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This publication is no longer current and is not being updated.

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Equality Impact Assessment (EIA)
<ul style="list-style-type: none"> Remember that your duty is to demonstrate that you have had “due regard” to equalities issues.

1. Name and outline of policy proposal, guidance or operational activity
<p><u>Revision summary</u></p> <p>This EIA reflects the Windrush Compensation Scheme policy as of March 2022.</p> <p>The EIA has been updated to reflect that the scheme is now live, alongside policy changes made to the scheme with regards to:</p> <ul style="list-style-type: none"> Awards for Loss of access to Employment, Detention associated with Deportation and Impact on Life Operating the scheme fully on the balance of probabilities Preliminary payments <p>Windrush compensation policy.</p> <p><u>Policy background</u></p> <ol style="list-style-type: none"> In April 2018, the Home Secretary announced a suite of measures to right the wrongs suffered by the Windrush generation who have faced difficulties in demonstrating their lawful status in the UK under the immigration system and, as a result, faced difficulties working and accessing services. One of these measures was establishing a compensation scheme as quickly and carefully as possible. The compensation scheme is intended to provide redress for certain losses and/or impacts that some of those who came to the UK legally many years ago and are entitled to live and work here have experienced as a result of not being able to evidence their lawful right to stay in the UK, primarily a result of measures put in place to tackle illegal immigration. These measures were not

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intended to have negative impacts on British Citizens or those who are lawfully resident in the UK.

3. The measures to tackle illegal immigration have been built up over many years. The first NHS treatment charges for overseas visitors and illegal migrants were introduced in 1982; right to work checks by UK employers were introduced in the Asylum and Immigration Act 1996 and came into force in January 1997; and more recent measures on the private rented sector, bank accounts and driving licences were introduced in the 2014 and 2016 Immigration Acts.
4. The compensation policy will address those losses or impacts felt by members of the Windrush generation who were unable to evidence their lawful right to stay in the UK. They will also extend in some cases to the children and grandchildren of those who have been affected. Furthermore, the estates of deceased claimants and claims where a close family member of an individual who meets the eligibility criteria has suffered certain impacts and/or losses are also included in the eligibility criteria.
5. Compensation will only be available to those meeting the eligibility requirements as set out in the scheme rules, and this will give rise to differential treatment between those eligible for the compensation scheme, and other migrants, including migrants who arrived in UK after 1988 but who may also have faced difficulties in confirming their lawful status in the UK.
6. The policy recognises the specific historical circumstances in relation to the Windrush generation. The term 'Windrush' is a reference to the ship MV Empire Windrush, which arrived at Tilbury Docks, Essex, in June 1948, bringing citizens of Jamaica, Trinidad and Tobago and other islands, as a response to post-war labour shortages in the UK.
7. However, the "Windrush generation" usually refers to people who settled in the UK before 1 January 1973. Prior to the Immigration Act 1971 (which came into force on 1 January 1973), Citizens of the UK and Colonies (CUKC), British subjects with a connection to the UK or remaining colonies and Commonwealth citizens from independent countries, were subject to limited controls introduced in the Commonwealth Immigrants Acts of 1962 and 1968.
8. In most cases, CUKC passport holders automatically ceased to be CUKC on the date of independence of their country of origin. This was set out in that country's own independence legislation, which also provided for them to become citizens of the newly independent country. Most countries remained in the Commonwealth, so the citizens remained Commonwealth citizens.
9. Members of the Windrush generation, who were settled in the UK before 1 January 1973 were treated automatically (by operation of section 1(3) of the Immigration Act 1971) as having indefinite leave to enter and remain. An individual's indefinite leave will lapse after two years outside the UK.

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10. Sometimes “the Windrush Generation” also refers to non-Commonwealth citizens who arrived and were settled in the UK before 1 January 1973 who also benefited from deemed leave by virtue of the Immigration Act 1971. For the purposes of this Policy Equality Statement references to “the Windrush Generation” includes this group.

11. Those arriving in the UK since 1 January 1973 are not in the same position as those who arrived prior to 1973, because they must have had some status to enter the UK and documentation to evidence this. However, there are a number of individuals in this group – often those who arrived shortly after 1973 – who have nonetheless struggled to demonstrate their status. Of those who responded to the Call for Evidence, 17% arrived after 1973 (13% between 1973 and 1988 and 4% who arrived after 1988). Of those who responded to the Consultation and responded to the question about what year they first arrived in the UK to live, 73% said before 1973, 14% said 1973-1988 and 13% said from 1988 onwards.

For the purposes of this EIA, references to “the Windrush Generation” also includes individuals who arrived in the UK between 1 January 1973 and 31 December 1988. In this way, the WCS mirrors the Windrush Scheme. Full details of the Windrush scheme including those who are eligible are set out [here](#).

Windrush Lessons Learned Review

In 2018, Wendy Williams was asked by the then Home Secretary to conduct an independent Windrush Lessons Learned Review (WLLR). The review, which was published in March 2020, made 30 recommendations for change in the Home Office.

As part of the WLLR reforms, mandatory training on the Public Sector Equality Duty (PSED) and the impact assessment process was rolled out across the Home Office and all impact assessments and submissions to Ministers must – as well as considering the equalities impact – address potential risks to vulnerable individuals and groups.

On 29 September 2021 Wendy Williams returned to the Home Office to start her independent assessment of the progress the Home Office has made in implementing the 30 recommendations she set out in her Windrush Lessons Learned Review against the Department’s own published Comprehensive Improvement Plan.

Existing ex gratia scheme

The Home Office has an existing ex-gratia scheme that can make discretionary payments to customers of Immigration Enforcement, UK Visas & Immigration and Border Force, as redress for maladministration. Loss of documents, taking incorrect action, or giving incorrect advice may, depending on the facts, be examples of maladministration considered for financial redress under the scheme.

The difficulties some of the Windrush generation have encountered arose as a result of a

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complex set of circumstances. The responses to the Call for Evidence and consultation have demonstrated, that did not necessarily involve maladministration. As a result, some of those the Government wanted to compensate would not qualify under the existing ex gratia scheme. The Home Office therefore established a bespoke scheme to provide appropriate redress specifically for those from the Windrush generation who have suffered losses or impacts in connection with difficulties they have faced demonstrating their lawful right to stay in the UK.

Windrush Compensation Scheme policy

The aims of the Windrush Compensation Scheme are:

- To seek to compensate eligible individuals for certain financial losses they have experienced, as a result of difficulty in demonstrating their lawful status.
- Provide for the possibility for payment in recognition of non-financial losses or impacts including emotional suffering and other categories of non-financial loss.
- Be a quick and easy to scheme navigate for claimants, with assistance available for claimants to make their claims, with an onus on those operating the scheme to gather evidence, with the consent of the claimant, from other public bodies or government departments in the first instance.
- Minimises the likelihood of ineligible or fraudulent claims.
- Minimises the risk of or perceived need to pursue litigation.
- Achieve maximum support and advocacy from external (and internal) stakeholder groups, through consultation on design and transparency of operation.
- Operates as cost effectively as possible while meeting the above objectives.

