

Equality analysis for Local Government Pension Scheme (England and Wales) consultation – addressing unlawful age discrimination – June 2020

This document records the analysis undertaken by Ministry of Housing, Communities and Local Government (MHCLG) to fulfil the requirements of the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. This requires the department to pay due regard to the need to:

1. eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
2. advance equality of opportunity between people who share a protected characteristic and those who do not
3. foster good relations between people who share a protected characteristic and those who do not.

The protected characteristics which should be considered are:

- age
- disability
- sex
- gender reassignment
- marriage or civil partnership
- pregnancy and maternity
- race
- religion or belief
- sexual orientation.

Please note that in relation to the protected characteristic of marriage and civil partnerships the department is required to have due regard only to the first point in the first paragraph above.

SECTION 1

1.1 Policy/Service

Background

In 2018 the Court of Appeal ruled that the transitional protection in the 2015 public service pension reforms constituted unlawful age discrimination in the Firefighters' and Judges' schemes, often informally referred to as the 'McCloud' and 'Sargeant' cases. Following this judgment, in July 2019 a Written Ministerial Statement confirmed that the Government believed the ruling had implications for the main public service pension schemes, including the Local Government Pension Scheme in England and Wales (LGPS), and that the discrimination would be addressed in all the relevant schemes, regardless of whether members had lodged a legal claim.

Since then, MHCLG have been considering the changes that would remove the unlawful discrimination from scheme regulations. In February 2020, technical discussions were held with the national Scheme Advisory Board to discuss and get feedback on initial proposals. We are now at a stage where we plan to undertake a full public consultation on our proposals. This equality impact assessment is based on the proposals we will be seeking views on in that consultation.

Existing transitional protection in the LGPS

In the McCloud and Sargeant cases, the claimants had challenged transitional protection given to older workers when the Firefighters' and Judicial Pension Schemes were reformed in April 2015. These reforms were part of a wider programme of reform to public service pension schemes, implemented following the report of the Independent Public Service Pensions Commission in March 2011¹ and a HM Treasury Green Paper in November 2011². The Public Service Pensions Act 2013 was enacted to provide for a new benefits and governance framework across all relevant schemes. Principally, the main changes that were implemented were:

- a move from a final salary benefit structure to a career average benefit structure, and
- for most schemes, an alignment of a member's normal pension age with their state pension age.

As part of the package of reforms, members nearing retirement in all schemes were given transitional protection. The high level aims for this protection were set out on p10 of the November 2011 Green Paper:

“for those public service workers who, as of 1 April 2012, have ten years or less to their current pension age, the Government's objective is that they will see no change

¹ <https://www.gov.uk/government/publications/independent-public-service-pensions-commission-final-report-by-lord-hutton>

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205837/Public_Service_Pensions_-_good_pensions_that_last_Command_paper.pdf

in when they can retire, nor any decrease in the amount of pension they receive at their current Normal Pension Age.”

In the LGPS in England and Wales, the changes to the scheme’s benefit structure were implemented from 1st April 2014. All active scheme members moved from the final salary scheme (‘the 2008 Scheme’) into the new career average scheme (‘the 2014 Scheme’) from this date, including those eligible for transitional protection.

Transitional protection for those eligible was provided through a statutory underpin, with details contained in regulation 4 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (‘the 2014 Regulations’).

Under regulation 4, underpin protection provides that when a protected member reaches their underpin date (the earlier of the date they leave the scheme with an immediate entitlement to benefits and 65), their 2008 Scheme and 2014 Scheme benefits are compared. If the 2008 Scheme benefits are higher, an adjustment is made to their 2014 Scheme benefits to make up the shortfall. If the 2014 Scheme benefits are higher, no changes are necessary.

To qualify for underpin protection, members currently have to:

- have been within ten years of their 2008 Scheme normal pension age (normally 65) on 1st April 2012,
- have been active in the LGPS on 31st March 2012,
- have gone on to be active members in the 2014 Scheme, without having had a break in service of more than five years, and
- leave the scheme with an immediate entitlement to pension benefits, or attain age 65.

