



HM Treasury

Public Service Pensions: changes
to transitional arrangements to
2015 schemes
Updated Equality Impact Assessment

February 2021

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Updated Equality Impact Assessment



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Chapter 1

Introduction

Equality impact analysis

Purpose

- 1.1 This document records the equality analysis undertaken for the changes to transitional arrangements to the 2015 public service pension schemes, to enable Ministers to fulfil the requirements placed on them by the Public Sector Equality Duty¹ (PSED) as set out in section 149 of the Equality Act 2010.²
- 1.2 This analysis builds on, and updates, the equality impact analysis undertaken by HM Treasury³ to inform the proposals set out in the consultation document published on 16 July 2020.⁴ Further analysis has been undertaken following the closure of the consultation to inform final policy decisions. The consultation set out proposals for addressing the unlawful discrimination identified by the Court of Appeal in the cases of *McCloud* and *Sargeant*⁵ in relation to transitional protection element of the reformed public service pension schemes.
- 1.3 When formulating policy, the government is required to comply with the PSED. The duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between people with different protected characteristics when carrying out their activities. This document includes the assessment of the impacts of the government's policies outlined in its consultation response published on 4 February 2021, by reference to the protected characteristics identified in the Equality Act 2010 of: sex, age, disability, race, religion or belief, gender reassignment, pregnancy and maternity, sexual orientation and marital or civil partnership status.

¹ www.equalityhumanrights.com/sites/default/files/meeting_the_duty_in_policy_and_decision-making.pdf

² www.gov.uk/guidance/equality-act-2010-guidance

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900999/Public_Service_Pensions_FIA_.pdf

⁴ www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes

⁵ *Lord Chancellor and another v McCloud and others, Secretary of State for the Home Department v Sargeant and others* [2018] EWCA Civ 2844.

- 1.4 The government response to the consultation, published alongside this document covers two policies, both of which relate to public service pensions:
- first, the response sets out the government’s chosen approach for addressing the unlawful discrimination identified by the Court of Appeal, in respect of the remedy period (1 April 2015 to 31 March 2022). Following a period of consultation, the government has decided to proceed with implementation of the Deferred Choice Underpin (DCU) to address this unlawful discrimination
 - secondly, the policy for future arrangements for public service pensions from 1 April 2022 onwards. The government has confirmed that from 1 April 2022, all those who remain in active service will only be eligible to be members of their respective reformed scheme
- Full policy details are set out in the consultation response document (CP373) published alongside this document.

Approach

- 1.5 Chapter 2 of this Equality Impact Assessment (EqIA) considers the potential impact of the proposed remedy and the government’s proposals for future pension provision by reference to the protected characteristics identified in the Equality Act 2010. Annex A then describes the data used for this analysis in more detail.
- 1.6 The analysis in Chapter 2 is based on the data contained in Annexes A and B. It has first been used to identify both potential and actual differential impacts by reference to each of the protected characteristics. The impacts identified through this analysis are discussed for each of the protected characteristics in turn.
- 1.7 Where it seems likely that a potential or actual differential impact by reference to protected characteristics is caused by external factors, such as existing features of pension scheme design, the interaction of those external factors with the proposals under consultation have been considered from an equality perspective.
- 1.8 Responses to the consultation questions relating to the equality impacts of the proposals (questions 1 and 2 of the consultation document) have also been analysed and considered.
- 1.9 In each case, thought has been given to whether the policies should be changed or altered, considering the identified equality impacts. The government assumes that no further specific considerations arise in relation to advancing equality of opportunity and fostering good relations.
- 1.10 Equality impacts were considered throughout the consultation and policy development stage and such consideration will continue through to implementation via legislation.

Data

- 1.11 This equality impact analysis has made use of a wide variety of available data. Details of the data used can be found in Table 8 of Annex A, with scheme specific data available in Annex B. This data has been valuable in assessing potential equality impacts of the proposals throughout the consultation period, through to decision making.
- 1.12 Public service pension schemes hold data on sex and age - the key characteristics for pension calculations. This data is based on the public service pension schemes 2016 actuarial valuation data and considers the active membership as at 31 March 2016. It was provided to the Government Actuary's Department (GAD) by public service pension schemes covering the NHS (England and Wales), Teachers (England and Wales), Police (England and Wales), Fire (England), Civil Service (Great Britain) and Armed Forces (UK). GAD produced summarised versions of this data found in Annex B. Public service pension schemes do not hold complete or up-to-date data on the other protected characteristics under the Equality Act 2010. This data is therefore not currently available for GAD to analyse. Whilst it was not feasible to acquire such data, it was also not necessary to do so given the close match with data for the public sector as a whole.
- 1.13 The population affected by the consultation response are members of the main public service pension schemes.⁶ Data for age and sex covers the public service pension population. For the other protected characteristics, data for the whole of the public sector workforce has been used, regardless of whether they are enrolled in a pension scheme. The data for the two populations (public sector workforce, and public service pension scheme active membership) is broadly similar given that 89% of public sector employees were members of a workplace pension scheme in 2019;⁷ and the aggregated data available from schemes on age and sex is consistent with the wider public sector on age and sex (see Tables 1 and 3 at Annex A).
- 1.14 It is therefore reasonable to use the Labour Force Survey (LFS) and Annual Population Survey (APS) for the analysis of the other protected characteristics, rather than commissioning a data gathering exercise. Further limitations of using public sector level data are explored in A.27 to A33.

Background

Removing discrimination arising from transitional protection

- 1.15 Between 16 July and 11 October 2020, the government consulted on two options (an immediate choice exercise or a DCU) to remedy discrimination

⁶ Members of the Armed Forces, Firefighter's, NHS, Police, Civil Service and Teachers pension schemes

⁷ www.ons.gov.uk/employmentandlabourmarket/peopleinwork/workplacepensions/bulletins/annualsurveyofhoursandearningspension/tables/2019provisionaland2018finalresults

that arose when reformed public service pension schemes were introduced in 2015.⁸

- 1.16 This discrimination arose when transitional protection was offered to some members – following negotiations with member representatives – alongside the introduction of the reformed pension schemes in 2015. This was intended to protect and give certainty to people who were close to retirement. In December 2018 the Court of Appeal found that transitional protection arrangements, which allowed certain members of the judicial and firefighters’ pension schemes to remain in their existing schemes when they were closed to other members, gave rise to unlawful discrimination, as transitional protection was only offered to older scheme members.⁹ In July 2019 the government confirmed that it accepted the Court’s judgment had implications for the other public service schemes that had similar transitional arrangements.¹⁰
- 1.17 The government believes it is not fair to simply move all those in scope of the remedy back into the legacy schemes, even though this would remove the unlawful discrimination identified. This is because many scheme members are likely to be better off in the reformed schemes. Instead, as set out in the consultation, eligible members will be given a choice of legacy or reformed pension scheme benefits in respect of their service during the period between 1 April 2015 and 31 March 2022 (the remedy period). The two options included in the consultation (immediate choice or DCU) differed primarily in the point in time at which the decision would be made by the member.
- 1.18 HMT received 3,144 responses to the consultation, expressing a broad range of views from individual members of relevant schemes, trade unions and other member representative bodies, employers, administrators and other organisations. These presented a diverse range of views on both options presented by the government.
- 1.19 The majority of respondents to the consultation supported the DCU option, primarily as members will have greater certainty on their benefit entitlements at the point at which they make a decision. In comparison, respondents expressed concerns about the immediate choice option as it would require members to base their decision on assumptions covering many decades around factors such as their future earnings and career paths, their family circumstances, and when they expect to retire. Most respondents felt that this would place too much risk on members and could create new discrimination.

⁸ This covered the following schemes: NHS in England and Wales, NHS Scotland, Teachers in England and Wales, Teachers in Scotland, Fire in England, Fire in Wales, Fire in Scotland, Police in England and Wales, Police in Scotland, UK Armed Forces, Civil Service in Great Britain, and the Civil Service (Others) scheme. Changes to the judicial pension schemes, the Local Government Pension Scheme in England and Wales, and the equivalent scheme in Scotland, as well as the public service pension schemes in Northern Ireland have been consulted on separately.

⁹ *Lord Chancellor and another v McCloud and others, Secretary of State for the Home Department v Sargeant and others* [2018] EWCA Civ 2844.

¹⁰ <https://questions-statements.parliament.uk/written-statements/detail/2019-07-15/HCWS1725>

- 1.20 Having considered the responses to the consultation and views that were expressed at stakeholder events, the government intends to proceed with the DCU. This means that members will make their decision between scheme benefits shortly before benefits are paid from the scheme. In the meantime, members will be deemed to have accrued benefits in their legacy schemes, rather than reformed schemes, for the remedy period, until they make that choice.
- 1.21 All individuals who were members or were eligible to be members of a legacy scheme immediately prior to 1 April 2012 and have a period of service after 31 March 2015 during which they were members of a legacy or reformed scheme will be given such a choice where those periods of service are continuous (including those with a qualifying break in service of less than 5 years). This is irrespective of whether they have submitted a legal claim or not, or whether they are currently an active, deferred or pensioner member.
- 1.22 Those who have already retired and/or received a pension award will be offered a choice as soon as practicable after necessary legislative and process changes can be made. The position they choose will be applied retrospectively back to the date the award was made.
- 1.23 It is important to make clear that all eligible members will ultimately be able to choose to receive benefits from the relevant legacy scheme or to instead receive the benefits that would have been available from the relevant reformed scheme, for any period of service between 1 April 2015 and 31 March 2022. There will be no entitlement to have the benefits of one scheme in some respects, but of the other scheme in other respects. Nor will there be any provision for a "tapered" system under which some members might be entitled or required to treat part of that period as service in one scheme, and part of it as service in another. Maintaining such an age-based system of tapered protection would perpetuate or even extend the discrimination identified by the courts.

Future pension provision

- 1.24 In addition to the proposals to address the discrimination identified by the courts, the public consultation also set out the proposals for future pension arrangements – and asked whether these proposals ensured equality of treatment.
- 1.25 The government has reviewed the responses to these proposals and has considered the points raised by respondents, and views expressed during stakeholder engagement sessions, when making final policy decisions.
- 1.26 The government remains committed to providing generous pension arrangements for public service workers. This provision must be sustainable and affordable. The 2015 schemes that were introduced following the recommendations of the Independent Public Service Pensions Commission (the reformed schemes) offer generous pension provision, improve affordability and sustainability, and are fairer to lower and middle earners.
- 1.27 The reformed schemes are some of the most generous available in the UK: backed by the taxpayer; index-linked; and offering guaranteed benefits on retirement; comparing very favourably to the typical private sector scheme.

- 1.28 The reforms created a fairer system. The move from (mostly) final salary to career average pension means members accrue their pension at a typically higher annual rate based on their average salary. Although some members are better off in legacy schemes, the reformed schemes are more beneficial for others, particularly many lower paid members.
- 1.29 The reforms reflected the need to control the significant costs of public service pension scheme benefits (now £44.3 billion for Great Britain in 2019-20) and to ensure that pension provision for public service workers remains sustainable. They also reflected the significant changes in life expectancy since the legacy schemes were established, leading to increasing costs to the taxpayer. Normal Pension Age (NPA) in most of the reformed schemes is linked to the State Pension Age (SPA), reflecting that most people can expect to live longer and have longer working lives. Nobody, though, is required to work up until the reformed scheme NPA as pensions can be taken before NPA, as long as Minimum Pension Age (MPA) is reached, but pensions taken before the relevant NPA will be adjusted fairly to reflect the fact they are likely to be paid for longer.
- 1.30 Whilst the transitional protection arrangements were found to give rise to unlawful discrimination – and the government has set out its proposals to address that discrimination – the rationale for the reforms and introducing reformed schemes still stands. The government remains of the view that these schemes – of which most public servants are already members – offer generous pension provision and address the objectives of affordability and sustainability.
- 1.31 The reformed schemes themselves are not discriminatory, and the government wants to ensure that all members are treated equally in respect of the scheme design available to them after the discrimination has been addressed. These plans achieve this, but if some members were able to remain in legacy schemes while others were not, that key objective would not be met.
- 1.32 Therefore, the government remains of the view that all public servants who continue in service from 1 April 2022 onwards will do so as members of their respective reformed scheme. Legacy schemes will be closed in relation to service after 31 March 2022, closing the remedy period, during which members in scope have a choice of benefits.