The WCS is a non-statutory principally award-based scheme which provides an apology to successful applicants and compensation for certain immigration fees and legal fees, detention, deportation, removal and returns, loss of access to employment, loss of access to certain benefits, loss of access to services and impact on life. Discretionary payments for losses which are not excluded and not covered in other categories are also considered. Compensation is awarded according to both actual losses and tariff-based awards.

The Home Office is the first point of contact for the claimant in order to provide a simple service; however, some payments are made directly by other government departments in accordance with their usual rules and using existing mechanisms, for example benefit reinstatement and back-payment from DWP and consolatory payments from DVLA. The compensation scheme works with other government departments to facilitate this process.

The scheme accepts compensation claims for losses and impacts experienced at any point in the past. Claimants are asked to provide information and evidence to demonstrate the losses and impacts they have faced. Where individuals are unable to provide this, we

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will try to obtain this on their behalf from other government departments and third parties. We recognise that some evidence will not be available. The scheme therefore operates on the balance of probabilities which means caseworkers must be satisfied it is more likely than not that the losses and impacts being claimed for were suffered due to difficulties evidencing lawful status.

The compensation scheme is open to those with confirmed status in the UK and those overseas.

Claims for compensation are accepted from -

For those in the UK:

- A Commonwealth citizen who was settled in the UK before 1 January 1973 and has been continuously resident in the UK since their arrival (or who satisfied this provision and is now a British citizen); or
- A Commonwealth citizen who was settled in the UK before 1 January 1973, whose settled status has lapsed because they left the UK for a period of more than 2 years, and who is now lawfully in the UK (including as a British Citizen); or
- A Commonwealth citizen who has a right of abode and was ordinarily resident in the United Kingdom on 1 January 1973 (or who satisfied this provision and is now a British citizen); or
- A child of a Commonwealth citizen who either was (i) settled in the UK before 1 January 1973 or (ii) has a right of abode (or did and is now a British Citizen) and was ordinarily resident in the UK on that date (including a citizen who satisfied one of those requirements and is now deceased), where the child was born in the UK or arrived in the UK before the age of 18 and has been continuously resident in the UK since their birth or arrival; or
- A grandchild of a Commonwealth citizen who either (i) was settled in the UK before 1 January 1973, or (ii) has a right of abode (or did and is now a British Citizen) and was ordinarily resident in the UK on that date (including a citizen who satisfied one of those requirements and is now deceased), where the grandchild and their parent were born in the UK or arrived in the UK before the age of 18 and the grandchild has been continuously resident in the UK since their birth or arrival; or
- A person of any nationality who arrived in the UK before 31 December 1988 and who either is lawfully in the UK or is now a British Citizen.

Individuals applying from within the UK should provide evidence of their lawful status (right of abode, British citizenship or indefinite leave to remain) with their claim. Anyone who does not have documentary evidence of their lawful status should contact the Windrush Help Team to obtain this before submitting their claim for compensation.

For those overseas:

- A Commonwealth citizen outside the UK who was settled in the UK before 1 January 1973 and who has a right of abode or settled status or who is now a British Citizen or whose settled status has lapsed because they left the UK for a period of more than 2 years.

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Individuals applying from overseas should provide evidence of this with their claim.

Claims for compensation are also accepted from:

- The estate of a person who would have been eligible.
- A close family member of an eligible person, where they have suffered losses and/or impacts because of that eligible person's inability to demonstrate their lawful status.

To make a claim for compensation individuals are required to complete a claim form, available on gov.uk. Guidance notes on completing the forms are also available on gov.uk. We recognise that many people who have been affected may not have immediate access to technology such as the internet, printing facilities or email. We therefore accept applications in the post and by email. If individuals need help accessing the forms or have any queries about eligibility, they can contact the Windrush Help Team. The Help Team can also post forms and guidance directly to individuals. For those who do wish to complete and subject their claims in an entirely digital manner, this is also possible.

The Home Office has also funded We Are Digital (WAD) to provide free, independent support to individuals to complete their claim forms. WAD work through a network of local centres, including Citizens Advice Bureaux, Community Centres, and specialist Immigration Charities. WAD offer the option of face to face meetings where possible, telephone, or remote delivery sessions. WAD has extensive experience of dealing with isolated and vulnerable customers and in delivering support and advice both over the phone, via remote video sessions and in person through centres. A referral to WAD can be made via the Windrush Help Team. Alternatively, individuals can contact WAD directly.

The WCS has a two-tier review process. Individuals who are dissatisfied with the outcome of their claim can firstly ask the Home Office for an internal independent review by a senior reviewer who has not been involved in their claim. If following this they remain dissatisfied, individuals can request an external independent review by the Adjudicator's Office. There is a further option for cases to be looked at by the Ombudsman.

The operation of the scheme is overseen by an Independent Person who will be instrumental in ensuring that the Windrush Compensation Scheme operates effectively and will make recommendations to Ministers on improvements. On 21 April 2021, the Home Office announced the appointment of Martin Levermore as the new Independent Person to advise on the WCS. Professor Levermore will provide crucial independent oversight and assurance on the Windrush Compensation Scheme's operation, policy and effectiveness.

This EIA considers any impacts of the WCS on those with protected characteristics.

If further impacts upon protected characteristics are discovered, these impacts will be duly considered.

2. Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.

Evidence and data considered to support the establishment and launch of the compensation

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scheme in April 2019

Immigration data

Based on the 2011 census there were estimated to be 524,000 Commonwealth-born people living in the UK who arrived before 1971, and 57,000 of them self-report as not being UK citizens¹.

We have also undertaken internal Home Office analysis based on the ONS 2011 Census². For the dataset 'passports held by year of arrival in the UK by country of birth (national)' the analysis finds:

Table 1: internal analysis on 2011 ONS Census data

Year	Commonwealth	Possibly Commonwealth
To 1970	38,264	22,457
To 1990	86,603	75,262
Of which 1971 – 1990	48,339	52,805

This collection of data does not, however, tell us how many Commonwealth citizens who arrived before 1 January 1973 or before end of 1988 have had or continue to have difficulty evidencing their lawful status in the UK. It also does not tell us how many people may not have had any difficulty.

On 10 May 2018 the Government published a Call for Evidence for a Windrush Compensation Scheme. The deadline for responses was 8 June. Those responses were valuable in informing the approach to the consultation on the scheme, including in relation to the equality analysis set out below. The following analysis is based on all 650 responses to the Call for Evidence received by the deadline.

Country of birth

- Almost three-quarters of respondents reported their country of birth (455). Of these, 9% were born in the UK and 90% were born in other Commonwealth countries.
- Of those born outside the UK, almost three-quarters provided their year of arrival (451). Of these 83% arrived in the UK before 1973.

Of those who provided their country of birth, 42% were from Jamaica. The UK and Barbados were the next largest country of birth groups (9% and 8%, respectively).

- No other country of birth was mentioned by more than twenty responses.