The proposed changes

Through the McCloud and Sargeant cases, the Courts identified unjustified direct age discrimination in transitional protection arrangements in the Judicial and Firefighters’ Pension Schemes. In relation to the LGPS, this difference in treatment exists between two groups of LGPS members:

- those who were in service on 31 March 2012 and were within ten years of Normal Pension Age (NPA) on 1st April 2012, therefore benefiting from underpin protection; and ‘better off’ than the second group
- those who were in service on 31 March 2012 and were more than ten years from NPA, and so were not eligible for underpin protection and therefore “worse off” than the protected members (as they were not guaranteed a pension of at least the level they would have received in the final salary scheme).

The changes we are seeking views on in our consultation would attempt to remove the difference in treatment from LGPS scheme regulations.

Principally, we propose to do this by removing the age-related aspect of the qualifying criteria for the underpin. This would extend the application of the underpin and mean that any members active in the LGPS on 31st March 2012 who subsequently joined the 2014

Scheme without a break in service of more than five years would receive transitional protection.

The 'underpin period', the period over which a member's 2008 Scheme and 2014 Scheme benefits are compared, currently begins on 1st April 2014 and runs until a member's underpin date. Under the regulations governing the existing underpin, the last possible underpin date is 31st March 2022, as this is the last date a member in the protected cohort can reach their 2008 Scheme normal pension age. In considering how to equalise treatment between the unprotected and protected groups, we propose that both groups will be given underpin protection from 1st April 2014 to 31st March 2022 (or to the members' underpin date, where this is earlier). In our view, this approach will mean there is a consistent period of protection for all those who were members of the scheme on 31st March 2012 and who went on to have 2014 Scheme membership without a disqualifying break in service, regardless of their age.

However, where a member continues in active service beyond March 2022, they will retain a final salary link, and it will be their pay at the point of leaving the LGPS (or at age 65, if earlier) which would be used in their underpin calculation. This should ensure that older and younger members have an equivalent level of protection.

We are also proposing changes to some aspects of the underpin to ensure it works effectively and consistently for scheme members. The main changes can be summarised briefly as follows:

- **Members returning to LGPS employment** - At the moment, the underpin applies at a single point in time and, if a member returns to active membership at a later date (potentially in a higher paid post), there is no re-calculation of their underpin (even if they may have a continuing final salary link). Under our proposals, where members have not yet 'crystallised' their benefits and return to work without a disqualifying break in service (a continuous break of five years or more in active membership of a public service pension scheme), they would retain underpin protection, so long as they aggregate their previous scheme membership. This should particularly benefit women, who are more likely than men to have employment breaks³ (for example, due to caring responsibilities) and, overall, ensure that the underpin applies more fairly across the LGPS membership.
- **Immediate entitlement** - Under the current underpin regulations, members must have an immediate entitlement to benefits upon ceasing to be an active member, in order for the underpin to apply. This requirement means that members leaving the scheme before age 55 do not usually benefit from underpin protection. We believe this means older workers are more likely to obtain underpin protection than their younger colleagues (as they would be more likely to remain in active membership until their 55th birthday). At the moment, this rule only impacts on a handful of individuals⁴, as most members had to be at least 55 in April 2012 to obtain underpin protection. However, to avoid creating a difference in treatment between older and younger workers which is likely to become bigger over time, it is proposed that the requirement for members to have an immediate entitlement is removed. Instead,

³ <http://www.parliament.uk/briefing-papers/sn06838.pdf>

⁴ Some members who have a protected 2008 Scheme normal retirement age of 60 under regulation 24 of the 2014 Regulations may not have been aged 55 in April 2014. It is possible those members

underpin protection would apply to members leaving the LGPS with a deferred or immediate entitlement to a pension.

- **Introduction of a two-stage process** - Under current provisions, the underpin calculation takes place at a single point in time – a member's underpin date, being the earlier of the date a member leaves active service with an immediate entitlement to a pension, and the date they reach their 2008 Scheme normal retirement date. This has its advantages, such as in respect of administration. However, in the round, we now consider a two-stage underpin process would provide a more robust form of protection and the draft regulations attached propose such an approach. Under this, all members would have an 'underpin date' and an 'underpin crystallisation date':
 - the purpose of the 'underpin date' would be to provide for a provisional assessment of the underpin, generally at the earlier of a member's date of leaving active service and the date they reach their 2008 Scheme normal retirement age.
 - The purpose of the underpin crystallisation date would be to provide for a final check at the point the member's benefits from the scheme are 'crystallised'. The check would be designed to ensure that members always receive at least the higher of the pension they would have been due from the 2014 Scheme and the 2008 Scheme, taking into account the impact of factors like early/ late retirement adjustments

Together and individually, these changes are intended to be beneficial for scheme members, and are intended to ensure that the revised underpin works for all members with underpin protection in a consistent and effective way. The proposals to extend underpin protection to those with breaks in employment may be more likely to benefit women, who are more likely to have time out of the labour market⁵, and therefore have positive effects in relation to the protected characteristics of sex. The proposals to extend underpin protection to those who leave with a deferred or immediate entitlement is likely to mean younger members would be more likely to benefit from underpin protection and therefore have positive effects in relation to the protected characteristics of age.