Next steps

- 1.33 The government will bring forward new primary legislation to provide requisite powers to deliver these changes to pension schemes.
- 1.34 By legislating in this way, the government's intention is to avoid any uncertainty or other problems which might otherwise result from relying simply upon whatever automatic effect the Equality Act 2010 may have, or from leaving it to courts or tribunals to make orders in particular cases. This will also ensure that the changes will apply to claimants and non-claimants as well as deal with consequential issues.

- 1.35 The government will bring forward new legislation when parliamentary time allows. This will ensure that the discrimination is remedied, and that the plans are set out for future arrangements from 1 April 2022 onwards after the remedy period ends.
- 1.36 Individual pension schemes will consult on the specific details of the implementation of these changes when they publish their draft regulations. The government will be able to consider further the impacts and detailed policy for each scheme at that stage, within the context of the overall policy.
- 1.37 The PSED is an ongoing duty which will continue to be monitored and reviewed through to implementation of the policies set out in the government response to the consultation. Further analysis will be conducted by individual pension schemes and mitigations will be considered where impacts on protected characteristics are identified. However, the government does not envisage any differential impact on persons or groups with protected characteristics on a scheme level other than those set out throughout this assessment for the public service as a whole.

Chapter 2

Equality impact overview

Analysis of consultation responses: summary

- 2.1 In the consultation document published on 16 July 2020, the government asked two specific questions on the equality impacts of its proposals to address unlawful discrimination identified by the Court of Appeal.
- 2.2 Question 1 asked for views on the implications of the proposals set out in the consultation on people with protected characteristics, as defined in section 149 of the Equality Act 2010.¹ This question also asked if respondents had any evidence for these matters and if anything could be done to mitigate any impacts they had identified.
- 2.3 Question 2 asked if there was anything else respondents would like to add regarding equality impacts of the proposals.
- 2.4 As shown in Table 1, 337 responses from individuals were received to question 1 and 231 responses from individuals to question 2. Many of these were from individuals expressing concerns that they would have to work longer under the 2015 reformed schemes, due to the link between scheme Normal Pension Ages (NPAs) and the State Pension Age (SPA) introduced alongside the 2015 pension reforms. The rationale for this and analysis of any potential impact is explored below.
- 2.5 Table 1 also shows that 84 responses from organisations were received to question 1 and 97 responses from organisations to question 2.

Table 1: Number of responses received (Questions 1 and 2):

Responses	Question 1	Question 2
Individuals	337	231
Organisations	84	97
Total	421	328

¹ www.legislation.gov.uk/ukpga/2010/15/contents

- 2.6 The main theme in responses from both employers and Scheme Advisory Boards (SABs)² was a request for scheme specific equality analysis to enable them to consider the impacts for their respective schemes.
- 2.7 While some respondents believed that the government’s proposals would fully address the discrimination found by the Court of Appeal, many did raise concerns.
- 2.8 There was a general concern that an immediate choice (IC) would lead to less favourable outcomes for younger members because those who considered any differential impact was justified in the Equality Impact Assessment were mostly in favour of the deferred choice underpin (DCU) approach. They believed this will give members sufficient time to consider their choice, compared with an IC, and that a DCU will allow all members, including those with protected characteristics, to make their decision at the same point in their career (e.g. when benefits are paid, which for the majority of members is usually retirement). These responses felt that a DCU would better remedy the discrimination.

“DCU ensures more equitable treatment in terms of allowing all individuals (young and old) to make their decision at the same point in their career.”
- Member of the Armed Forces Pension Scheme (AFPS)

- 2.9 Regardless of the decision between an IC or a DCU, some respondents felt that the scope of solution unfairly excluded those who joined after 2012, and who were more likely to be younger and, for some workforces, more likely to be female or from an ethnic minority group.
- 2.10 Some responses disagreed with the proposal to return active members to reform schemes from 2022 and the alignment of NPA and SPA in many public service schemes.
- 2.11 Generally, employers did not raise issues of discrimination as they felt the government’s proposals adequately addressed the discrimination identified.
- 2.12 The final theme raised was from member representatives who were concerned about the support members would need when using online models and calculators. These responses suggested that to mitigate this problem the government should provide support to members who need it, by making the models and calculations clear and accessible for members, including those who have a disability.

“Members would need support with, for example, online models and calculators. However, many members are likely to find online models difficult to use and understand without substantial support and some members may be unable to access such support at all. All members would need support with calculations and modelling that is clear and accessible.”
- Royal College of Midwives

² Statutory bodies, created by the Public Service Pensions Act 2013, that advise responsible secretaries of state on potential changes to public service pension schemes and advise on the administration and management of the relevant schemes. The SABs usually consist of representatives of the relevant employers, employees and administrators.

Government equality analysis response: summary

- 2.13 The approach set out in the response to the consultation is intended to remedy unlawful discrimination found to exist as a consequence of the transitional protection arrangements of the 2015 pensions reforms. The DCU and the changes to future pension provision will apply equally to all those in scope. One reason for adopting a DCU rather than an IC is that the risk of negative impacts on those with protected characteristics is lower. The government has carefully considered the evidence currently available and does not consider that the final policy set out in the response to the consultation will result in unjustified differential impacts on individuals with the following protected characteristics: disability, sex, race, age, religion or belief, gender reassignment, pregnancy and maternity, sexual orientation and marital or civil partnership status.
- 2.14 The government believes that the previous conclusions reached in the Equalities Impact Assessment for public sector pension reforms³ published on 16 July 2020, accompanying the consultation, still hold. However, the government has identified further areas where individuals with protected characteristics may be affected based on its analysis of responses to the consultation. The government believes that these impacts are justified, as explained below, based on available evidence.
- 2.15 In offering individuals a choice over scheme benefits for the remedy period, the government is seeking to remove the existing discrimination and ensure that no new discrimination arises. There are, however, some ways in which the DCU may impact different groups in different ways – in particular, by age group. As identified in the original *McCloud* and *Sargeant* cases, younger members in some workforces are also more likely to be women and from ethnic minority groups, as a result of some workforces having actively sought to improve the diversity of their workforce. This is explored in more detail throughout Chapter 2.
- 2.16 Respondents expressed concerns about the level of support that will be available for members when making the decision about which benefits to receive for the remedy period. The government will ensure that appropriate information is available to members so they can make an informed choice at retirement. Support should be provided on a scheme by scheme basis, specifically to those who may find it more difficult to understand the choices available and the implications of their decision.
- 2.17 All those who continue in service from 1 April 2022 will do so as members of their respective reformed schemes. Many are already members of the reformed schemes, and those who are not will accrue benefits in their respective reformed scheme from 1 April 2022, regardless of any protected characteristics. As all members will be in their respective reformed scheme

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900999/Public_Service_Pensions_EIA_.pdf

from this point onwards, they will therefore be treated equally in this respect.

- 2.18 This chapter sets out the equality impacts of each of the policy decisions set out in the government’s consultation response on each protected characteristic as identified in the Equality Act 2010, in line with the government’s duty to have regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations. These protected characteristics are:
- A. age
 - B. sex and pregnancy and maternity
 - C. race
 - D. disability
 - E. other protected characteristics (sexual orientation, gender reassignment, religion or belief and marital or civil partnership status)
- 2.19 The government has reached the conclusions set out in Chapter 2 based on consideration of responses from individuals and organisations and other available data, as discussed in Annexes A and B.

Analysis of protected characteristics

A. Age

- 2.20 The government acknowledges that the policies set out in the consultation response may have different impacts on people depending on their age. It has considered whether those potential impacts are proportionate and justified and has concluded that they are, as set out below.

Consultation responses

Remedying the discrimination

- 2.21 Respondents generally felt that a DCU would minimise unequal effects on those with protected characteristics, including age. They argued that an IC would be more likely to cause discrimination against younger members, as they would need to make their decision based on assumptions over a longer time period, rather than known benefits as they would under a DCU. They felt that the further away from retirement a person is, the more difficult it may be to make accurate assumptions.

“Immediate choice could place an added burden on younger members and disadvantage them, because they will have to factor in more assumptions than older colleagues, such as on their remaining service, career path, life decisions, health, fitness and pension benefits.”

- Fire Brigades Union (FBU)

- 2.22 A small number of responses from member representatives also raised concerns with limiting the scope of the remedy to members who joined prior to 31 March 2012. One reason for this was that respondents felt that the

exclusion of members who joined after 31 March 2012 but before 1 April 2015 could lead to indirect sex, race and age discrimination.

2.23 Member representatives generally acknowledged the rationale that post 1 April 2012 joiners are outside of the scope of the proposals set out in the consultation. Most believed that by the time those members joined, they should have been aware of the proposals to move to the reformed schemes in due course, agreeing with the rationale set out by the government in the consultation. However, they raised the point that there was a significant period of time between 1 April 2012 and the reformed schemes coming into force on 1 April 2015, during which those members became members of the legacy schemes in relation to their employment, before being moved to the reformed schemes. These responses noted the risk of potential discrimination in respect of this cohort (i.e. those joining between April 2012 and April 2015) when considered against a comparator who was in service on 31 March 2012. Some respondents felt that these joiners were not given adequate notification of the of the planned changes to public service pensions, contrary to the position set out in the consultation.

2.24 Many of those who responded to the consultation were in receipt of tapered protection and some said that they had expected to benefit from legacy scheme membership beyond 2022. Several of these respondents raised concerns over the treatment of those with tapered protection in response to the conclusions in the original EqIA. These individuals disagreed with the conclusions made in that assessment and felt that the proposals in the consultation would negatively affect those with tapered protection. They argued that the requirement for these members to change pension rights is indirectly discriminatory as it will only affect those over a certain age. Several recognised that a minority of members would be better off under a combination of legacy and reformed schemes for the remedy period and therefore felt that members with tapered protection should be allowed to retain this combination of benefits. However, others thought this would lead to further inequality and complexity.

"All members whether protected, taper protected or unprotected will be given the same options. Therefore, this equality of treatment should not result in widescale direct, adverse impacts.

While it may be conceivable that for a tiny minority the benefits from the tapered position are better than being in either scheme for the whole remedy period, the FDA recognises the absurd complexity of developing a universal solution. The implication would be giving everyone a choice between 7 years in legacy, 7 years in reformed, and many combinations of X years in legacy and Y years in reformed."

- FDA

2.25 As noted in the government's response to the consultation, some respondents raised concerns that the remedy's interaction with the tax system could put some members in a more favourable position than others, for reasons to do with their age. For example, if a younger member returning to their legacy scheme by 2023 would ordinarily have paid more tax on their legacy scheme benefits, this can only be collected for years in scope of the usual statutory time limits on collection of tax in previous years. This could result in younger members paying less tax on legacy benefits than

an older member who had always been in receipt of those benefits. The government has given further consideration to this issue and further detail is provided in paragraphs 2.45 to 2.56 below.

Future pension provision

- 2.26 Some member representatives acknowledged that the discrimination identified was as a result of the transitional protection offered to members closest to retirement, rather than the reformed schemes themselves.

“The judgement ruled that the protection arrangements that treated members differently by age were unlawful, not the introduction of new schemes. The Hutton report itself noted that all members should be enrolled into new schemes to prevent age discrimination. The proposal to replace the protection arrangements with all members joining the reformed schemes at a future date and an individual choice for membership during the remedy period remedies the discrimination.”