Table 2: Country of birth group and period of arrival in the UK

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<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/methodologies/labourforcesurvey/lfsqmi#validation-and-quality-assurance>

² <https://www.ons.gov.uk/census/2011census>

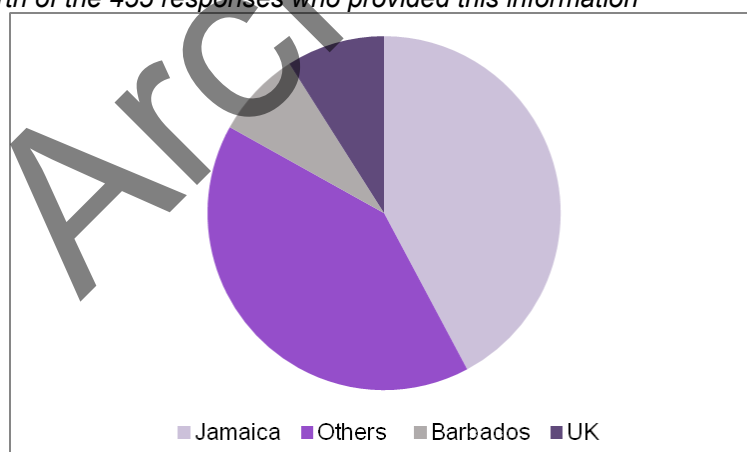
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	Pre 1973	1973-1988	post 1988	Unknown arrival period	UK born	Total	% of known country of birth
Commonwealth total (non-UK)	298	45	16	50	0	409	90%
Caribbean	240	20	11	32	0	303	67%
Other	58	25	5	18	0	106	23%
UK	n/a	n/a	n/a	n/a	41	41	9%
Non-Commonwealth	2	0	0	3	0	5	1%
Total	300	45	16	53	41	455	100%
% of known arrival period	83%	12%	4%				

When did losses begin?

Around half of respondents (338) specified when they first started to experience losses. Of those who did, 52% reported experiencing losses after 2010, 28% between 1999-2010, and the remaining 20% started experiencing losses before 1999.

Figure 1: Country of birth of the 455 responses who provided this information



Types of impacts reported

Table 3: Primary categories of loss or impact as a proportion of responses specifying a loss or impact

Emotional distress	403	68%
Direct costs related to confirming correct immigration status	368	62%
Loss of income ¹	367	62%

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Inability to travel	153	26%
Access to public services	141	24%
Access to infrastructure	50	8%
Detention and/or removal	39	7%
<i>Total Respondents</i>	592	

¹ including loss of employment and access to benefits.

Note: Percentages do not total 100% as multiple impacts were reported

Following the Call for Evidence a consultation was published. This ran from 19 July – 16 November 2018.

A total of 1,435 responses to the consultation were received. Individual responses were asked to provide information³ relating to their country of birth, passports held (as a proxy for nationality), age, gender, and about their interest in the compensation scheme.

- Of those who indicated their main interest in the compensation scheme (1,240), 44% (549) of respondents describe themselves as an interested member of the public, 35% (430) thought they may be eligible for compensation and 12% (150) knew someone who may be eligible for compensation. A further 9% (111) were interested in the compensation scheme for 'other' reasons.
- Of those who responded to the question about their **country of birth** (1,237), 46% (572) were born in the UK and 46% (563) were not. A further 8% (102) preferred not to say. Of those born outside the UK (563), 46% (260) were born in Jamaica, 6% (36) were born in Barbados, 5% (27) were born in Nigeria, 4% (22) Trinidad and Tobago and 4% (21) in St Vincent and the Grenadines. Over a third (35%, 197) of respondents were born in other countries (with no other countries being mentioned by more than 20 respondents).
- Of those who stated what **year they first arrived in the UK to live** (557), 74% (413) said before 1974, 13% (70) said 1974-1988 and 13% (74) said from 1988 onwards.
- Of those who responded to the question about which **passports** they hold (1,221), 52% (639) stated that they held a UK passport only, 13% (158) held a non-UK passport(s), 10% (126) held a UK passport and other(s) and 10% (122) did not hold any passport. A further 14% (176) preferred not to say.
- Of those who provided information relating to their **current place of residence** (1,245), most (92%, 1,148) were currently living in the UK, 3% (42) were not living in the UK and 4% (55) preferred not to say.

³ Responses made on behalf of another individual were asked to provide details to that individual.

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- Of those who declared their **age** in their response (1235), almost half (47%, 579) were aged 50-64, 19% (232) were aged 35-49, 14% (175) were aged 65+, 10% (124) were aged 25-34 and 3% (36) were aged 16-24. A further 7% (89) preferred not to say.
- Of those who declared their **gender** in their response (1,230), over half (53%, 657) were female, 38% (465) were male and 9% (108) preferred not to say.
- Of those who responded to the question about whether their parents or grandparents were part of the **Windrush Generation** (1,237), half (50%, 620) stated that their parents were part of the Windrush Generation and under a tenth (8%, 99) said that their grandparents were part of the Windrush Generation. Almost a third (29%, 361) said neither their parents or grandparents were part of the Windrush Generation while 11% (130) preferred not to say, and 2% (27) did not know.

Data on Windrush Compensation Scheme claims received to the end of February 2022

Table 1: *Number of Windrush Compensation Scheme claims received*

All claims received	3618
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Table 2: *Age of Windrush Compensation Scheme claimants*

Age range	Cases
0-18	28
>18-25	59
>25-30	84
>30-35	129
>35-40	173
>40-45	133
>45-50	139
>50-55	211
>55-60	406
>60-65	850
>65-70	679
>70-75	247
>75-80	196
>80-85	175
>85	109
Total	3618

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Table 3: Age - Number of over/under 50's receiving compensation

Age range	Average final payment amount	% of claims concluded that received compensation
50 or over	£48,967.76	60%
under 50	£37,340.44	50%

Table 4: Number of male and female applicants to the Scheme

Gender	Total	50 or over	Under 50
Male	2008	1669	339
Female	1606	1232	374
Unknown	4	3	1

Table 5: Breakdown of claims by country of nationality as recorded on the claim form

Country	Number of claims received
United Kingdom	2756
Jamaica	358
Nigeria	101
Barbados	32
United States	35
Ghana	31
India	28
Bangladesh	26
Trinidad and Tobago	21
Others	230
Total	3618

Table 6: Breakdown of claims by country as recorded on the claim form

Country of Nationality	Number of claims received
Jamaica	100
United Kingdom	3443
Nigeria	5

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Barbados	0
India	3
St Lucia	0
St Vincent	0
Grenada	0
Trinidad and Tobago	7
Others	60
Total	3618

3A. Consideration of limb 1 of the duty: Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act

The Equality Act 2010 provides a limited exception from the requirement not to discriminate on certain grounds within paragraph 1 of Schedule 23 to the Act. That exception applies inter alia to anything done “in pursuance of arrangements made (whether before or after the passing of this Act) by, or with the approval of, or for the time being approved by, a Minister of the Crown”.