To avoid creating new differences in treatment in the LGPS, we propose that the amended regulations would apply retrospectively from 1st April 2014, ensuring that all protected scheme members are subject to the same detailed provisions.

Further details of the overall changes proposed, and the background to these changes, are outlined in the draft consultation document.

⁵ <http://www.parliament.uk/briefing-papers/sn06838.pdf>

SECTION 2

2.1 Summary of the evidence considered in demonstrating due regard to PSED

In considering the impacts of these reforms on the LGPS membership, we have been supplied with and considered analysis from the Government Actuary's Department (GAD) on how the package would impact on different sections of the LGPS membership. This is attached as **annex A**. The data used in this analysis was LGPS fund membership data as at 31st March 2019, collated from each administering authority and provided to GAD in late 2019.

Full information regarding the assumptions used in GAD's analysis and the limitations of the analysis are set out in annex A. However, we draw attention to the following points in particular:

- GAD's analysis has principally considered those who would benefit from the proposals outlined in this consultation. So members who already have underpin protection under existing provisions (being those aged 62 and older on 31st March 2019) have not been considered directly.
- GAD's analysis is based on active membership records totalling 1.68mn. The analysis has been conducted on a per-member basis, meaning additional records where members have more than one active employment have been removed.
- The proportion of the protected membership which is eventually likely to be better off as a result of underpin protection is strongly dependent on what future pay growth is in the LGPS. In this analysis, the annual future pay growth assumption used is CPI + 2.2%. This is in line with the HMT Directions for the 2016 scheme valuation. If future pay growth differs from this it may impact on the proportion of the membership who will benefit from underpin protection. Significantly, if future pay growth is closer to more recent pay growth trends in the public sector, it is likely more members will benefit from the reformed scheme. In that situation some of the trends noted in this assessment of who the underpin is more likely to benefit may not materialise.
- The analysis is based on the LGPS's active membership as at 31st March 2019. Under our proposals, the proposed changes to the underpin would apply retrospectively to 1st April 2014. We would therefore expect that a number of additional members would benefit from our proposals. However, we do not anticipate this limitation would significantly change the results of the analysis.
- The analysis is based on an "average" member at each particular age. Allowing for variations in individual members' future service or salary progression could produce different figures.

We have also considered data from the 2020 Q1 Labour Force Survey (LFS), and the Annual Population Survey (APS) in relation to the below populations.

Protected characteristic	Data collected	Data reference	Country
Race	https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentande	LFS 2020-21 Q1	UK

	mployeetypes/datasets/labourmarketstatusbyethnicgroupa09			
Religion	https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/datasets/religioneducationandworkinenglandandwales	APS 2019	England and Wales	
Marital status	https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesbymaritalstatusandlivingarrangements	LFS 2020-21 Q1	England and Wales	
Disability	https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusofdisabledpeoplea08	LFS 2020-21 Q1	UK	
Sexual orientation	Data unavailable			
Gender reassignment	Data unavailable			
Pregnancy and maternity	Data unavailable			

The LFS is the largest regular household survey in the UK. The survey covers people resident in private households, National Health Service (NHS) accommodation and student halls of residence. However, it does not cover any other communal establishments. A nationally representative sample of approximately 100,000 people aged 16 and over in around 40,000 households are interviewed for the LFS. The survey may pose some limitations to our analysis as explored below.