- Prospect

- 2.27 A minority of the responses from individuals thought that neither an IC nor a DCU would remove the discrimination identified by the Court of Appeal entirely, particularly for prison officers and members of the police service. They felt that younger members would not be treated fairly as they would not be able to remain in their original pension schemes until their retirement. These respondents also noted that even if a younger and older member joined the police pension scheme at the same time, then the older member may be able to retire on legacy scheme benefits, but the younger member may not. Therefore, these respondents felt the proposals were discriminatory towards younger members.

- 2.28 A number of responses from organisations raised concerns about creating indirect age discrimination towards younger members. This was especially the case from member representatives for the police and firefighters pension schemes. They believed that as younger members would have to work beyond their legacy schemes' NPAs (as they will be required to accrue in reformed schemes after 31 March 2022), many officers would not be physically and mentally fit enough to meet the demands of their job.

“We believe that imposing a pension scheme with an NPA equal to SPA is not realistic. It sets a test that most officers will be bound to “fail” in the sense that they will never be able to retire from operational duties at their NPA. In the case of the MDP [Ministry of Defence Police], it also discriminates on the grounds of (a) sex, (b) age and (c) in particular, sex and age combined.”

- Defence Police Federation

- 2.29 One common suggestion to address this issue was to allow more flexibility for leavers, by permitting them to take a pension five years earlier than the NPA in the reformed schemes without penalty. They believed this would address the issue of discrimination for younger members who would not be able to retire at their legacy NPA.

Government response and analysis of impacts

Remedying the discrimination

- 2.30 The government's intention is that the DCU will remove the discrimination that has been identified by the courts. The difference in treatment that was found to be discriminatory related to those who were in service on or before 31 March 2012. It is therefore this group who are considered 'in scope' for any remedy and are eligible to make this choice.
- 2.31 Giving this choice only to those in service on 31 March 2012 is likely to have an age-related impact. Although some people do enter the public service workforce at a relatively later age, overall, those who first joined after 31 March 2012, and so are not in scope, are likely to be younger than those who joined before 31 March 2012. In addition, the average age of the workforce has decreased slightly over time. In 2012, 27% of the public sector workforce were aged 16 to 34. This had increased to 29% by 2016.⁴
- 2.32 However, the government considers that any such potential age-related impact would be justified. The reasons for this are set out below.
- 2.33 It is acknowledged that more recent joiners to some relevant workforces are likely to be younger, and also that in some relevant workforces more recent joiners are more likely to be women or from ethnic minority groups. However, extending transitional protection to members who would never reasonably have expected this could not be considered justifiable. Changes to pension arrangements or other terms and conditions of employment by their nature impact differently on those who join or leave employment at different times. The government therefore remains of the view that the limited impacts on these protected groups are justified in the context of its aim of removing earlier discrimination in a manner which is affordable and respects the rationale for having transitional protection at all, as opposed to simply moving all employees into legacy schemes on 1 April 2015. Moreover, to extend the DCU to members who joined the schemes after 1 April 2012 would also increase the administrative workload and financial cost.
- 2.34 The purpose of the original transitional protection was to protect those members closest to retirement and already in public service, as they had the least time to prepare for the changes (although the Court of Appeal decided that this did not justify the subsequent discrimination).
- 2.35 This rationale never applied to those who joined the schemes in the year commencing 1 April 2012, or in subsequent years, after the former Coalition Government's proposals had been made known in November 2011. The publication of the IPSPC (Hutton) reform proposals,⁵ acceptance of those by the Coalition Government⁶ and the subsequent proposed introduction of the reformed schemes in the white paper 'Good Pensions That Last'⁷ were well publicised at the time and were the subject of widespread media coverage.

⁴ 'Labour Force Survey (LFS) 2016 and 2012', Quarter 3

⁵ 'Independent Public Service Pensions Commission', Final Report, Independent Public Service Pensions Commission, March 2011.

⁶ 'Budget 2011', HM Treasury, March 2011, Paragraph 1.132.

⁷ 'Public service pension schemes, good pensions that last (Cm 8214)', HM Treasury, November 2011.

The government therefore remains of the view that those joining after 31 March 2012, considered as a group, can reasonably be expected to have known that they would not remain in the legacy schemes, whether or not the precise date of anticipated changes was known.

- 2.36 Whilst accrual in legacy schemes will end when those schemes are closed on 31 March 2022, any accrual that has been built up in the legacy schemes up to that date, and the NPA at which the benefits accrued in those schemes can be taken in full, is protected. Although the reformed schemes are career average schemes, the 'final salary link' is also protected. This means that all the accrual in a final salary legacy scheme will be calculated in relation to a member's final salary when they retire or otherwise leave the scheme, regardless of how many years' service was spent in the reformed schemes, and not their salary at the point when they left the legacy scheme.
- 2.37 In these circumstances, it is not necessary or appropriate to extend to them the same choice of scheme membership in respect of service between 2015 and 2022 as those already in service at 31 March 2012. The government consider it reasonable, fair and appropriate that the DCU only applies to those who were subject to the original discrimination, i.e. in service on 31 March 2012.
- 2.38 By 1 April 2022, all members who were eligible to be offered full transitional protection in 2012 will have reached their legacy NPA. Table 4 in the Annex shows there were 245,000 tapered members and Chart 1 shows the youngest lies between 35 to 49 years of age. This means 3% of 35 to 49 year olds and 23% of 50 to 64 year olds were eligible for tapered protection in 2016, as they would have been within ten and thirteen and a half or fourteen years of their NPA from the 1 April 2012.
- 2.39 Those aged 16 to 34 at the time of the reforms did not receive transitional protection. This means that they were either members who were moved to reformed schemes in 2015 or new members of the post-2015 schemes. Those aged 35 to 49 were predominantly 'unprotected' members (i.e. did not have transitional protection), however a small proportion either received transitional or tapered protection. Just over 50% of those aged 50 to 64 are protected members, the other 50% is evenly split between unprotected and tapered members (25% each). Finally, those aged 65 and older are predominantly protected members, with only 15% unprotected. The 15% of older workers who are unprotected would have joined their pension scheme after 31 March 2012 or had a relevant disqualifying break in service which is why the proportion of older members who are unprotected is a small proportion.
- 2.40 In Annex B a breakdown of membership by age into protected types is available for each specific scheme. The armed forces for example have no tapered members, because tapered protection was not offered to members of the armed forces pension scheme.

Taper protected members

- 2.41 In order to receive tapered protection, members had to be between ten and thirteen and a half or fourteen years from Normal Pension Age (NPA) on 31

March 2012, depending on scheme. In Annex A, Chart 1 shows that all those who originally received tapered protection were aged between 35 and 64 in 2016.

- 2.42 Giving members a choice of scheme benefits at retirement is expected to have a broadly positive impact for members in that it will address the discrimination identified by the courts while also allowing a choice of receiving legacy or reformed scheme benefits across the whole remedy period, depending on which is most beneficial for the member. For a small number of individuals, however, tapered protection may have been more advantageous than the choice of receiving either reformed or legacy scheme benefits for the entire remedy period. The effect of the DCU is that those individuals will lose that advantage.
- 2.43 However, any such advantage will have arisen by chance, in the sense that it is not something which the system of tapered protection deliberately set out to produce, and it would have been as a result of a policy that has been identified by the courts as giving rise to unjustified discrimination. Alternative options have been considered to test whether it would be possible to construct an alternative system of tapered protection that was not age based. However, any such system would be much more complex both for members and administrators than a DCU. Further, since it would, by definition, be a different system, members in any case would not necessarily be in the same position as under the original age-based taper. This was not therefore considered to be a viable or appropriate option.
- 2.44 The government recognises that the removal of tapered protection changes the expected position for previously tapered members, including the position in relation to pension for past years of service, and in some cases for members who have already retired. However, the government considers that it is not right to continue to give members an advantage which has been decided to give unjustifiably differential treatment on grounds of age. The fact that those with tapered protection will be over a certain age reflects the discriminatory nature of the tapered protection, and the government does not consider that the removal of that unjustified discrimination itself to be a discriminatory act. To the extent that removal has a retrospective effect, the government considers that it is justified for the reasons above, especially bearing in mind that all those who were subject to tapered protection will have the choice of legacy or reformed scheme membership for the remedy period, and that any additional advantage beyond that was always a fortuitous one. As some respondents recognised, moreover, offering *all* relevant members the choice to accrue a mix of legacy and reformed scheme benefits, in whatever combination they felt may suit them best, would be unworkable. Where pensions benefits are adjusted for taper protected members who have already retired, the government will ensure that schemes take a proportionate approach to the recoupment of any overpaid benefits, including ensuring any overpayment can be collected over time.

Tax implications

- 2.45 The government recognises concerns that the way the remedy outlined in the consultation interacts with the statutory time limits for collection of tax in previous years, could benefit some members over others.

- 2.46 For example, unprotected members, who may generally be younger than protected members, will be moved back into their legacy pension scheme by 2023. A minority of these individuals may ordinarily have paid more annual allowance charge on those legacy benefits than they have actually paid on the reformed scheme benefits they have been accruing up to that date. The statutory time limits for collecting tax in previous years will prevent collection of the additional tax that would otherwise be owed on those legacy benefits, for the earlier years of the remedy period. This has the effect that an unprotected, younger member could have paid less tax overall on their legacy scheme benefits than an older, protected member, who has paid tax on their legacy benefits since 2015.
- 2.47 One aspect where an individual's tax position may change as a result of the remedy set out in the consultation is member contributions. Contributions to these pension schemes are made tax-free, so any adjustment in contributions will have implications for an individual's tax position.
- 2.48 Where an individual owes more contributions as a result of receiving different scheme benefits for the remedy period, they will be owed tax relief when those contributions are paid. No discrepancy should arise in the amount of tax paid by younger and older members. This is because tax relief on the additional contributions will be claimed by the individual in the year that those contributions are paid and should therefore fall within the usual statutory time limits for tax collection. Where an individual receives less tax relief than they would have had the discrimination not occurred, they will be able to apply for compensation for the difference.
- 2.49 However, where an individual has overpaid contributions and is owed a refund, then the approach set out in the consultation document could allow younger and older members to receive different treatment for tax along the lines set out above.
- 2.50 In these cases, the individual will have previously benefitted from tax relief on those overpaid contributions at the time they were made. For remedy period years within the usual statutory time limits for collection of tax, contributions can be repaid and taxed as income, i.e. the tax relief can be repaid. However, statutory time limits will prevent contributions relating to earlier years of the remedy period from being taxed. This could give younger members an advantage over older members who had always paid income tax on legacy scheme contributions.
- 2.51 Following the consultation, the government has decided that individuals will receive a payment equivalent to the contributions they are owed, with an amount deducted. This deduction will reflect the income tax they would have paid, had they originally made those contributions in the relevant remedy period years. This will apply to years outside the scope of the usual statutory time limits for collection of tax. This approach departs from the position set out in the original consultation, which stated that individuals who had overpaid their contributions in remedy period years beyond the usual statutory time limits for tax collection would receive a full refund of contributions and not face any tax charge. This approach will minimise the potential for differential tax consequences regarding tax on contributions in earlier years. It will also ensure that individuals affected are put back as

closely as possible to the position they would have been in had the discrimination identified by the Court of Appeal not occurred and will remove any differential consequences regarding tax on contributions.