The design and establishment of the Windrush Compensation Scheme follows an announcement of the scheme made by the Home Secretary to Parliament on 23 April 2018⁴ and is therefore within the scope of this provision. The eligibility criteria for the scheme as set out in the Scheme Rules favours certain Commonwealth Citizens, or their children and grandchildren when compared to persons of other nationalities. Ministerial Authorisation was obtained for the Windrush Compensation Scheme which included the more favourable treatment of certain Commonwealth citizens, their children and grandchildren on the basis of nationality. The authorisation is fixed for the life cycle of the scheme and will be kept under review.

A person does not contravene Part 3, 4, 5 or 6 of the Act by doing anything in pursuance of such arrangements where (i) the act discriminates against another because of the other's nationality; or (ii) the act involves the application to a person of a provision, criterion or practice (PCP) which relates to their place of ordinary residence, or the length of time they have been present or resident in or outside the United Kingdom or an area within it.

Nevertheless, given the circumstances in which this policy has arisen, this EIA seeks to assess discrimination which may be caused by the policy.

Race

⁴ <https://hansard.parliament.uk/commons/2018-04-23/debates/AFC7E55B-9796-4FDA-8BB6-9EBDC7CCDAE2/Windrush>

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Direct Discrimination –

Eligibility Requirements:

Under the policy an application for compensation will be accepted from -

For those in the UK:

- A Commonwealth citizen who was settled in the UK before 1 January 1973 and has been continuously resident in the UK since their arrival (or who satisfied this provision and is now a British citizen); or
- A Commonwealth citizen who was settled in the UK before 1 January 1973, whose settled status has lapsed because they left the UK for a period of more than 2 years, and who is now lawfully in the UK (including as a British Citizen); or
- A Commonwealth citizen who has a right of abode and was ordinarily resident in the United Kingdom on 1 January 1973 (or who satisfied this provision and is now a British citizen); or
- A child of a Commonwealth citizen who either was (i) settled in the UK before 1 January 1973 or (ii) has a right of abode (or did and is now a British Citizen) and was ordinarily resident in the UK on that date (including a citizen who satisfied one of those requirements and is now deceased), where the child was born in the UK or arrived in the UK before the age of 18 and has been continuously resident in the UK since their birth or arrival; or
- A grandchild of a Commonwealth citizen who either (i) was settled in the UK before 1 January 1973, or (ii) has a right of abode (or did and is now a British Citizen) and was ordinarily resident in the UK on that date (including a citizen who satisfied one of those requirements and is now deceased), where the grandchild and their parent were born in the UK or arrived in the UK before the age of 18 and the grandchild has been continuously resident in the UK since their birth or arrival;
- A person of any nationality who arrived in the UK before 31 December 1988 and who either is lawfully in the UK or is now a British Citizen.

For those overseas:

- A Commonwealth citizen outside the UK who was settled in the UK before 1 January 1973 and who has a right of abode or settled status or who is now a British Citizen or whose settled status has lapsed because they left the UK for a period of more than 2 years.

The following groups will also be included:

- The estate of a person who would have been eligible.
- A close family member of an eligible person, where they have suffered losses and/or impacts because of that eligible person's inability to demonstrate their lawful status

By limiting the eligibility of those overseas to commonwealth nationals, of children/grandchildren to those born to certain commonwealth nationals (and not children

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and grandchildren of non-Commonwealth citizens or those whose parent or grandparent arrived after 1973), the scheme directly discriminates on the basis of nationality.

More generally the compensation scheme disproportionately benefits members of the Windrush generation and their children (and grandchildren) originating from Commonwealth countries, particularly the Caribbean. The Call for Evidence and Consultation, as well as the number of people who at that point had made an application to the Commonwealth Citizens Taskforce showed that people from the Caribbean were predominantly affected. The nationality of claims received to date tends to support this (see stats in section 2 above), however, because 75% of claims are from people who identify as British, we cannot evidence this conclusively.

We consider this direct discrimination to be justified on the basis of the unique history of the UK and the Commonwealth, the complicated legislative changes since 1949 including the giving of leave by the Immigration Act 1971, and the fact that many Commonwealth citizens who arrived prior to 1973 may have considered themselves British, all of which meant that these particular groups had particular difficulties demonstrating their lawful status in the UK. We have a Ministerial Authorisation on this basis.

With the exception of the eligibility of children and grandchildren of members of the pre-1973 Windrush generation and overseas claimants, the eligibility criteria draw no distinction on the basis of race.

Indirect Discrimination –

The compensation scheme will compensate for losses that people have experienced because of their nationality or national origin. We have identified three main groups affected by indirect discrimination based on race.

Criminality

The compensation scheme allows for compensation to be withheld or reduced if a claimant has a record of serious criminality (a custodial sentence of more than four years).

Whilst there are no specific figures on offending rates for those from the Windrush generation, it should be noted that in general, non-White ethnic groups appear to be over-represented at most stages throughout the Criminal Justice System. Among non-White ethnic groups, Black and Mixed individuals were often the most over-represented. According to the Ministry of Justice's statistics in 2016/17,⁵ compared with the White ethnic group, arrests proportionate to population size were more likely to be carried out on the Black (three and half times more likely) and Mixed (twice as likely) ethnic groups.

Relative to the population, the rates of prosecution for indictable offences for Black and Mixed ethnic groups were four and two times higher than for the White ethnic group. For

⁵ Ministry of Justice's race and the justice system statistics, in 2016/17, <https://www.gov.uk/government/collections/race-and-the-criminal-justice-system>

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every 1,000 population members, 16 Black and 9 Mixed defendants were prosecuted compared to 4 White defendants. There were 82,773 prisoners in England and Wales as at 30 June 2018. In terms of ethnic group, 60,275 (73%) are white, 20,813 (25%) are from mixed or other ethnic groups, 497 did not specify.⁶ This compares with ONS data (based from 2011 census data – that specifies that 86% of the population are white and 14% are from other ethnic groups.⁷ Lastly, there are over 11 million people with a criminal record and there are approximately 735,000 people with unspent convictions. Males over 50 are more likely to have a criminal record (33%).

The conclusion could therefore be drawn that those making claims to the Windrush compensation scheme might, due to their age and race, disproportionately have criminal convictions which could impact on the level of compensation payment they receive. This could therefore constitute indirect discrimination.

It is not considered appropriate, in all cases, for public funds to be paid out to those who have showed such a serious disregard for the law. The difference in treatment is accordingly lawful by reference to s19(2)(d) of the Equality Act 2010 as it is a proportionate means of achieving a legitimate aim. We consider this difference in treatment is justifiable and proportionate on the basis of public policy in light of the legitimate aim of prioritising public spend on those who have not shown a serious disregard for this country's laws.