- We have excluded those individuals who have answered “I don’t know” to whether you are economically active or inactive. The individuals we have excluded represent 4% of the LFS. These have been excluded from the equality analysis to ensure public sector level data isn’t skewed.
- We have also excluded those who are economically inactive (20% of the LFS) as this would have given a misrepresentation of the working population for the public sector workforce from the LFS.
- Data from the LFS for the working population on ethnicity, marital status and disability are based on the proportion of individuals who are economically active. These individuals are aged 16 and over and are either in employment or unemployed. The unemployed in this instance are defined as those aged 16 and over, who are without work but have actively sought work in the last 4 weeks and are available to start work in the next 2 weeks.
- Additionally, as the LFS is survey data, it provides estimates of population characteristics rather than exact figures. Confidence intervals are used to present the sampling variability. For the LFS the confidence interval is 95%, so it is expected that in 95% of the survey samples, the resulting confidence interval will contain the true value of surveying the whole population.

The APS is compiled from interviews for the LFS along with additional regional samples. The APS comprises the main variables from the LFS, with a much larger sample size. Consequently, the APS supports more detailed breakdowns than can be reliably produced from the LFS. This survey has been used for religion and to check consistency across the other protected characteristics which the limitations have been explored below.

- Data for Religion is based on the APS for England and Wales. This also includes those who are economically inactive, i.e. those without a job who have not actively sought work in the last four weeks, and/or are not available to start work in the next two weeks. This means we are not comparing the same populations between characteristics, as these percentages include the 20% of the population who are economically inactive.
- However, when we compare the APS to the LFS proxy for the public sector there isn't much dispersion. For example, 0.4% of the public sector identify as Jewish compared to 0.5% of the England and Wales population. We therefore think these percentages are robust enough to use as proxies in our analysis, but we will keep monitoring and evaluating this.

2.2 Assess the impact

Age

The proposals outlined here are intended to remove age discrimination, which had been found to be unlawful in the firefighters' and judicial pension schemes, from the LGPS rules governing the underpin. After the changes proposed, we would expect there to be greater equality in how the underpin applies to members based on their age.

The data shows that there would remain some differences in how the underpin applies across age ranges, and we set out below why this is the case.

Data

March 2019 data supplied to GAD by LGPS administrators included an age breakdown of active LGPS membership, showing the following age distribution⁶ across the scheme:

Age range	Total number of members (000s)	Proportion of total
16-20	26	1.55%
21-25	86	5.13%
26-30	122	7.28%
31-35	153	9.13%
36-40	189	11.28%
41-45	202	12.05%
46-50	261	15.57%
51-55	278	16.59%
56-60	222	13.25%

⁶ Table 4 in annex H

61-65	112	6.68%
66-70	20	1.19%
71-75	5	0.30%
All	1,676	100.00%

As can be observed, LGPS active membership is not uniformly distributed through age ranges and the group who make up the highest proportion of the total membership are in the 51-55 age group.

Based on the remedy proposed within the consultation paper, and described at a high-level in section 1, GAD have analysed which members would qualify for the proposed underpin, and broken this down by age⁷:

Age range	Total number of members expected to qualify (000s)	Proportion of total
16-20	0	0.00%
21-25	1	0.15%
26-30	12	1.78%
31-35	39	5.78%
36-40	68	10.07%
41-45	84	12.44%
46-50	135	20.00%
51-55	171	25.33%
56-60	145	21.48%
61-65	20	2.96%
66-70	0	0.00%
71-75	0	0.00%
All	675	100.00%

GAD have also considered which members would benefit from the proposed underpin (i.e. where the final salary benefit is higher) and broken this down by age⁸:

⁷ Table 4. This analysis does not include members who already have underpin protection – i.e. those aged 62 or above at 31st March 2019.

⁸ Table 5. This analysis does not include members who already have underpin protection – i.e. those aged 62 or above at 31st March 2019.

Age range	Total number of members expected to benefit (000s)	Proportion of total
16-20	0	0.00%
21-25	1	0.32%
26-30	9	2.91%
31-35	25	8.09%
36-40	35	11.33%
41-45	45	14.56%
46-50	89	28.80%
51-55	105	33.98%
56-60	0	0.00%
61-65	0	0.00%
66-70	0	0.00%
71-75	0	0.00%
All	309	100.00%

Analysis

Figure 2 in annex A presents the findings of the above tables in a graph. This shows that, broadly, the likelihood of a member either qualifying for the revised underpin or benefitting from the revised underpin reflects the age profile of the LGPS generally.

However, it is also clear from figure 4 that there are some differences in how the proposed underpin would apply based on age. In particular:

- members between 41 and 60 are more likely to qualify, and those between 16 and 40 less likely to qualify.
- members between 41 and 55 are more likely to benefit (i.e. where the final salary pension would be higher), and those between 16 and 35 and over 55 are less likely to benefit.