- 2.52 Differential tax consequences could potentially also arise from adjustments to annual allowance (AA) and lifetime allowance (LTA) charges as a result of the *McCloud* remedy. For the AA this might occur when unprotected individuals are put back into their legacy schemes (by 2023), as set out above. Where benefit crystallisation occurs before that point, there may also be either AA or LTA adjustments, or both, which could also result in differential treatment. This is discussed more fully in paragraphs 2.117 to 2.120 below.
- 2.53 The government has given careful consideration to whether and how such differential consequences might be mitigated in these circumstances. Mitigation is not straightforward as statutory time limits that operate across the tax system prevent tax being levied on these payments past a certain point. These time limits are in place to protect the taxpayer from the disproportionate uncertainty and administrative burden of potentially having their tax affairs from many years ago reopened. Unlike repayment of member contributions, there is no obvious mechanism that would be available in all cases for deducting an amount that is equivalent to the tax that an individual might have paid, had they always received a particular set of pension benefits. Setting up alternative approaches to remove the discrepancy would be administratively complex, for both schemes and individuals. The government also believes that under the DCU model, in contrast to the alternative IC approach, this differential treatment concerning the AA charge is minimised in most cases. In only a minority of cases will younger members receive an advantage over their older counterparts.⁸
- 2.54 Given these points, the government does not believe it would be proportionate to try to recoup an equivalent to the AA and LTA charges owed on pension benefits for earlier years of the remedy period, for those affected.
- 2.55 As set out in the consultation response, differential tax treatment regarding earlier years of the remedy period does not arise in the case of corrections to pension income resulting from the remedy. This is because tax will be due on backdated pension payments in the year those payments are made, so that all backdated pension will be fully taxed for all individuals affected. No backdated pension should fall out of scope of the usual statutory time limits for collection of tax.
- 2.56 As a result of the actions and analysis set out above, the government believes it has taken proportionate and appropriate action to remove treatment that is more or less favourable on grounds of age.

⁸ The main exceptions are those members of police and fire schemes who receive double accrual, and are high earners, and exceptional examples in other workforces of individuals receiving very significant pay rises at certain points within the remedy period.

Future pension provision

- 2.57 The government believes that the reformed schemes introduced in 2015, of which all public service workers who joined since 2012 are already members, is an appropriate level of pension provision. The government will remove transitional protection and tapered protection from all members, and, from 1 April 2022, the government will place all pre-2012 joiners in their respective reformed schemes. The government will bring forward primary legislation to implement this.
- 2.58 The proposals to address the discrimination will treat all those in the remedy cohort equally, regardless of age. Those eligible will be offered a choice of scheme benefits for the remedy period. From 1 April 2022, all those who continue in service will do so as members of the reformed schemes, and thus there will be no disparity between those who are in the 'remedy cohort', and those who are not in scope, and who are already in reformed schemes. Therefore, all members in the remedy cohort will be treated equally in this sense, regardless of age.
- 2.59 As the plans to remedy the discrimination afford members in scope a choice of scheme benefits for the remedy period, there will be a group of people who receive legacy benefits for the remedy period (those who were originally offered transitional protection, and those who were not offered such protection, but who exercise their choice to this effect). From 1 April 2022 this group - if they continue in service, and like all others who do so - will do so as members of the reformed schemes and receive reformed scheme benefits accordingly. Whilst the precise make up of this cohort is not known, it is likely to be generally older as transitional protection was only provided to those who were within 10 years of their NPA. Those who will be offered a choice of benefits as a result of the remedy proposals were in service at the time of the reforms, and thus likely to be generally older than those who have joined since.
- 2.60 However:
- a. all those in service at the time of the reforms will be treated equally during the remedy period, as a result of the remedy proposals; and
 - b. everyone who continues in service from 1 April 2022 will be treated equally in as far as they will all accrue any service beyond that point as members of the reformed schemes
- 2.61 From 1 April 2022, when all those who continue in service will be members of reformed schemes, older members who had been offered transitional protection will have had more than 20 months' notice of the government's plans and will be able to participate in the reformed schemes in relation to any eligible employment from 1 April 2022 onwards, beyond their legacy scheme Normal Pension Age (by 1 April 2022, all members who were offered transitional protection in 2012 will have reached their Normal Pension Age).
- 2.62 The government's intention, reflected in legislation passed by Parliament in the Public Sector Pensions Act 2013, was that no benefits would be provided under the legacy schemes in relation to employment after 1 April 2015, but

allowed for exceptions to be made that were short term in their nature, applying only to members who were within 10 years of their NPA under the legacy schemes. The majority of these members are expected to have retired already, or to do so in the coming years.

- 2.63 These exceptions gave rise to unlawful discrimination and the deferred choice underpin will be introduced to address that. These members will also have reached their NPA at this point. If they choose to continue in service, they can do so as members of the reformed schemes, in the same way as all other members.
- 2.64 The impact on protected characteristics if this group were to be treated differently and permitted to continue as members of legacy schemes has been considered. This would discriminate against those who would not be offered that choice, and who are likely to be younger (and may also have other protected characteristics as these are more prevalent in younger cohorts for some workforces). The government does not believe that such discrimination would be justified. Whilst the distinction will not directly be based on age (as in the case of the transitional protection arrangements that were found to be discriminatory by the courts), this group is likely to be generally older than those who have joined since the 2015 reforms, have only ever been members of the 2015 schemes, and will continue as such. The government's plans for future arrangements treats all those in service after 31 March 2022 equally in respect of the scheme benefits available to them, in that they will all only be eligible to be members of their respective reformed scheme.
- 2.65 The government is also aware of a scheme specific issue raised in some responses that, that occurs due to the service length-based specifics of some schemes (namely older police and firefighter schemes). This issue is that there may be differences for members who joined on the same day, and thus reach their expected maximum service in the legacy schemes at the same point in time. The contention is that they will be treated differently because of their age – depending on the age when they joined, they may or may not have reached the MPA in the reformed schemes at this point, and thus may become a deferred member of the reformed schemes if they choose to access the legacy benefits at this time.
- 2.66 The government has directly addressed this point in its consultation response, and it does not believe that the proposals for future arrangements constitute discrimination on the grounds of age. Those who begin service at the same point in time, but who are of different ages, will often likely retire at different points in time. If the government considers that it is necessary to make changes to pension arrangements, this might mean individuals finish their career under different pension arrangements, that the precise nature of the benefits accrued across the course of their careers is different, and that they retire at a later age.
- 2.67 Under the proposals, the service and benefits accrued under the legacy arrangements are protected, and all members will be treated equally; any service from 1 April 2022 will be under reformed scheme arrangements, for everyone, regardless of age or any other factor.

B. Sex and pregnancy and maternity

- 2.68 The government has considered the impacts of the policy proposals set out in the consultation response on those sharing the protected characteristics of sex and/or pregnancy and maternity. It addresses these characteristics together in this section, in circumstances in which similar concerns were raised in the consultation responses.
- 2.69 As set out in the EqIA accompanying the consultation document,⁹ the Court of Appeal in 2018 held that the 2015 reforms gave rise to indirect sex and race discrimination. The basis for that decision was that the relevant workforces had become more diverse over time, and that the use of age as a determinant of the right to transitional protective benefits, was indirectly discriminatory in respect of women and ethnic minorities.

Consultation responses

- 2.70 Several respondents raised concerns about limiting the scope of the remedy to members who joined prior to 31 March 2012. One reason for this was that respondents felt that the exclusion of members who joined after 31 March 2012 but before 1 April 2015 could lead to indirect sex, race and age discrimination as those joining later are more likely to have been women, from minority ethnic groups and younger.

Remedying the discrimination

- 2.71 As explored under 'Age', respondents tended to favour a DCU as the option that would best remove discrimination, including on the basis that they believed an IC would generate indirect sex discrimination.
- 2.72 In particular, many individuals raised concerns that an IC could be more detrimental than a DCU for those likely to take a career break. This was because they felt it was not always possible for members to plan when a career break would be, and for how long. The DCU would allow individuals who have taken a career break to base their decision on known benefit entitlements, rather than making assumptions about their future career path as under an IC. As a result, many felt that an IC could cause indirect sex

⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900999/Public_Service_Pensions_EIA_pdf

discrimination as several respondents felt women were more likely to take a career break than men.¹⁰

"I think the Deferred Choice would be the more equal option. There are noted inequalities in anticipated future pay, which would affect the choices which people make between the two schemes. E.g. Gender differences in anticipated pay negotiation strategies and outcomes / Gender Differences in Anticipated Salary: Role of Salary Estimates for Others, Job Characteristics, Career Paths, and Job Inputs. It would be fairer to allow people to choose the most beneficial package when they are aware of their final salary. Making individuals choose their scheme now would amplify actual inequalities already created by unequal promotion to a high final salary."

- Individual response, unspecified scheme

2.73 Similarly to responses from individuals, member representatives also believed that deferring the choice would prevent any differential impact on women. They felt women were more likely to take career breaks, and as a result their career progression may be less clear than their male counterparts. A DCU would reduce reliance on assumptions (such as future career paths) compared with an IC, giving members the choice of scheme at the point benefits are paid, which in most cases is usually retirement. They therefore felt a DCU was the preferable option.

2.74 Member representatives for firefighters and the NHS noted that their workforces have a higher proportion of male and female employees respectively, as compared with the public sector population. These proposals therefore could have a greater impact within these workforces than identified in the government's previously published EqIA which considered the impacts at public sector level.

Future pension provision

2.75 The majority of member representatives for firefighters were concerned generally around the effect of the increased NPAs in the reformed schemes on female employees. Responses from member representatives for firefighters and police focused on the difficulties they felt female employees would face in maintaining the required fitness standards throughout their career, suggesting that female workers may be less likely to work to their full pension age than male workers so therefore may not be able to draw a full pension.

2.76 A small number of individuals also felt that the proposals to move members in scope of remedy into the reformed schemes after the remedy period would negatively impact those who work part time, who they felt would be more likely to be female.

¹⁰ From the 'ONS Labour force survey 2020 Quarter 3' we can see that on average just 71% of mothers with children aged 0 to 4 are in paid employment compared to 93% of fathers with pre-school age children. This analysis shows that the age of a woman's youngest child has a clear influence on whether or not she is in paid employment. This is consistent with the NHS demographic report on part time employees too.

“ While not directly connected with the remedy, we would like to raise a general concern in relation to female firefighters. We have consistently raised our concerns regarding the structure, interpretation and implementation of the fitness standards. For female firefighters to comply with the current standards until the Normal Pension Age (NPA) they require a level of fitness that very few are able to maintain due to genetics. Therefore, female firefighters are more likely to be forced to retire prior to the NPA and receive a deferred pension compared to their male colleagues. This is an issue yet to be realised and should be addressed at the earliest opportunity.”

- Fire and Rescue Services Association (FRSA)

Government response and analysis of impacts

2.77 The government has considered the issues raised around potential indirect sex discrimination. Its decision to implement the DCU has been in part informed by concerns raised in responses about the impact IC would have for women who respondents felt are more likely to take a career break. The government’s intention in implementing a DCU is that it will be fairer for women and other groups who are more likely to take career breaks or work part-time.

2.78 In relation to the concerns raised in regard to indirect discrimination in future pension provision, the government introduced the career average revalued earnings (CARE) scheme structure in the reformed schemes in part to offer relatively fairer outcomes to women who have tended to experience lower salary progression. As set out in the assessment of the 2015 reforms themselves, a CARE scheme structure is likely to benefit those with lower salary growth more than higher earners.¹¹ A larger proportion of males currently reach higher salary bands than females across the public service pension schemes, and therefore among those who may be better off under legacy scheme (and final salary) arrangements, a higher proportion will be male. A higher proportion of women (and those of other protected characteristics) are likely to be better off under CARE schemes, which are broadly more beneficial for lower and some middle earners.

“I believe the effect of the proposed changes will be discriminatory on those, primarily women, who chose to take a career break or to work part-time in the belief that they would be able to make up for the pension thereby lost by working extra years after NPA to make up their full pension entitlement. In my case, I would need to complete 40 years of service in order to achieve the full pension in my current legacy scheme. To make up for the years lost earlier in my career when I had small children, I had planned to work until the end of 2024 to complete the required 40 years for a full pension. The proposed mandatory change to the CARE scheme in April 2022 scuppers these plans, with insufficient notice to amend my plans in a satisfactory manner.”