In October 2020 the Home Office clarified the scheme's criminality policy and set out that in most instances an individual's criminality will not impact on the compensation they are to be awarded. Only awards for Impact on Life will be affected and only where individuals have received sentences of imprisonment of four years or longer for offences such as murder, rape or sex/sexual offences with a minor. This serves to reduce the indirect discrimination caused by this aspect of the scheme. To the end of October 2021, fewer than 10 claimants have had their compensation award for Impact on Life declined or reduced because of previous criminality. On this basis we believe this is a proportionate approach to achieve the legitimate aim of prioritising public spending on those who have not shown a serious disregard for this country's laws. It is not considered appropriate, in all cases, for public funds to be paid out to those who have showed such a serious disregard for the law. The compensation scheme therefore includes an element of discretion for awards to be reduced or refused in appropriate cases. The difference in treatment is accordingly lawful by reference to s19(2)(d) of the Equality Act 2010 as it is a proportionate means of achieving a legitimate aim.

Further on criminality, when the scheme was established, claimants whose time spent in detention was ancillary to consideration for automatic deportation (by virtue of the length of a custodial sentence) would not be entitled to compensation for that detention. Given the

⁶ .Ministry of Justice's offender management statistics - 2018
<https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2018>

⁷ ONS Census Data 2011 -
<https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/articles/ethnicityandnationalidentityinenglandandwales/2012-12-11>

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statistics set out above, the conclusion could therefore be drawn that applicants to the Windrush compensation scheme, due to their age and race, might disproportionately have been considered for automatic deportation, which in turn would affect their entitlement to compensation. This could therefore constitute indirect discrimination.

At the time we considered that this difference in treatment was justifiable and proportionate on the basis of public policy in light of the legitimate aim of spending public funds efficiently. It is not considered appropriate for public funds to be paid out to those who have showed such a serious disregard for this country's laws and where consideration is being given to automatic deportation.

However, in October 2020 the Home Office amended this aspect of the WCS to allow all individuals who were exempt from deportation for their time in detention to be compensated, thereby removing this element of indirect discrimination from the scheme.

Employment

Awards for loss of access to employment are made where individuals can demonstrate they lost access to employment because they were unable to demonstrate their lawful status. Where we can obtain evidence of an individual's salary, their award will be based on this. Where we cannot obtain evidence of salary, an award will be made using a general tariff.

People who worked in lower-paid, temporary or insecure jobs may be less able to provide evidence to support their claim under this category, particularly evidence of their salary. Data published by DWP on Household Income in 2018 showed that 33% of Mixed households and 35% of Black households had a weekly income of less than £400, the highest percentages out of all ethnic groups in this income group. There are two types of tariffs within the employment categories, actual and general. The information that can be obtained in support of the claim, will depend on which would be applied to a particular claim. Individuals applying to the scheme may be unable to provide evidence that they lost access to employment, particularly evidence of their salary. This could therefore constitute indirect discrimination.

We consider this differential impact is justifiable and proportionate on the basis of public policy in light of the legitimate aim of spending public funds efficiently and in seeking to make compensation payments to claimants on the basis of the evidence available. It is also proportionate to provide for a system of general application to a wide range of claimants, designed to address a range of circumstances in an administratively simple, cost-effective manner. The difference in treatment is accordingly lawful by reference to s19(2)(d) of the Equality Act 2010 as it is a proportionate means of achieving a legitimate aim.

When the scheme was established, individuals were required to meet a higher (criminal) standard of proof to receive an actual award, and general awards were capped at 12 months. In December 2020 the Home Office amended the scheme so both actual and general awards are made on the balance of probabilities and the 12-month cap on general awards was removed. The Home Office also expanded the category criteria so more individuals will be entitled to compensation. These actions serve to reduce the indirect discrimination outlined above.

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Age

Direct Discrimination –

We are not aware of any evidence that this policy will have differential impacts of direct discrimination with respect to age.

Indirect Discrimination –

Whilst the policy is not framed by reference to age, the compensation scheme affects different age groups differently. This is because those who arrived here before 1988 are treated differently from those who arrived later; those who arrived after 1988 are excluded from the policy (unless they are the child or grandchild of a pre-1973 Windrush arrival who was born in the UK or arrived before their 18th birthday). Although date of arrival and age are not the same, we know that the scheme's arrival cut off means the policy disproportionately benefits those over 50. Of the 3,618 claims received by February 2022, 2,904 were from people over the age of 50 compared to 714 from people who were under the age of 50.

This differential treatment is justified, given the differing impacts in evidencing lawful status. Older people bore the brunt of the changes in immigration and nationality legislation extended incrementally by all Governments since the 1960s.

The policy does not treat the various eligible cohorts under the compensation scheme differently, except the potential to withhold or reduce payments based on serious criminality.

We consider that these differences in treatment are justifiable and proportionate in light of the legitimate aim of seeking to rectify the historic injustice suffered by this particular group. The difference in treatment is accordingly lawful by reference to s13(2) of the Equality Act 2010.

Where a claim is accepted under loss of access to employment or benefits, the Government will seek to ensure that the individual's National Insurance position is corrected so that the period of the loss does not impact their State Pension entitlement. However, there is no broader inclusion in the scheme for losses related to pensions, which may be more likely to have been felt by those who are older. This could therefore disproportionately impact those closer to pension age, depending on the particular pension profile of an individual claimant. We consider any such differential impact is justifiable and proportionate on the basis of public policy in light of the legitimate aim of spending public funds efficiently. It is also justifiable to provide for a scheme of general application to a wide range of potential claimants which is simple and cost-effective to administer. The Windrush Compensation scheme is intended to compensate claimants for certain losses and impacts related to demonstrating their lawful status in the UK, but it is not, in all respects, intended to put claimants in the position they would have otherwise been in had this not happened. The difference in treatment is accordingly lawful by reference to s19(2)(d) of the Equality Act 2010.

As set out above, compensation awards may be withheld or reduced for claimants who were convicted of serious criminal offences - where a sentence of four or more years has been

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given. Males over 50 are more likely to have a criminal record (33%). The conclusion could therefore be made that applicants to the WCS, due to their age and race might disproportionately have previous criminal convictions which could impact on what compensation payment they receive. This could therefore constitute indirect discrimination on the basis of age. We consider that this difference in treatment is justifiable and proportionate on the basis of public policy in light of the legitimate aim of prioritising public spend on those who have not shown a serious disregard for this country's laws. It is not considered appropriate, in all cases, for public funds to be paid out to those who have showed such a serious disregard for the law. The difference in treatment is accordingly lawful by reference to s19(2)(d) of the Equality Act 2010. And, as set out above, the changes implemented in October 2020 mean this element of indirect discrimination has been reduced.

With regards to loss of access to employment, the longer ago the loss of employment occurred, the less likely it may be that claimants will have retained evidence of the reasons for that loss of employment, or their salary at the time. Older people may therefore be less able to provide evidence to support their claim and the conclusion could be made that claimants to the scheme might disproportionately be unable to receive compensation for loss of access to employment, specifically actual awards. As mitigation, the Scheme will always try to access information on behalf of a claimant from a variety of sources, recognising that some people don't retain documents and others won't have access due to the passage of time. The scheme also operates on balance of probabilities to ensure any evidential requirements are not a barrier to compensation.