These trends reflect a number of points. Significantly, in relation to qualification for the proposed underpin, it reflects that under our proposals members would need to have been in active membership of the LGPS on 31st March 2012 to qualify for the underpin. The proportion of members active in the scheme as at 31st March 2019 who had been members of the scheme on 31st March 2012 is lower for younger members, as experience shows they have a higher withdrawal rate from active scheme membership.

It is proposed that we retain this qualification date in underpin regulations to reflect the fact that transitional protection across public service pension schemes was always designed to help members with the transition from the old scheme designs to the new (principally, in the LGPS, in relation to the move from a final salary to a career average structure). We therefore consider it would be inappropriate to grant underpin protection to those joining the

scheme on or after 1st April 2014, as they joined the scheme when it had already been reformed.

In relation to members who joined the LGPS in the final salary scheme after 31 March 2012 and who were ineligible for transitional protection regardless of their age, they were not subject to the discrimination identified by the Courts.

The purpose of the transitional protection was to protect those closest to retirement, and so with least time to prepare, from the changes. The introduction of the reformed schemes was publicised at the time and was the subject of widespread media scrutiny. Anyone joining after 31 March 2012 could, therefore, reasonably be expected to have known when they entered service that they would join or be moved to the reformed scheme. They could not have expected to remain in, or join, the final salary scheme. Consequently, they are also not within scope of the proposals set out in the consultation.

The figures also show that members in certain age ranges (particularly those between 41 and 55 as at 31st March 2019) would be more likely to benefit than those in the latter stages of their career and those at the early stages of their career.

Partly this is a consequence of the point discussed above – i.e. that members would have to have been in the LGPS on 31st March 2012 to qualify for underpin protection, and older scheme members are more likely to have been so. However, it is also partly due to our understanding (based on analysis of previous member experience) of how members' career average and final salary benefits are likely to compare over the underpin period, 2014 to 2022, for different age groups. Specifically, we anticipate that those aged between 41 to 55 are:

- more likely to remain in active service until such time as their final salary benefits are higher than their career average benefits than younger colleagues. This is reflected in the assumed voluntary withdrawal rates used which are shown in Table B3 in annex A.
- more likely to have salary growth/ promotional pay increases over the underpin period (including increases after the end of the underpin period) than their older colleagues, resulting in the final salary benefit being higher. Again this assumption is reflected in the assumptions made for promotional pay increases shown in Table B2 in annex A (noting that members aged 41 to 55 in 2019 would be aged between 36 and 50 in 2014).

These differences in outcome between different age groups reflect that final salary schemes typically benefit members with particular career paths (for example, they usually favour high-earners with long service).

Over time, we would expect the age group of LGPS members who have underpin protection and who would be likely to benefit from underpin protection to continue to mature. As noted in section 1, under our proposals, from 1st April 2022 all LGPS membership would accrue on a career average basis, without ongoing underpin protection. This reflects the Government's original desire to phase out final salary membership of public service pension schemes, and to replace them with career average pension rights, which we believe are fairer and more sustainable.

Nevertheless, to ensure that younger members with underpin protection have protection that is equivalent to their older colleagues, we propose that members with underpin protection will retain an ongoing final salary link until the earlier of the date they leave active service or reach their 2008 Scheme normal retirement age. This will ensure that younger members who are currently at an early stage of their career, and who may have promotions and other salary increases later in their career, have an equivalent underpin test to their older colleagues (i.e. allowing for career progression). Members who return to active membership and aggregate their pension records without a disqualifying break in service (i.e. five years or more) would retain their final salary link

Sex

We expect some minor differences in how the underpin would apply based on gender, as described in this section.

Data

March 2019 data supplied to GAD by LGPS administrators shows that the LGPS active membership is predominantly female⁹:

Sex	Total number of members (000s)	Proportion of total
Male	439	26.19%
Female	1,238	73.87%
Total	1,676	100.00% ¹⁰

GAD's analysis of our proposed underpin show that the proportion of men and women who would qualify for underpin protection and benefit from that protection (i.e. where the final salary benefit is calculated to be higher) broadly matches the profile of the scheme¹¹. As at 31st March 2019:

- 74% of scheme members were female, and 26% male
- 73% of the scheme members who were estimated to qualify for the proposed underpin protection were female, and 27% male
- 73% of the scheme members who were estimated to benefit from the proposed underpin (i.e. where the final salary benefit is higher) were female, and 27% male

⁹ Figure 1b and table 4 of annex H.