- Individual response, unspecified scheme

¹¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205840/Central_Equalities_Impact_Analysis.pdf

- 2.79 The government acknowledges that it is likely that more recent joiners to some relevant workforces will typically be younger and that in some relevant workforces more recent joiners are more likely to be women or from ethnic minority groups. However, extending transitional protection to members who would never reasonably have expected this could not be considered justifiable. Changes to pension arrangements or other terms and conditions of employment by their nature impact differently on those who join or leave employment at different times. The government therefore remains of the view that the limited impacts on these protected groups who joined after pension reform was announced are justified and proportionate.
- 2.80 The government also recognises that some affected workforces may have a higher proportion of male or female employees in comparison to the overall public sector population. These policies will apply to all public service workers and all schemes in scope, regardless of their sex. Schemes will carry out subsequent analysis of equality impacts alongside scheme level consultations. The government will then be able to consider the impacts for each scheme at this stage too.

Remedying the discrimination

- 2.81 Many respondents noted that the courts identified that those joining some relevant workforces after 1 April 2012 were more likely to be women. This is true in both 2012¹² and 2016,¹³ where 65% of the overall public service active membership were female. This has remained constant over 4 years, so the overall ratio of females to males joining relevant workforces after 2012 is assumed to be consistent with the ratio in the existing workforce. Therefore, as identified by the courts, those joining some relevant workforces after 1 April 2012 are more likely to be women, given the consistency in the proportions over the last 4 years. It is likely that in some workforces, there will be a higher proportion of women who have not benefitted from the proposals because they do not include post-2012 joiners, even if this isn't the case overall.
- 2.82 Nevertheless, and despite these impacts, for the reasons as set out in 2.33 to 2.38, the government considers that these potential impacts on the protected characteristics of sex and pregnancy and maternity are justified.
- 2.83 Individuals who were in service on or before 31 March 2012 but subsequently left and re-joined will also be in scope of these policies, provided their break in service was less than five years and meets the criteria for continuous service set out in their scheme regulations. This provision for continuity of service enables those who have taken career breaks, for example to care for young children or elderly relatives, to maintain parity with their colleagues who joined at the same time in respect of the nature of their pension terms.

¹²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205840/Central_Equalities_Impact_Analysis.pdf – Table A.1

¹³ 'Labour Force Survey (LFS) 2016', Quarter 3

2.84 Many respondents also raised that women are more likely to take a career break than men. The analysis supports this at the UK population level,¹⁴ where on average 71% of mothers with children aged 0 to 4 were in paid employment compared to 93% of fathers with pre-school age children in 2020. This analysis shows that the age of a woman's youngest child influences whether or not she is in paid employment. The employment rate for mothers increases by 7 percentage points to 78% for women with children at primary school (aged 5 to 10) and by 8 percentage points to 79% for mothers with secondary age children (11 plus). In addition, women are more likely to work part time, for example at the UK population level, 74%¹⁵ of those who work part-time are women. A higher proportion of women working part time is also consistent with the NHS demographic report 2018¹⁶ and so we assume this holds true for the public service pension scheme population more widely:

- in 2018 the NHS workforce shows women are more likely to work part-time hours than men as 24% of women and 5% of men worked part-time in the NHS. This is a consistent pattern for women across Bands 4 to 8d¹⁷

2.85 The data above shows women are more likely to take career breaks than men and are also more likely to work part-time compared to men. Respondents cited concerns that the IC proposal could have detrimental impacts on these individuals given the uncertainty of their future career paths. As set out above, this has informed the government's decision to proceed with the DCU, to minimise any unequal effects.

Future pension provision

2.86 Many responses also suggested that moving members in scope of remedy to the reformed schemes after the remedy period ends would create sex discrimination.

2.87 The policies as to future pension provision apply regardless of sex and so from 1 April 2022 all public service workers who remain in service will only be eligible to do so as members of the reformed schemes. Many are already members of such schemes (those who have joined since 2012, and are not therefore eligible for remedy), and the aim is to ensure equal treatment in this respect.

2.88 Members that will be moved to the reformed schemes from 1 April 2022 form a subset of the public service pension population referred to below as the 'remedy cohort' (i.e. those in service at the time of the reforms, and who will accrue service in the legacy scheme up to 1 April 2022 and will be

¹⁴ www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/economicactivityandemploymenttypeformenandwomenbyageoftheyoungestdependentchildlivingwiththentables

¹⁵ www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/fulltimeparttimeandtemporaryworkersseasonallyadjustedemp01sa

¹⁶ www.digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/how-we-support-diversity-and-inclusion/our-workforce-demographics-2018

¹⁷ Bands 4 to 8d include newly qualified nurses, senior nurses, deputy ward managers, health visitors, specialist nurses, ward managers, emergency nurse practitioners and clinical specialists. These roles require experience and qualifications and are in the middle of the NHS pay band scale.

offered the choice of scheme benefits through the DCU. They will move to the reformed schemes from 1 April 2022 under these proposals).

- 2.89 Data on this specific subset of members is not currently available for analysis. For the purpose of this analysis, we consider it reasonable to assume that the proportion of men and women in the 'remedy cohort' will be broadly consistent with the proportion in public service pension schemes more widely, i.e. with 65% female and 35% male members as Table 1 in Annex A shows. This proportion of female members is greater than the wider population (51%), although this varies by pension scheme: for example, the NHS has 78% female members, but the Armed Forces has 10% female members. The 'remedy cohort' for specific schemes therefore do not align with the whole public service pension workforce.
- 2.90 A small number of responses from individuals believed that a CARE scheme structure would result in them being worse off, especially a number of individuals who suggested that this structure would be discriminatory towards women. More generally, the government introduced the CARE scheme structure in the reformed schemes in part to offer fairer outcomes to those who have tended to experience lower salary progression, including women. As set out in the assessment of the 2015 reforms themselves, a CARE scheme structure is likely to benefit those with lower salary growth more than higher earners.¹⁸ A larger proportion of males currently reach higher salary bands than females across the public service pension schemes, therefore men are likely to receive relatively less under a CARE scheme structure. The salary progression of lower earning women means this group is likely to benefit from the new scheme design.

C. Race

- 2.91 The government recognises the Court of Appeal's findings in 2018 that the transitional protection provisions gave rise to indirect discrimination on the grounds of race.
- 2.92 The proportion of individuals from ethnic minority groups has increased in the public sector between 2012¹⁹ and 2020²⁰ by 2 percentage points (10 to 12%). This suggests that those joining relevant workforces after 1 April 2012 are more likely to be from ethnic minority groups.

Consultation responses

- 2.93 A small number of respondents both from organisations and individuals raised concerns that individuals from ethnic minority groups, especially those in lower grades, were more likely to have flatter career progression. This is also evidenced in the Cabinet Office Race Disparity Audit (RDA) report

¹⁸https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205840/Central_Equalities_Impact_Analysis.pdf

¹⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205840/Central_Equalities_Impact_Analysis.pdf – Table A.4

²⁰ 'Labour Force Survey (LFS) 2020', Quarter 3

2018,²¹ “ethnic minority employees are concentrated in the lower grades or ranks within younger members in the public sector workforce”. One response suggested that “those starting in relatively low-paid jobs may make a decision to move into the reformed scheme on the assumption that they will not enjoy significant career progression but may in the event achieve significantly greater success than anticipated”. For this reason, they supported the DCU, as members would make the decision over scheme benefits once these were known.

- 2.94 Individuals who supported the government’s proposed approach to remedying the discrimination more broadly felt that since the changes apply to all staff regardless of race, they do not discriminate against any particular group. These individuals therefore believed that either a DCU or an IC would mean that all groups would be treated equally going forwards.
- 2.95 Many respondents from organisations and from individuals noted that as younger members are more likely to be from an ethnic minority group, these individuals would be more likely to be disadvantaged by making an immediate choice where they would be reliant on complex assumptions such as future earnings. These respondents supported the implementation of the DCU which they felt mitigated the impacts explored above.
- 2.96 Responses from organisations also expressed concerns with the requirement to produce information in a short time window for members to understand when making an immediate choice. Younger members would rely more heavily on this information as they would be required to make assumptions over a longer period. These members are also more likely to be from an ethnic minority group. They therefore felt to reduce this risk, a DCU was preferable to give schemes longer to provide the information to members and ensure that such information was based on their actual circumstances rather than assumptions, which they felt would reduce disproportionate impacts on those in ethnic minority groups.

“Younger members face greater uncertainty than older members under immediate choice. Younger members are more likely to be women or BME or both. Any immediate choice exercise will be complex and rely on members gaining enough information and understanding to make a good choice, which earlier choice exercises show can be very difficult to achieve across a large and diverse workforce. Deferred choice would lessen the risk of such members making the wrong decision.”

- Managers in Partnership (MiP)

- 2.97 An additional concern raised through the consultation was that Gurkha and other non-UK resident members may be unaware of these changes or experience difficulties with their administration. To mitigate this, one respondent recommended that schemes disseminate updates through veterans’ networks and charities, in order to ensure hard-to-reach members are informed.

²¹www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686071/Revised_RDA_report_March_2018.pdf - Paragraph 2.25

Government response and analysis of impacts

- 2.98 The issues raised above under 'Age' also give rise to potential differential impacts by race, in circumstances in which younger members are more likely to be from ethnic minorities, supported by the analysis below, and in Annex A.
- 2.99 The government has considered the indirect race discrimination, especially the impact on younger members, and believes the impacts are justifiable for remedying the discrimination.

Remedying the discrimination

- 2.100 The proportions of individuals from ethnic minority groups has increased in the public sector between 2012²² and 2020²³ by 2 percentage points (10% to 12%). This suggests that those joining relevant workforces after 1 April 2012 are more likely to be from ethnic minority groups. This is broadly consistent with other public sector workforces:
- the proportions of employees from an ethnic minority group in the NHS workforce has risen by 1.5 percentage points from 2015 to 2019²⁴ (11.2% to 12.7%) suggesting new starters are more likely to be from ethnic minority groups
 - the proportions of employees from an ethnic minority group in the civil service has increased between 2012²⁵ and 2020²⁶ by 3.9 percentage points (9.3% to 13.2%). This is slightly higher than the public sector average, and also indicates that new starters in the civil service are more likely to be from an ethnic minority group
- 2.101 It is acknowledged that it is likely that more recent joiners to some relevant workforces will typically be younger, and also that in some relevant workforces more recent joiners are more likely to be women or from ethnic minority groups. Changes to pension arrangements or other terms and conditions of employment by their nature, impact differently on those who join or leave an employment at different times. The government therefore remains of the view that the limited impacts on these protected groups who joined after the pension reforms were announced are justified and proportionate.
- 2.102 For the reasons as set out in 2.33 to 2.37, the government considers that the impacts on the protected characteristics of race are justified.
- 2.103 Schemes will also consider the implementation of the policy in due course especially regarding Gurkha and other non-UK resident members who may be unaware of the changes or experience difficulties with administration.

²²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205840/Central_Equalities_Impact_Analysis.pdf – Table A.4

²³ 'Labour Force Survey (LFS) 2020', Quarter 3

²⁴ www.digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/how-we-support-diversity-and-inclusion/our-workforce-demographics-2019/ethnic-origin#changes-over-time

²⁵ www.ons.gov.uk/employmentandlabourmarket/peopleinwork/publicsectorpersonnel/bulletins/civilservicestatistics/2012-10-24

²⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940284/Statistical_bulletin_Civil_Service_Statistics_2020_V2.pdf

Thus, schemes will take into account mitigations that respondents raised to solve these issues when looking at the implementation of the policy.