We consider that any potential difference in treatment is justifiable and proportionate on the basis of public policy in light of the legitimate aim of spending public funds efficiently and in seeking to make compensation payments to claimants on the basis of all evidence available. It is also proportionate to provide for a system of general application to a wide range of claimants, designed to address a range of circumstances in an administratively simple, cost-effective manner. The difference in treatment is accordingly lawful by reference to s19(2)(d) of the Equality Act 2010. And as set out above, the changes implemented in December 2020 mean this element of indirect discrimination has been reduced.

Under the scheme rules, employment awards are capped at three months from the date on which the primary claimant or the deceased received a document from the Home Office proving their lawful status in the United Kingdom. In circumstances where claimants face difficulties in returning to work because they have been out of work for an extended period due to their inability to demonstrate their lawful status, or if they are approaching pensionable age, this may constitute indirect discrimination due to the age of the affected cohort and could therefore disproportionately impact those closer to pension age. We consider any such differential impact is justifiable and proportionate on the basis of public policy in light of the legitimate aim of spending public funds efficiently. It is also justifiable to provide for a scheme of general application to a wide range of potential claimants which is simple and cost-effective to administer. The Windrush Compensation scheme is intended to compensate claimants for certain losses and impacts related to demonstrating their lawful status in the UK, but it is not, in all respects, intended to put claimants in the position they would have otherwise been in had this not happened. The difference in treatment is accordingly lawful by reference to s19(2)(d) of the Equality Act 2010.

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Disability

Direct Discrimination –

We are not aware of any evidence that this policy will have differential impacts of direct discrimination with respect to disability.

Indirect Discrimination –

As stated above, the scheme as a whole disproportionately benefits older people. Older people are statistically more likely to suffer from disabilities as defined in the Equality Act than the general population (that is, they will have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out day to day activities).

Insofar as this means that the policies disproportionately benefit those suffering from disabilities, this seems appropriate in the context of the policy objectives of addressing the losses these people have faced (which disproportionately affect the groups in question).

As stated above, older people may be less likely to have retained documentary evidence of their loss of employment due to the time that has elapsed since the loss occurred. Since older people are more likely to be disabled, disabled people may therefore be less able to provide evidence to support their claim and the conclusion could be made that disabled claimants to the scheme might disproportionately be unable to receive compensation for loss of access to employment, specifically actual employment awards. We consider that any potential difference in treatment is justifiable and proportionate on the basis of public policy in light of the legitimate aim of spending public funds efficiently and in seeking to make compensation payments to claimants on the basis of evidence. It is also proportionate to provide for a system of general application to a wide range of claimants, designed to address a range of circumstances in an administratively simple, cost-effective manner. The difference in treatment is accordingly lawful by reference to s19(2)(d) of the Equality Act 2010. And as set out above, the changes implemented in December 2020 mean this element of indirect discrimination has been reduced.

Sex

Direct Discrimination –

We are not aware of any evidence that this policy has differential impacts of direct discrimination with respect to sex.

Indirect Discrimination –

The policy objectives do not differentiate on the basis of gender. It is known that post-war patterns of migration often involved men coming to the country first, and then bringing their partners and children across when they had become settled. However, women did also come to the country from the Commonwealth seeking opportunities and we know that female Caribbean economic migrants arrived on the Empire Windrush on 22 June 1948. Since those proposed to be eligible for the compensation scheme could have arrived at any time

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over a long period up to 1988, there is unlikely to be a significant difference in the overall numbers of eligible men and women. Indeed, of the claims received to the end of February 2022, 2008 were from men and 1606 were from women. (see stats in section 2 above).

As set out above, the policy retains the discretion to reduce or withhold an award in cases where there is serious criminality (where a custodial sentence of four or more years has been given). Males over 50 are more likely to have a criminal record (33%). The conclusion could therefore be made that males submitting claims to the scheme might disproportionately have previous criminal convictions which could impact on what compensation payment they receive. This could therefore give rise to differential treatment on the basis of gender. We consider that this difference in treatment is justifiable and proportionate on the basis of public policy in light of the legitimate aim of prioritising public spend on those who have not shown a serious disregard for this country's laws. It is not considered appropriate, in all cases, for public funds to be paid out to those who have showed such a serious disregard for the law. The compensation scheme therefore includes an element of discretion for awards to be reduced or refused in appropriate cases. The difference in treatment is accordingly lawful by reference to s19(2)(d) of the Equality Act 2010.

ONS data on the gender pay gap from January 2018 showed that the pay gap has fallen from 10.5% in 2011 to 9.1% in 2017 but remains positive in value – meaning that on average men are paid more than women⁸. It is therefore possible that men may be disproportionately impacted by a general award for lost income that does not fully reflect their losses. Any difference between actual wage loss incurred and a general award may therefore be greater for men than women. Any attempt at addressing this potential differential impact might, itself, give rise to gender-related discriminatory outcomes, which is undesirable. We consider that any differential impact is justifiable and proportionate on the basis that it is reasonable to apply a standard approach to all claimants where insufficient evidence of an actual salary means we make a general award. It is also a legitimate public policy aim to spend public funds efficiently. The difference in treatment is accordingly lawful by reference to s19(2)(d) of the Equality Act 2010.

Changes to the loss of access to employment category in December 2020 so that it operates fully on the balance of probabilities have served to reduce this aspect of indirect discrimination.

It is possible that women may find it more difficult to evidence their loss of access to employment if they have had breaks in their career history potentially as a result of caring responsibilities (for example, career breaks, part time working, temporary or insecure work). This is because women are more likely to be the primary caregivers within the family unit.

We consider that any difference in treatment is justifiable and proportionate on the basis of public policy in light of the legitimate aim of spending public funds efficiently. It is also

⁸ ONS data on the gender pay gap in the UK

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/understandingthegenderpaygapintheuk/2018-01-17>

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proportionate to design the scheme to be of general application to a wide range of potential claimants, providing a simple and cost-effective solution to meeting the policy aims. The difference in treatment is accordingly lawful by reference to s19(2)(d) of the Equality Act 2010.

Changes to the loss of access to employment category in December saw an expansion in the category criteria to better take into account circumstances such as this, where individuals may not have been in regular employment in the two years prior to being unable to work due to status issues. This serves to reduce this aspect of indirect discrimination.

Gender Reassignment

Direct Discrimination -

We have not identified impacts on the grounds of gender reassignment or transgender. The policy applies equally to everyone regardless of their gender.

Indirect Discrimination –

We are not aware of any evidence that this policy has differential impacts of indirect discrimination with respect to gender reassignment. However, it is acknowledged that individuals who received a Gender Recognition Certificate, i.e. officially changed their birth gender, or who identify as transgender may have experienced additional difficulty in evidencing their status, due to needing to provide additional documentation, or documentation in different names, and therefore the WCS may be of particular benefit to them.