¹⁰ Difference in total and individual numbers reflects rounding.

¹¹ Figures 1a and 1b and table 1 of annex H

In addition, men and women are estimated to qualify and benefit from the underpin in similar proportions:

LGPS populations	Proportion who qualify for proposed underpin	Proportion who benefit from proposed underpin
Male	42%	19%
Female	40%	18%

This shows that men are marginally more likely to qualify for the proposed underpin protection and to benefit from that underpin protection.

GAD have also supplied analysis which shows, for an average member, the likelihood that they would:

- a) qualify for underpin protection at any given age, and
- b) benefit from underpin protection at any given age.

This is presented visually at figure 2 in annex A and shows that at most ages men are more likely to qualify for, and benefit from, underpin protection than women.

Analysis

As set out above, the proportion of men and women who would qualify for underpin protection and benefit from that protection under our proposals closely matches the profile of the scheme.

However, as a proportion of their membership, men are marginally more likely to qualify for the proposed underpin and also more likely to benefit from that underpin protection.

It is anticipated that men would be marginally more likely to qualify for the underpin under our proposals, based on the data used in this analysis, because the average man would be expected to have a lower voluntary withdrawal rate than the average woman, based on LGPS experience. This reflects the fact that women are more likely to have breaks in employment due to childcare and other caring responsibilities¹². Our proposals to allow for breaks in service of up to five years during which a member would retain underpin protection would help ensure that female members are not disadvantaged by their increased likelihood of having breaks in employment. This would have a positive impact on those that share this protected characteristic.

It should also be noted that GAD's analysis is based on the LGPS's active membership in March 2019. As our proposals are that the amended regulations would be applied retrospectively to April 2014, a number of members who would benefit from the proposed underpin are not included in this analysis (being those who were previously in the scheme on 31st March 2012 and re-joined after 1st April 2014 without a five year break in service). As female members are assumed to have a higher rate of voluntary withdrawal, it is possible that a greater proportion of female members would be included in this tranche of membership.

It is anticipated that men would be marginally more likely to benefit from underpin protection under our proposals because, in line with previous scheme experience, the average male

¹² <http://www.parliament.uk/briefing-papers/sn06838.pdf>

LGPS member would be expected to have higher salary progression than the average woman and that women are generally expected to have higher voluntary withdrawal rates than men. Members with longer scheme membership and with higher salary progression would be more likely to receive an addition to their pension through the underpin (i.e. where the final salary benefit is higher). These differential impacts reflect the workings of a final salary scheme, and demonstrate some of the effects that can arise under that design. This inherent issue with final salary schemes is one of the reasons why the Government is keen to move public service pension schemes to career average benefit accrual across the board from April 2022, which are fairer and more sustainable.

Other protected characteristics

Limited data specific to the LGPS in England and Wales is available in relation to other protected characteristics. However, we do not consider that the changes to underpin protection proposed in the consultation will result in any differential impact to LGPS members with the following protected characteristics: disability, race, religion or belief, gender reassignment, pregnancy and maternity, sexual orientation and marriage/civil partnership. Further discussion on these topics is outlined below.

Race, religion, disability and marital status impact

There is limited membership data available across public service pension schemes on race, religion, disability and marital status as the LFS has no information about pension membership. The LFS does however break down results to public sector level, which we will use as a proxy for public service pension schemes for race and disability. For religion the APS has been used as a proxy for the public service pension schemes as it can be broken down into public sector level too. We know that the civil service, a sub-section of the public sector workforce, has broadly the same level of representation of ethnic minorities as the UK population so we can confidently assume this holds true for the remainder of the public sector. Tables A-C and graph 1 show the distribution of the total population compared to the public sector population.

Although there are limitations with formal religion, race, disability and marital status data, the Government recognises the need to continually monitor the race and disability status of public service workforces and the relationship with scheme membership. It also acknowledges the importance of using new data obtained to inform these reviews and the development of pension policies.

Table A indicates that the breakdown of ethnicity within the public sector is broadly consistent with the UK population. We therefore assume this to be the same within public service pension schemes. Although Black/African/Caribbean individuals are slightly overrepresented in the public sector relative to the UK population, this is only by a small proportion. Therefore, we would not expect Black/African/Caribbean individuals to be affected by the changes to underpin protection to a larger extent relative to the UK population averages.