Future pension provision

- 2.104 The analysis of data in Table 5 and 6 of Annex A shows that representation of ethnic minority groups is broadly similar in the public sector workforce as the wider working population.
- 2.105 The government's proposals for future pension provision will apply regardless of race, and whilst there will be differences by scheme, they will also apply to all the schemes in scope of this consultation.
- 2.106 As set out above, overall, a CARE scheme structure may offer relatively fairer outcomes to ethnic minority groups who, like women, in some public sector workforces tend to experience lower salary progression.

D. Disability

Consultation responses

- 2.107 A small number of responses from individuals raised that they felt the proposals may have an impact on the protected characteristic of disability. Of these responses, the majority felt that those with disabilities may be worse off under the DCU proposal. This was because they felt that by deferring the choice until benefits are paid, certain disabilities may deteriorate. Thus, they thought the DCU would not be beneficial to these individuals as they may not be able to make the correct decision given the perceived severity of their disability at this point in time.

"Most disabilities are invisible, and many can start/deteriorate with age. Previously capable high performing scheme member's may in decades time find that due to their disability they are not able to comprehend the options and make a choice e.g. Alzheimer's."

- Individual response, unspecified scheme

- 2.108 Some individuals did mention ways to mitigate these impacts, including by providing a sufficient amount of information and support to individuals, especially those suffering from long term disabilities. Respondents also noted that those with mental health-related disabilities in particular should be provided with support in order to help them make an appropriate decision for their specific circumstances.
- 2.109 Responses from organisations who focused on the implications arising from the proposals on the protected characteristic of disability were in favour of a DCU approach from an equality perspective. Indeed, many of these responses noted concerns that the IC model would not fully minimise or eliminate differential treatment for those with disabilities.

“The NFCC agrees that potential differential impacts based on protected characteristics will be minimised by offering all eligible scheme members the choice of whether to receive benefits based on the legacy schemes or reformed schemes for the period April 2015 – March 2022. It believes there is an increased risk that the remedy for discrimination against people with protected characteristics such as age, disability and gender is more likely to fail for immediate choice than for deferred choice.”

- National Fire Chiefs Council (NFCC)

- 2.110 In relation to future pension provision, member representatives for firefighters were especially worried about the challenge their workforces faced in maintaining fitness until the reformed scheme NPA. They felt that this may cause discrimination, for example, if members retired before their NPA and took an actuarially reduced pension as a result of being unable to maintain fitness levels. They felt that individuals with a disability would be more likely to be affected by the change to NPA in the reformed schemes, as disabilities may deteriorate with age, meaning they may not be able to continue to meet the demanding level of fitness required in their roles. These responses encouraged a review of the NPA in the reformed schemes, especially in roles such as the fire and police service where demanding levels of fitness are required.

Government response and analysis of impacts

- 2.111 The proportion of individuals reporting a disability in the public sector has also increased over time, for example in 2013²⁷ 11% of individuals in the public sector reported a disability (as defined under the Equality Act 2010), compared to 2020²⁸ where 16% of the public sector reported a disability. This aligns with trends from individual workforces, for example the proportion of individuals reporting a disability in the civil service is also increasing over time.²⁹
- 2.112 The government realises that individuals who work and have a disability are more likely to work part-time than those without a disability. 34% of people with a disability work part-time in comparison with 23% of those without a disability.³⁰ The government also recognises that people with caring responsibilities may be more likely to work part-time. For example, in the Civil Service, 41% of respondents to the “Civil Service People Survey 2019”³¹ who worked part time reported that they also have caring responsibilities, in comparison to 28% of full-time workers who reported caring responsibilities. While the government recognises that this could in turn affect their overall pensions accrual, the policies as outlined in the consultation document and response are not expected to have a disproportionate impact on those with a disability or caring responsibilities.

²⁷ ‘Labour Force Survey (LFS) 2013’, Quarter 3

²⁸ ‘Labour Force Survey (LFS) 2020’, Quarter 3

²⁹ www.instituteforgovernment.org.uk/explainers/disability-civil-service

³⁰ ‘Annual Population Survey (APS) 2019’, Disability statistics

³¹ <https://civilservice.blog.gov.uk/wp-content/uploads/sites/86/2020/06/2020-06-02-Carers-Strategy-v0e.pdf> - page 4

- 2.113 In addition, the government believes the CARE scheme structure is likely to offer fairer outcomes to those with disabilities in some public sector workforces who tend to experience lower salary progression given that disabled people are more likely to work part time.
- 2.114 The government has noted the concerns that firefighter and police representatives have raised about the challenges their workforces faced in maintaining fitness until the reformed scheme NPA. Under the reform, members are entitled to a full, unreduced pension at their NPA which for members of most schemes is linked to their SPA. Members of the armed forces, firefighters and police schemes have a lower NPA of 60, as recommended by the Independent Public Service Pensions Commission in recognition of the unique characteristics of the work involved within those occupations. Additionally, of course, like other members, they are also able to retire before this NPA; as long as they have reached their MPA and the pension is actuarially reduced to reflect the fact that it is likely to be paid for longer.
- 2.115 The government acknowledges concerns regarding the impact that the DCU model might have on individuals whose disabilities or health conditions deteriorate over time. Where support is needed by members this should be provided on a scheme by scheme basis, this will allow members and their dependents to make an informed decision as to the benefits they will take. The government and schemes are aware of the importance of ensuring that individuals have capacity, and appropriate information to make relevant pensions decisions notwithstanding disability.
- 2.116 As set out more fully in paragraphs 2.45 to 2.56 above, there is scope for differential tax impacts to arise from the interaction of the DCU and the statutory time limits for collecting tax in previous years.
- 2.117 For individuals who retire before 2023, it is possible for those whose pension situation is corrected sooner to be placed at a disadvantage compared to others whose situation is corrected later. This arises because individuals whose situation is corrected sooner within the remedy period are likely to have fewer remedy period years beyond the statutory time limits for tax collection. So, tax that would otherwise be owed due to retrospective changes to pension benefits could not be collected for those years. Individuals whose pension is corrected later will have more of these years where tax cannot be collected.
- 2.118 It is possible that individuals retiring during the remedy period have protected characteristics. They may be older, and where they are retiring due to ill health, they may have a disability.
- 2.119 Differential tax impacts will not arise for backdated pension payments, as these will not be corrected retrospectively. A single back payment will be made, and taxed, in the year that the individual's pension situation is corrected. But differential impacts might occur where individuals have pension benefits sufficient to trigger AA or LTA charges, or where tax is owed on repaid contributions, which will all be retrospectively corrected. As set out in paragraphs 2.53 to 2.55 the government has not been able to identify a proportionate means of addressing this issue with regards to the

AA or LTA. However, the government will take action to address it regarding tax owed on repayments of contributions.

E. Other protected characteristics

- 2.120 The consultation received a low volume of responses regarding marital and civil partnership status, religion and belief, gender reassignment and sexual orientation (other protected characteristics under the Equality Act 2010).
- 2.121 Taking into consideration the limited evidence available, including as set out in the original equality impact assessment, the government does not envisage any unjustified differential impacts caused by the proposals by reference to these protected characteristics. However, if new data indicates that these groups may suffer disproportionate effects, the government will investigate further to address any negative impacts arising.
- 2.122 The government has analysed the few responses it has received on these characteristics below.

Consultation responses

- 2.123 The government received very few responses regarding the proposals' impact on groups with the protected characteristics of marital or civil partnership status, gender reassignment, religion and belief and sexual orientation. Of those responses, the main concern regarding the proposed remedy was around the need for sufficient information to enable members to make informed choices.
- 2.124 A DCU was preferred by most individuals with regard to its impact on other protected characteristics, as it removes the need for members to make assumptions regarding their future public service career or retirement age, which would otherwise increase the risk of making an incorrect decision. These respondents felt that the provision of information at the point of retirement (or other stage at which they receive their benefits) would enable individuals to make an informed choice based on personal circumstances and protected characteristics and avoid further discrimination.
- 2.125 Although a recurring theme was that these respondents wanted their legacy pension reinstated indefinitely and thought they should receive compensation for the distress that the introduction of reformed schemes has caused members, there was no evidence given that this effect is worse for individuals with these protected characteristics.

Government response and analysis of impacts

- 2.126 Data on sexual orientation, gender reassignment and other groups covered by the Equality Act 2010 within the public service pension schemes is not available, but the government has considered the very few responses it received regarding the protected characteristics of religion or belief and marital or civil partnership status.
- 2.127 With respect to religion, the data provided in Annex A shows that most religions are underrepresented in the public sector workforce relative to the

UK working population. As shown in Chart 2 in Annex A, those identifying as Christian or no religion are overrepresented in the public sector workforce, whereas the other religions that the Office for National Statistics (ONS) holds data on, are underrepresented in the public sector workforce, relative to the UK working population. Some schemes may have different proportions of members with different religious beliefs than the public sector workforce, for instance the NHS has a higher proportion of workers who are Hindu (2.15%) and Sikh (1.02%).

- 2.128 With respect to marital or civil partnership status, the data in Annex A shows that those who are married, cohabiting or in a civil partnership are overrepresented in the public sector. Conversely, those who are not married are underrepresented in the public sector compared to the working population. However, some schemes may have higher or lower proportions of members with a specific marital status than the public sector workforce, such as the NHS who have a lower proportion of people who are married or in a civil partnership (50%) and single (30%).³²
- 2.129 As to the choice between a DCU and IC, the government considers that, overall, a DCU will better enable most members to make a fully informed choice at retirement in comparison to IC.
- 2.130 For example, the government believes that a DCU will be beneficial for unmarried partners. Where the member dies before retirement or benefits are being taken as a member of a legacy scheme, that scheme is unlikely to provide survivor pensions for unmarried partners. Therefore, a DCU is positive for these individuals as it ensures unmarried partners of a deceased member can choose between sets of benefits knowingly. This is a choice which they might not have had if their partner chose the legacy scheme under IC.
- 2.131 In summary, the government expects that the proposals set out in the consultation response will apply equally to all members, regardless of their religion or belief, sexual orientation, marital or civil partnership status and gender reassignment. The government does not, therefore, envisage a differential impact of moving all members into 2015 reformed schemes on individuals with these protected characteristics.

³² www.digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/how-we-support-diversity-and-inclusion/our-workforce-demographics-2019/marriage-and-civil-partnership

Annex A

Public Service workforce data

Method

- A.1 This Annex contains further detail on the data used throughout the government’s policy development and production of this equality impact assessment. The analysis of the data relating to the policies can be found in Chapter 2.
- A.2 The high-level impact of the policies within the consultation response has been considered by reference to a combination of sources; the 2020 Q3 Labour Force Survey (LFS), the 2019 Annual Population Survey (APS), and data provided by the public service pension schemes:
- from the LFS, the public service workforce population can be broken down by age, sex, ethnicity, marital status and disability. The LFS does not record whether the individual is a member of a pension scheme, so it is not possible to identify those directly affected by the policies
 - from the APS, the working population and public sector workforce population can be broken down by religion. The APS does not record if an individual is a member of a pension scheme, so as with the LFS it is not possible to identify those directly affected by the policies outlined within the consultation response
 - from public service pension scheme data, the membership of public service pension schemes can be broken down by age and sex. This data was compared to the LFS and APS to see the variation between public service pension data and public sector workforce data. The pension scheme data used was provided for NHS (England and Wales), Teachers (England and Wales), Police (England and Wales), Fire (England), Civil Service (Great Britain) and Armed Forces (UK). It is based on the public service pension schemes 2016 actuarial valuation data and considers the active membership as at 31 March 2016. This data excludes the Scottish pension schemes, however the data available is assumed to be reflective of those missing schemes.¹ Data for the Local Government and Judicial pension schemes is also excluded as these schemes consulted separately
- A.3 The affected population of the consultation response are members of the public service pension schemes.² Data for age and sex covers the public service pension population, for the other protected characteristics data for

¹ Fire (Wales) and Scotland pension schemes are missing from the data.