Pregnancy and Maternity

Direct Discrimination –

We are not aware of any evidence that this policy has differential impacts of direct discrimination with respect to pregnancy and maternity.

Indirect Discrimination –

We have not identified impacts on the grounds of pregnancy and maternity other than those addressed above relating to gender and the role of women as primary caregivers more generally. Because of the predominant age demographic disproportionately affected by this issue (50 plus), we have not identified reasons why this policy would impact those pregnant or on maternity.

Religion or Belief

Direct Discrimination –

We are not aware of any evidence that this policy will have differential impacts of direct discrimination with respect to religion or belief as there are no restrictions in regard to religion or belief.

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Indirect Discrimination –

We have not identified any impacts on the grounds of religion and belief. However, since those most likely to benefit from the compensation scheme will be from the Caribbean (as referred to above), and because the Commonwealth Caribbean countries are predominantly Christian because of their history, many of those who benefit will be actual or nominal Christians.

There may therefore be indirect discrimination in favour of Christians. However, this results from the religious make-up of the countries most impacted by difficulties in demonstrating their immigration status. The policy does not impose a condition that will only or predominantly affect any particular religion. It is completely neutral in that respect. Those who practise religions other than Christianity and who fall into the relevant criteria will also benefit.

Sexual Orientation

Direct Discrimination –

We are not aware of any evidence that this policy will have differential impacts of direct discrimination with respect to sexual orientation.

Indirect Discrimination –

We are not aware of any evidence that this policy will have differential impacts of indirect discrimination with respect to sexual orientation.

Marriage and Civil Partnership

Direct Discrimination –

We are not aware of any evidence that this policy has differential impacts of direct discrimination with respect to marriage and civil partnership as it applies to those who are married or in a civil partnership and those who are not.

Indirect Discrimination –

We are not aware of any evidence that this policy has differential impacts of indirect discrimination with respect to marriage and civil partnership as it applies to those who are married or in a civil partnership and those who are not.

3B. Consideration of limb 2: Advance equality of opportunity between people who share a protected characteristic and people who do not share it

This limb of the duty involves having due regard, in particular, to the need to:

- a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

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- b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Race –

As discussed above, the WCS will compensate for losses that people have experienced because of their nationality or national origin. It is not intended to be neutral in that respect, and the advantages that accrue will be a result of the policy. Race and ethnic origin are less directly a feature of the policy objectives, though they are related to it in that most of those who benefit are from a Caribbean Commonwealth background. It benefits people who have historically experienced a detriment or disadvantage on the grounds of race or nationality.

There is therefore a positive impact as regards advancing equality of opportunity for this group.

As previously outlined, there may be equalities impacts that stem from the Loss of Access to Employment category – those applying to the scheme may be less able to provide evidence that they lost access to employment. This is because, as compared to the wider population, those in black and mixed households are more likely to be in lower-paid, temporary or insecure employment which, in themselves lend themselves to being more difficult to provide evidence of.

As set out above, this element of indirect discrimination has been reduced by operating the category on the balance of probabilities. Alongside this, caseworkers actively help claimants to gather information in support of their claim – where there are evidential gaps, we will contact other government departments such as HMRC and DWP. Overall, caseworkers make a holistic assessment of the claim, carefully considering the individual circumstances and experiences of all claimants so we can offer people the maximum compensation to which they are entitled.

The WCS has also made provision to support claimants who want or need support to make a claim and gather documentation to support their claim. Support is provided through the independent claims assistance provider - We Are Digital (WAD). WAD has extensive experience of dealing with isolated and vulnerable customers and in delivering support and advice both over the phone, via remote video sessions and in person through centres.

The Windrush Help Team also provide support to claimants in the UK and overseas. The overall impact is that the services and support offered by caseworkers, WAD and the Help Team serves to advance equality of opportunity for this group.

Age –

As described above, the WCS disproportionately benefits older people, by redressing past losses, with no detriment to the young. There is, therefore, a positive impact as regards advancing equality of opportunity for those over 50.

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As previously outlined, there may be equalities impacts that stem from the Loss of Access to Employment category – those applying to the WCS may be less able to provide evidence that they lost access to employment. This is because, older people may be less likely to have retained documentary evidence of their loss of employment due to the time that has elapsed since the loss occurred.

As set out above, this element of indirect discrimination has been reduced by operating the category on the balance of probabilities. Alongside this, caseworkers actively help claimants to gather information in support of their claim – where there are evidential gaps, we will contact other government departments such as HMRC and DWP. Overall, caseworkers make a holistic assessment of the claim, carefully considering the individual circumstances and experiences of all claimants so we can offer people the maximum compensation to which they are entitled.

The WCS has also made provision to support claimants who want or need support to make a claim and gather documentation to support their claim. Support is provided through the independent claims assistance provider - We Are Digital (WAD). WAD has extensive experience of dealing with isolated and vulnerable customers and in delivering support and advice both over the phone, via remote video sessions and in person through centres.

The Windrush Help Team also provide support to claimants. The overall impact is that the services and support offered by caseworkers, WAD and the Help Team serves to advance equality of opportunity for this group.

The Home Office, mindful of the age of those applying for compensation has ensured that the application process is accessible to all, regardless of age. For those who are not computer literate and do not want to submit their claim digitally there is the option of submitting a claim on paper. This further serves to advance equality of opportunity for those claimants who are older.

Religion or Belief –

Similarly, and as described above, the WCS is likely to indirectly and disproportionately benefit Christians, because those most likely to benefit from the scheme are from Caribbean Commonwealth countries which are predominantly Christian. We therefore believe there may be a positive impact as regards advancing equality of opportunity for this group with no detriment to those of other religions or beliefs.

Disability –

As described above, the WCS will likely disproportionately benefit the disabled, as beneficiaries will be disproportionately older and so more likely to be disabled. We therefore believe there may be a positive impact as regards advancing equality of opportunity.

As previously outlined, there may be equalities impacts that stem from the Loss of Access to Employment category – those applying to the scheme may be less able to provide evidence that they lost access to employment. This is because older people, who are more likely to be disabled, may be less likely to have retained documentary evidence of their loss of employment due to the time that has elapsed since the loss occurred.

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As set out above, this element of indirect discrimination has been reduced by operating the category on the balance of probabilities. Alongside this, caseworkers actively help claimants to gather information in support of their claim – where there are evidential gaps, we will contact other government departments such as HMRC and DWP. Overall, caseworkers make a holistic assessment of the claim, carefully considering the individual circumstances and experiences of all claimants so we can offer people the maximum compensation to which they are entitled.

The WCS has also made provision to support claimants who want or need support to make a claim and gather documentation to support their claim. Support is provided through the independent claims assistance provider - We Are Digital (WAD). WAD has extensive experience of dealing with isolated and vulnerable customers and in delivering support and advice both over the phone, via remote video sessions and in person through centres. Regarding assisting WCS claimants with different accessibility needs, We Are Digital offer a translation service via through Clear Voice which includes telephone, face-to-face, and video interpreting. For individuals who have a hearing impairment, WAD offer a British Sign Language service via Sign Solutions, who provide access and combat inequality by enabling people of different languages, cultures, and communities to talk to each other. WAD's centre network adheres to the Disability Discrimination Act (DDA) ensuring disability access at all centres. WAD also offer remote support via telephone or video for those individuals who would rather be supported in this way, with in home support being an option in extreme cases subject to risk assessment.