The changes to transitional arrangements of 2014 pension schemes will arguably affect white people the most as this ethnic minority represent 87.6% of the public sector. However, we do not anticipate there to be a differential impact in relation to the application of the underpin in relation to this ethnicity.

Table A - Total and public sector population by ethnicity

Ethnicity	Working population	Public sector Population
White	88%	88%
Mixed	1%	1%
Indian	3%	2%
Pakistani	2%	1%
Bangladeshi	1%	1%
Chinese	0%	0%
Black/African/Caribbean	3%	4%
Other ethnic groups	3%	3%

Source: LFS Q1 2020

Table B shows the distribution of those with disabilities as defined under the Equality Act 2010. It suggests that individuals with disabilities are overrepresented in the public sector. Based on the data available, we do not consider that the proposals we are consulting on are likely to have differential impacts on individuals with a disability.

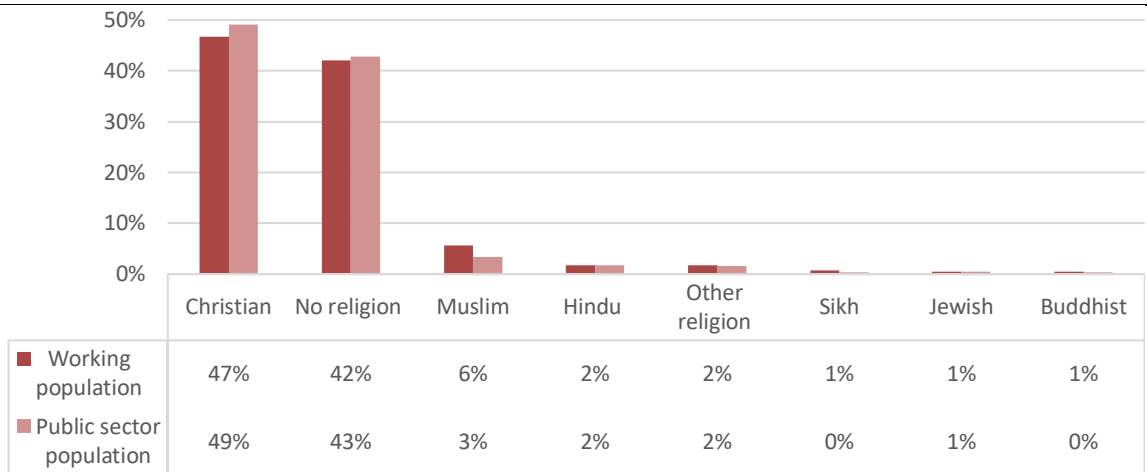
Table B: Total and public sector population by disability

Disability	Working population	Public sector Population
Equality act disabled	14%	16%
Not equality act disabled	86%	84%

Source: LFS Q1 2020

Graph 1 shows a visual representation of the public sector workforce compared to the total population. This shows that those identifying as Christian or no religion are overrepresented in the public sector relative to the UK. The other religions are underrepresented in the public sector relative to the UK population. We do not consider that the proposals we are consulting on are likely to have differential impacts on individuals with a religious affiliation.

Graph 1: Total and Public sector population by religion



Source: APS 2019

Table C shows that people who are married, cohabiting or in a civil partnership are overrepresented in the public sector and therefore the changes to transitional arrangements from the 2014 pension schemes will have a larger than expected effect on those people. Those who are not married are underrepresented in the public sector compared to the working population. However, we do not consider that the proposals we are consulting on are likely to have differential impacts on individuals of different marital statuses.

Table C: Total and public sector population by marital status

Marital status	Working population	Public sector Population
Married, cohabiting or in a civil partnership	56%	64%
Not married	44%	34%

Source: LFS Q1 2020

Sexual orientation, gender reassignment, pregnancy and maternity

Data on sexual orientation, gender reassignment, pregnancy and maternity (other groups covered by the Equality Act 2010) is not available.

2.3 Summary of the Analysis

Age

The changes proposed will significantly reduce differential impacts in how the underpin applies based on a member's age, by removing the age-related qualifying criteria which the Government considers unlawful, following the McCloud and Sargeant cases.