² Members of the Armed Forces, Firefighters’, NHS, Police, Civil Service and Teachers pension schemes.

the whole of the public sector workforce has been used, regardless of whether they are enrolled in a pension scheme. This is because scheme specific data is not currently available for the Government Actuary's Department (GAD) to provide a summary for other protected characteristics. The data for the two populations (public sector workforce and the active membership of the public service pension schemes) is broadly similar, and 89% of public sector employees were members of a workplace pension scheme in 2019.³ It is therefore reasonable to use the LFS and APS for the analysis of the other protected characteristics, rather than commissioning a data gathering exercise. Further limitations of using public sector level data are explored in A.27 to A.33.

High-level equality impact on groups

Sex

A.4 A greater proportion of public sector employees are female, relative to the working population, shown in Table 1. There are also more female members across the public service pension schemes than men, with broadly similar percentages to the public sector population.

Table 1: Sex demographics (scheme data compared to working and public sector):

Sex	Working population	Public sector population	Public service pension population
Male	52%	34%	35%
Female	48%	66%	65%

Source: LFS Q3 2020 and Public service pension scheme data

A.5 The proportions of male and female members in individual public service pension schemes differ from the proportions in the overall public service pension population in 2016. The Firefighters', Police and Armed Forces pension schemes are heavily male dominant with proportions above 70%, whereas the NHS and Teachers pension scheme are heavily female dominant. However, the whole public service pension population has a higher female than male proportion (65% to 35% respectively). This is because the NHS and Teachers pension scheme members represented 73% of the public service pension population in 2016 as shown in Annex B, Table 1, and from Table 2 it is clear these are female dominant workforces. In other schemes, such as the civil service pension scheme, there is a more even split between male and female members (Table 2 shows 47% are male and 53% are female members in the Civil Service pension scheme).

³www.ons.gov.uk/employmentandlabourmarket/peopleinwork/workplacepensions/bulletins/annualsurveyofhoursandearningspension/tables/2019provisionaland2018finalresults

Table 2: Sex demographics for each public service pension scheme:

Sex	Civil Service	Armed Forces	Firefighters	Police	Teachers	NHS
Male	47%	90%	95%	70%	29%	22%
Female	53%	10%	5%	30%	71%	78%

Source: Public service pension scheme data

Age

A.6 As shown in Table 3, those aged 25 to 64 are over-represented when comparing the public service pension population to the working population. Those aged 24 and below and 65 and above are under-represented in the public service pension population relative to the working population. For example, from Annex B, Table 2: 40% of members in the Civil Service pension scheme in 2016 were aged between 35 to 49, over 40% were over the age of 50 and around 20% fall below the age of 34.

Scheme specific members

A.7 Table 2 to 7 in Annex B show the age breakdown for each pension scheme. This data shows that although the proportions are not identical to those for the whole public service pension population (in Table 3), they are broadly similar for most of the public service pension schemes.

A.8 There are several factors which influence when members join and leave pension schemes, one of which is that the Normal Pension Age (NPA) varies between schemes; this influences the level of older people in each workforce. The Armed Forces and Police pension schemes have an NPA of 60 years, so therefore have a lower proportion of older members, with 15% or less of membership above the age of 50. For other workforces, around 30% of the workforce is above the age of 50, as the NPA in these schemes is higher.

A.9 The proportion of members aged 25 to 49 in all schemes was greater than or equal to the working population.

Table 3: Total membership by age (scheme data compared to population):

Age	Working population	Public Service Pensions Population
16 – 17	1%	0%
18 – 24	11%	5%
25 – 34	23%	24%
35 – 49	33%	41%
50 – 64	28%	30%
65 plus	4%	1%

Source: LFS Q3 2020 and public service pension scheme data

Unprotected members

- A.10 Table 4 shows the active membership in public service pension schemes and breaks down the public service pension scheme population into specific protected types. The highest proportion are those who are unprotected at 75%.
- A.11 Unprotected members are all members who were moved to the reformed schemes on 1 April 2015, or anyone who first joined their pension scheme after 1 April 2015 and therefore entered the reformed schemes.

Tapered members

- A.12 Tapered protection was offered to members between 10 and 13.5 or 14 years of Normal Pension Age on 31 March 2012, meaning they could stay in their existing schemes for a period ranging from a few months to several years after 2015. As with transitional protection, this was found to be unlawful discrimination by the courts.
- A.13 Tapered members represented 8% of the public service pension scheme active membership in 2016 and include both those that have already moved into the reformed scheme at their taper date, as well as those who will taper into the reformed schemes.

Protected members

- A.14 A protected member is one who was both an active member and within 10 years of their NPA on 1 April 2012. This transitional protection meant that members remained in their existing (legacy) scheme. This was also found to be unlawful discrimination by the courts.

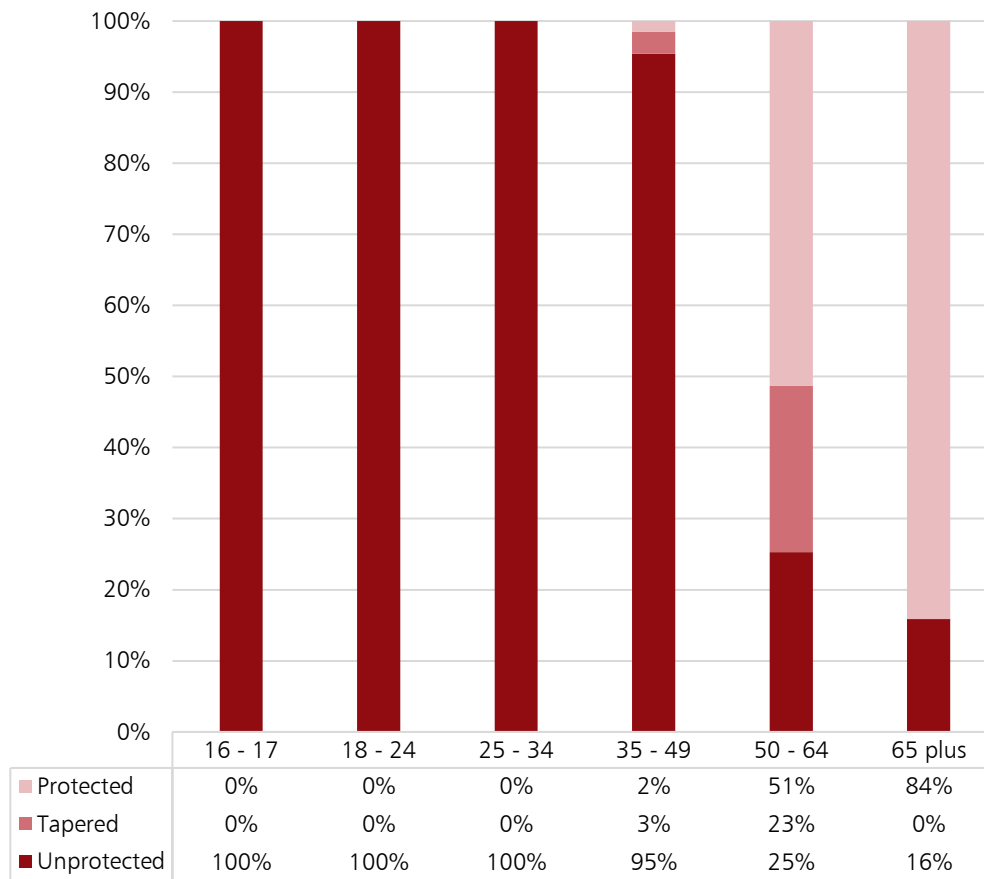
Table 4: Total active membership by protection type:

Protection type	Total active membership (headcount 000s)	Total active membership (%)
Unprotected	2,255	75%
Tapered	245	8%
Protected	499	17%
Total	3,000	100%

Source: Public service pension scheme data

- A.15 Table 4 shows that in 2016 there were 245,000 tapered members and that the youngest tapered member was aged between 35 to 49 years of age. In 2016, 3% of 35 to 49 year olds and 23% of 50 to 64 year olds were eligible for tapered protection, as they would have been within 10 and 13.5 years or 14 years of their NPA on 1 April 2012.
- A.16 Chart 1 shows the breakdown of total membership by age into protected types. Those aged 16 to 34 are all unprotected meaning they were either transitional members or new members of the reformed schemes, whereas 84% of those over 65 years old were protected. This is discussed in more detail in Chapter 2.

Chart 1: Total membership by age (scheme data broken down into protected types):



Source: Public service pension scheme data

Ethnicity, religion, disability and marital status

- A.17** There is limited membership data available for public service pension schemes on ethnicity, religion, disability and marital status as the LFS has no information on pension membership and GAD do not hold complete or up-to-date data on these characteristics.
- A.18** The LFS does however break down results to public sector level, which, as explored in A.2, is used as a proxy for public service pension scheme members for ethnicity and disability. For religion, data from the APS has been used as a proxy for the public service pension scheme members as it can also be broken down to public sector level.
- A.19** The government holds ethnicity data for public sector workforces including the NHS,⁴ Firefighters,⁵ Police,⁶ Teachers,⁷ Armed Forces⁸ and the Civil Service.⁹ The data shows that there are quite pronounced demographic differences in the workforce profiles of each of these employers by ethnicity, which is explored below:

⁴ www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/nhs-workforce/latest

⁵ www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/fire-and-rescue-services-workforce/latest

⁶ www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/police-workforce/latest

⁷ www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/school-teacher-workforce/latest

⁸ www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/armed-forces-workforce/latest

⁹ www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/civil-service-workforce/latest

- **NHS** - For those whose ethnicity was known in March 2019, 4 out of 5 (79.2%) were white (including white ethnic minorities), and 1 in 5 (20.7%) were from all other ethnic groups. There was a higher percentage of staff in medical roles (working as doctors in hospitals and community health services) from Asian, Chinese, mixed and other ethnic groups than in non-medical roles
- **Fire** - In 2019, for those whose ethnicity was known, 95.7% of firefighters were white compared to 85.1% of the working age population who were white. Overall, the percentage of fire and rescue services staff (including support staff) from Asian, Black, mixed and other backgrounds increased from 4% in 2011 to 5% in 2019
- **Police** - In March 2019, 93.1% of police officers were from white ethnic groups and 6.9% were from other ethnic groups
- **Teachers** - In 2018, for those whose ethnicity was known, 85.9% of all teachers in state-funded schools in England were white British compared to 78.5% of the working age population who were white British
- **Armed forces** - In October 2018 people from ethnic minorities (not including white minorities) made up 2.5% of officers in the UK regular armed forces, compared with 2.4% in April 2012. For ranks below that of officer, 8.8% of all armed forces personnel were from ethnic minorities, compared with 7.9% in April 2012
- **Civil Service** - In March 2019 there was broadly the same level of representation of ethnic minority groups as the UK population

A.20 Although there is no available data on religion, ethnicity, disability or marital status data at a pension scheme level, the government recognises the need to continually monitor ethnicity, disability and marital status in public service workforces. It also acknowledges the importance of using the latest data to inform this EqIA and the development of pension policies. The use of this data will be kept under review as the policies are further developed and implemented.

A.21 Table 5 indicates that the breakdown of ethnicity within the public sector workforce is broadly consistent with the UK population. This is assumed to be similar within the public service pension schemes. Black/African/Caribbean people and other ethnic groups are overrepresented in the public sector workforce relative to the UK population by a small proportion.

A.22 Those categorised as white (excluding white minorities) represent 88% and those from an ethnic minority¹⁰ represent 12% of the public sector workforce. The public service pension schemes are assumed to have a similar proportion of active members categorised as white (excluding white minorities).