Compared to the total active membership in March 2019, we anticipate some differences in how the underpin applies to different age groups – both in terms of qualification for the protection, and in relation to the members who would be likely to benefit from it. This reflects two main points:

1. Under our proposals, members will have to have been in active membership of the LGPS on 31st March 2012 to qualify for underpin protection. Younger members, who are more likely to have joined the LGPS since then, will be less likely to qualify. The Government is not proposing extending underpin protection to those who joined the LGPS after 31st March 2012 because:
 - For members joining after 1st April 2014, they joined the career average scheme and there is no need to provide protection to help them transition to the new scheme structure.
 - For members joining between 1st April 2012 and 31st March 2014, they joined the LGPS at a time when upcoming reforms were well publicised, and they could not have expected to remain in the final salary scheme.
2. Members between the ages of 41 and 55 as at 31st March 2019 are more likely to benefit from the underpin than other groups because, based on LGPS experience and future assumptions:
 - they are more likely to experience pay progression that would make the final salary benefit higher for the underpin period than their older colleagues, and
 - they are more likely to remain in active membership than younger colleagues who would be expected to leave before they receive the pay progression necessary for the underpin to result in an addition to their pension.

These differential impacts reflect the workings of a final salary scheme, and demonstrate why the Government is keen to move local government pensions accrual to a career average basis from April 2022 to apply a fairer system to all future service.

Sex

Broadly, the proportion the proportion of men and women who would qualify for underpin protection and benefit from that protection matches the profile of the scheme.

Men are marginally more likely to qualify for underpin protection and to benefit from underpin protection. This reflects the fact that men would be expected to have higher salary progression than women and that women are expected to have higher voluntary withdrawal rates than men.

These differential impacts reflect the workings of a final salary scheme, and demonstrate why the Government is keen to move local government pensions accrual to a career average basis from April 2022 to apply a fairer system to all future service.

Other protected characteristics

Limited data specific to the LGPS in England and Wales is available in relation to other protected characteristics. However, we do not consider that the changes to underpin protection proposed in the consultation will result in any differential impact to individuals with the following protected characteristics: disability, race, religion or belief, gender reassignment, pregnancy and maternity, sexual orientation and marriage/civil partnership. We are seeking views from stakeholders in the consultation on whether further data sets are available that would help us consider the impacts, particularly in relation to these other protected characteristics.

It is not proposed that we take any mitigatory steps in relation to the potential effects on members with protected characteristics that we have observed in this analysis.

SECTION 3

3.1 Decision Making

Following the assessment undertaken here, we intend to consult on introducing the changes to the LGPS outlined in section 1. The consultation will include a summary of our analysis to help stakeholders come to an informed view of the potential impacts. We intend to ask the following questions so that we can obtain broad feedback from stakeholders on the potential equalities impacts:

- Do the proposals contained in this consultation adequately address the discrimination found in the 'McCloud' and 'Sargeant' cases?
- Do you agree with our equalities impact assessment?
- Are you aware of additional data sets that would help assess the potential impacts of the proposed changes on the LGPS membership, in particular for the protected characteristics not covered by the GAD analysis (age and sex)?
- Are there other comments or observations on equalities impacts you would wish to make?

3.2 Monitoring arrangements

As outlined in section 3.1, we intend to consult on the proposals summarised in this equalities impact assessment and to ask specific questions regarding the potential impacts. Reviewing the responses on these points will allow us to consider the equalities impacts of our proposals in greater depth and allow us to consider changes that may be necessary to address any adverse or negative impacts noted. It will also help us to consider if there are further data sets that would help us assess the impacts on the LGPS membership.

If the proposal we consult on is implemented (whether substantively the same, or with amendments), we will review the operation of scheme regulations through regular dialogue with the sector. We maintain a close relationship with the LGPS scheme advisory board, a statutory body with a function to advise the Minister on the desirability of making changes to

the scheme¹³. The scheme advisory board is made up of equal numbers of employee and employer representatives so represents those individuals and organisations with the keenest interest and awareness of the impacts of our reforms. This relationship, and others we have with different scheme stakeholders, will enable us to monitor the application of the amended regulations.

3.3 Sign-off by the decision-maker

Name: Suzie Clarke

Job Title: Deputy Director, Local Government Finance Stewardship

Date: 20/06/2020

¹³ Regulation 110(3) of the Local Government Pension Scheme Regulations 2013