¹⁰ Includes all people stating their ethnicity as 'Mixed', 'Indian', 'Pakistani', 'Bangladeshi', 'Chinese', 'Black/African/Caribbean' or 'Other'.

Table 5: Total and public sector population by ethnicity:

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

Source: LFS Q3 2020

A.23 Table 6 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.

Table 6: Total and public sector population by disability:

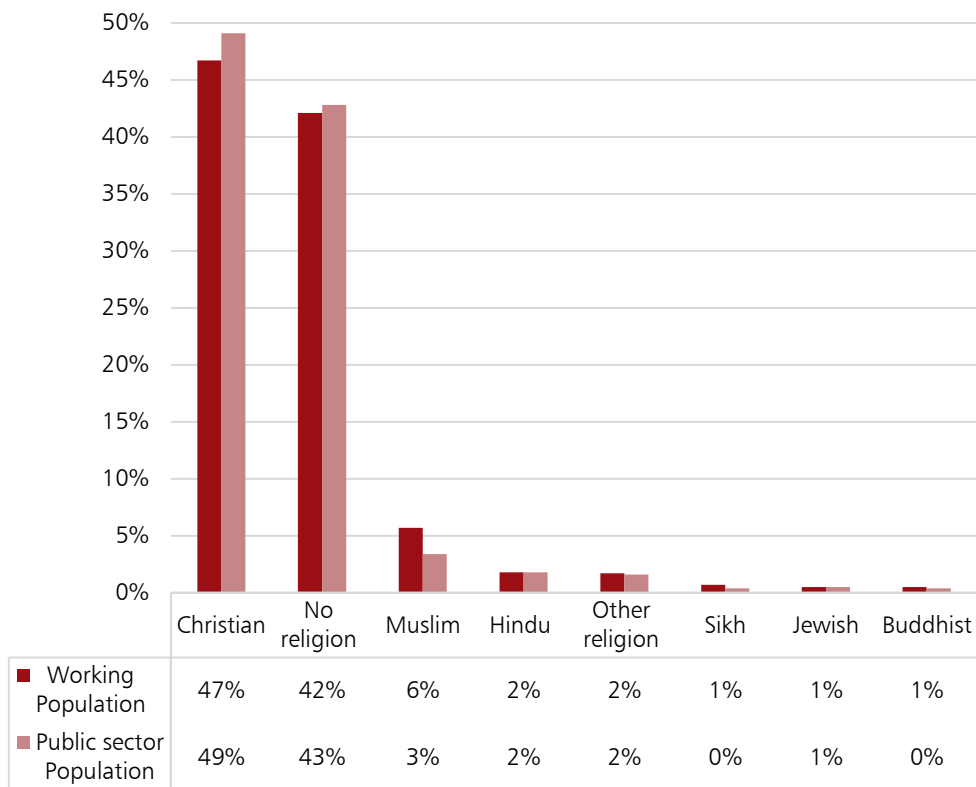
Disability	Working population	Public sector population
Equality act disabled	14%	16%
Not equality act disabled	86%	84%

Source: LFS Q3 2020

A.24 Chart 2 shows the breakdown of religion in the public sector workforce compared to the total working population. This shows that those identifying as Christian or no religion are overrepresented in the public sector relative to the UK population. The other religions (Muslim, Hindu, Sikh, Jewish, Buddhist and other religions) are underrepresented in the public sector relative to the UK population. Publicly funded systems like the NHS have a higher proportion of people who are Hindu (2.15%) and Sikh (1.02%) than the public sector more generally.¹¹ However, this data is not specific to the NHS pension scheme as it is based on the NHS workforce.

¹¹ www.digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/how-we-support-diversity-and-inclusion/our-workforce-demographics-2019/religion

Chart 2: Total and public sector population by religion:



Source: APS 2019

A.25 Table 7 shows that people who are married, cohabiting or in a civil partnership are overrepresented in the public sector. Inversely, those who are not married are underrepresented in the public sector compared to the working population.

Table 7: 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%	36%

Source: LFS Q3 2020¹²

A.26 Data on sexual orientation, gender reassignment, pregnancy and maternity (other groups covered by the Equality Act 2010) is not available.

¹² 'Labour Force Survey and Mid-year population estimates', Office for National Statistics.

Limitations

- A.27 Table 8 contains the data collected and used for comparison with public sector data and the public service pension population. It must be noted that all data (including the pension scheme data)¹³ is from a specific snapshot in time. This is not the specific point in time at which these policies apply; however, for the purposes of this analysis it is assumed that the percentages calculated here will be the same for the basis of our equality analysis, as referenced in paragraph 1.11 to 1.14.
- A.28 The LFS is the largest regular household survey in the UK. The survey covers people resident in private households, 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 this analysis as explored below:
- individuals who answered “I don’t know” to whether they are economically active or inactive have been excluded. The individuals excluded represent 4% of the LFS
 - those who are economically inactive (20% of the LFS) have also been excluded; these individuals are assumed not to be working; this analysis compares the public sector workforce data to data for the working population
 - data from the LFS for the working population on sex, ethnicity, age, 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
- A.29 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 – the limitations of which have been explored below:

¹³ Pension scheme data from the 2016 valuation reports has been provided by GAD; therefore, the data is based on membership in 2016 so the membership profile may change over time. This is the most up to date pension data schemes hold at the time of analysis, as valuation reports take place every 4 years.

- 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 the same populations are not being compared against characteristics, as these percentages include the 20% of the population who are economically inactive
- however, when comparing the APS to the LFS proxy for the public sector there is little dispersion. For example, 0.4% of the public sector identify as Jewish compared to 0.5% of the England and Wales population. These percentages are therefore considered robust enough to use as proxies in this analysis

A.30 As shown in Table 8, data for religion and marital status is based on the England and Wales population. However, data from the 2011 census and from Northern Ireland's and Scotland's respective datasets is available for religion¹⁴ and marital or civil partnership status.¹⁵ This has been used to verify the accuracy of using the England and Wales data on which to base this analysis.

A.31 This EqIA is based on available data but there are some limitations to the scheme data we have used throughout this document. These include:

- a considerable proportion of active members who are not in the public sector workforce, as strictly defined, but are included in the scheme data. These include NHS practitioners such as GPs, GP practice staff, teachers in Further and Higher Education and independent schools and staff employed by private sector contractors and admitted to public service pension schemes under the new Fair Deal. It is estimated these might represent around 10% of the total public service pension scheme active membership in the data we have used
- the public sector workforce data includes those in local government and the wider public sector who are not covered by the pension schemes affected by these policies

A.32 HM Treasury does not hold information on the membership of the smaller public service pension schemes. However, based on evidence available, the government does not envisage any differential impact on persons or groups with protected characteristics within each scheme than those set out above in this equality analysis for the public sector as a whole.

A.33 Individual pension schemes will consult on the specific details of the implementation of these changes when they publish their draft regulations. The government will be able to consider the impacts and detailed policy for each scheme at that stage.

¹⁴ Data for religion for **Northern Ireland**: www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/2011-census-results-key-statistics-northern-ireland-report-11-december-2012.pdf - page 19 and **Scotland**: www.scotlandscensus.gov.uk/ods-analyser/jsf/tableView/tableView.xhtml

¹⁵ Data for marital or civil partnership status for **Northern Ireland**: www.nisra.gov.uk/publications/registrars-general-annual-report-2018-marriages and **Scotland**: www.scotlandscensus.gov.uk/ods-analyser/jsf/tableView/tableView.xhtml

Table 8: Data used for the working population:

Protected characteristic	Data collected	Data style	Country
Sex	Male:	LFS 2020 Q3	UK
	www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/mgsa/lms		
	Female:		
	www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/mgsb/lms		
Ethnicity	www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusbyethnicgroupa09	LFS 2020 Q3	UK
Age	www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/employmentunemploymentandeconomicinactivitybyagegroupnotseasonallyadjusteda05nsa	LFS 2020 Q3	UK
Religion	www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/datasets/religiouseducationandworkinenglandandwales	APS 2019	England and Wales ¹
Marital or civil partnership status	www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesbymaritalstatusandlivingarrangements	LFS 2020 Q3	England and Wales ²
Disability	www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusofdisabledpeoplea08	LFS 2020 Q3	UK
Sexual orientation	Data unavailable		
Gender reassignment	Data unavailable		
Pregnancy and maternity	Data unavailable		

¹ Data for religion for **Northern Ireland**: www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/2011-census-results-key-statistics-northern-ireland-report-11-december-2012.pdf - page 19 and **Scotland**: www.scotlandscensus.gov.uk/ods-analyser/jsf/tableView/tableView.xhtml

² Data for marital or civil partnership status for **Northern Ireland**: www.nisra.gov.uk/publications/registrar-general-annual-report-2018-marriages and **Scotland**: www.scotlandscensus.gov.uk/ods-analyser/jsf/tableView/tableView.xhtml

Annex B

Scheme specific data

Table 1: Membership in public service pension schemes 2016:

	Armed forces	Civil service	NHS	Police	Teachers	Firefighters	Total
Membership (000s)	195.7	464.002	1,460	120.673	727	32.985	3,000
Proportion	7%	15%	49%	4%	24%	1%	100%

Source: Scheme specific data (Number of members as at 31 March 2016)

Table 2: Civil service pension scheme data broken down by age and protective status:

Age	Unprotected	Tapered	Protected	Total
16 – 17	100%	0%	0%	0%
18 – 24	100%	0%	0%	3%
25 – 34	100%	0%	0%	16%
35 – 49	100%	0%	0%	40%
50 – 64	17%	30%	53%	40%
65 plus	4%	0%	96%	2%

Source: Civil service (GB) pension scheme data

Table 3: NHS pension scheme data broken down by age and protective status:

Age	Unprotected	Tapered	Protected	Total
16 – 17	100%	0%	0%	0%
18 – 24	100%	0%	0%	5%
25 – 34	100%	0%	0%	22%
35 – 49	96%	3%	1%	40%
50 – 64	28%	21%	51%	32%
65 plus	15%	0%	85%	1%

Source: NHS (England and Wales) pension scheme data

Table 4: Teachers' pension scheme data broken down by age and protective status:

Age	Unprotected	Tapered	Protected	Total
16 – 17	100%	0%	0%	0%
18 – 24	100%	0%	0%	3%
25 – 34	100%	0%	0%	27%
35 – 49	100%	0%	0%	42%
50 – 64	28%	26%	45%	26%
65 plus	29%	0%	71%	1%

Source: Teachers' (England and Wales) pension scheme data

Table 5: Police pension scheme data broken down by age and protective status:

Age	Unprotected	Tapered	Protected	Total
16 – 17	0%	0%	0%	0%
18 – 24	100%	0%	0%	2%
25 – 34	100%	0%	0%	24%
35 – 49	61%	21%	18%	59%
50 – 64	1%	0%	99%	15%
65 plus	0%	0%	100%	0%

Source: Police (England and Wales) pension scheme data

Table 6: Firefighters pension scheme data broken down by age and protective status:

Age	Unprotected	Tapered	Protected	Total
16 – 17	0%	0%	0%	0%
18 – 24	100%	0%	0%	2%
25 – 34	100%	0%	0%	20%
35 – 49	72%	25%	4%	57%
50 – 64	10%	9%	81%	21%
65 plus	29%	0%	71%	0%

Source: Firefighters (England) pension scheme data

Table 7: Armed Forces pension scheme data broken down by age and protective status:

Age	Unprotected	Tapered	Protected	Total
16 – 17	100%	0%	0%	0%
18 – 24	100%	0%	0%	20%
25 – 34	100%	0%	0%	41%
35 – 49	99%	0%	1%	32%
50 – 64	44%	0%	56%	7%
65 plus	67%	0%	33%	0%

Source: Armed forces (UK) pension scheme data

HM Treasury contacts

This document can be downloaded from www.gov.uk

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