The Windrush Help Team also provide support to claimants. The overall impact is that the services and support offered by caseworkers, WAD and the Help Team serves to advance equality of opportunity for this group.

Sex –

As described above the compensation scheme will apply to men and women equally, depending on whether they have suffered losses. An advantage that accrues to one sex will not result in a detriment to the other and we have not identified any impacts as regards advancing equality of opportunity in respect of sex and therefore the policy is neutral in this regard.

Gender Reassignment –

As discussed above, those who have undergone gender reassignment and have obtained a Gender Recognition Certificate, or who identify as transgender may have faced additional difficulty demonstrating their right to be in the UK due to needing to provide additional documentation. This policy may provide greater benefit to those who have officially changed their gender, but not to the detriment of those who have not. We therefore believe there may be a positive impact as regards advancing equality of opportunity for those who have undergone gender reassignment or those who identify as transgender.

Pregnancy and Maternity –

Many of the individuals who benefit from this policy will not be of childbearing age. We

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consider that the policy is neutral in this regard.

Sexual Orientation –

The policy applies equally to individuals of all sexual orientation.

3C. Consideration of limb 3: Foster good relations between people who share a protected characteristic

This limb of the duty involves having due regard, in particular, to the need to tackle prejudice and promote understanding between people with different protected characteristics.

Race -

The disadvantage which has been experienced by particular groups as a result of the historical and changing immigration policies and law which have applied since 1948 has not only resulted in disadvantage for the people concerned but could have contributed to a worsening of relations within communities in this country.

For the Windrush Generation, this disadvantage manifested in a situation where some people were unable to evidence their residence or status when they subsequently travelled or applied for British passports, nationality, right of abode certificates or ILR from the immigration system. New legislation required them to show evidence of status to access work, benefits and services. Some individuals faced detention, removal, exclusion or lost their jobs. Consequently, a number of people have faced significant challenges and difficulties in evidencing their status and accessing the services and benefits to which they are entitled. This has resulted in stress and trauma to those individuals.

The measures to restrict access to service, benefits and work were never intended to adversely impact on those who are lawfully in the UK. However, it is now apparent that this is what has happened. The losses that people have experienced as a result of difficulties in confirming their status, and associated publicity, has led to a belief amongst some groups and communities that government policy has been uncaring towards, or even that it has deliberately targeted people of certain races and nationalities.

The Home Secretary has apologised unreservedly to victims and their families for the injustice, hardship and suffering they endured at the hands of successive governments over several decades. The Windrush Compensation Scheme and Windrush Scheme seek to rectify the disadvantage that has been experienced by those adversely affected, and to do so openly and transparently. The government accepted the findings of the Windrush Lessons Learned Review report by Wendy Williams and the comprehensive improvement plan set out the department's approach to implementing the 30 recommendations of the Windrush Lessons Learned Review.

We actively engage with stakeholders, listening to feedback, ensuring we act on it. In December 2020, following feedback from the Windrush Cross Government Working Group, members of the Windrush generation and community leaders, we overhauled the scheme so people would receive significantly more money, more quickly. These changes have had an immediate impact on the speed and amount of compensation being offered.

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We also conducted a light touch review of all Scheme training material, guidance and letters to ensure that they reflect our learning over time. Stakeholders and applicants were involved in this work. We continue to listen and respond to feedback received from stakeholders to ensure the Scheme is operating effectively.

This engagement is intended to have a positive effect and should help to foster good relations between communities, though it may take some time to have that effect. Overall, we believe that the overall impact of this policy will have a positive impact in terms of fostering good relations in particular in respect of race and nationality. We also believe that the overall impact of this policy will have a positive impact in terms of promoting understanding.

Age -

As described above, the equalities impact of the Loss of Access to Employment category is that older applicants applying to the scheme may disproportionately struggle to provide evidence that they lost access to employment and be compensated. The Press has highlighted cases where older people have worked for considerable periods of time in the UK and lost their employment because they were unable to demonstrate their lawful immigration status in the United Kingdom. The compensation scheme has recognised the wide-reaching ways people have been affected and caseworkers consider cases holistically and work extensively with individuals to gather evidence to support their claims and to ensure they receive the maximum compensation to which they are entitled.

The compensation scheme has faced criticism for the value of awards and the time taken to make awards given that the Scheme was set up to right the wrongs to a predominantly older generation. Following feedback from the Windrush Cross Government Working Group, members of the Windrush generation, community leaders and those affected, fundamental improvements were made to the Windrush Compensation Scheme leading to people receiving significantly more money more quickly and this has had an immediate beneficial impact.

The Department has also recruited more caseworkers, published redesigned primary claim forms, refreshed casework guidance and removed the formal end date of the Windrush Compensation Scheme. These measures are intended not only to respond to feedback from affected communities and stakeholders but to foster good relations between communities.

The scheme has also faced criticism that some people have died before they can be compensated (either before or after submitting a claim). The perception of the Home Office as having been slow to compensate an elderly cohort has created ill-feeling which has been worsened by the perception that it is more difficult for people to claim compensation where an individual has died. In response to this, the Home Office launched a package of support to make it easier for those making claims on behalf of a relative who has passed away to obtain the legal documentation required to process their claims and increase the WCS capacity to pay awards in a timely manner. The changes in facilitating estates awards should therefore help to foster good relations with respect to this issue.

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Disability -

The policy will indirectly benefit people with disabilities and improve their relationship with those who don't have the protected characteristic as the scheme has been set in a way that ensures that everyone can benefit and those with disabilities can receive additional support to mitigate any disadvantages they may experience through the process of making a claim. We have published a new accessible primary claim form which can be read by a screen reader which means that claimants with visual impairments would also be able to submit a claim. The form has a Crystal Mark from the Plain English Campaign. Although the policy was not set out to achieve a particular outcome in relation to people with disabilities, it pays due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The cumulative effect of the additional changes made to the scheme reduces prejudice and fosters good relationship with people with disabilities.

Sex –

As described above the compensation scheme will apply to men and women equally, depending on whether they have suffered losses. This policy fulfils its duty to have due regard to foster good relations in respect of sex as it does not have an adverse impact on people who have protected characteristic and those who do not, whilst promoting the aims of the Public Sector Equality Duty.

Gender Reassignment –

As described above, those who have undergone gender reassignment and have obtained a Gender Recognition Certificate may have faced additional difficulty demonstrating their right to be in the UK due to needing to provide additional documentation. This policy fulfils its duty to have due regard to foster good relations in respect of gender reassignment as it does not have an adverse impact on people and groups who have protected characteristic and those who do not, whilst promoting the aims of the Public Sector Equality Duty.

Pregnancy and Maternity -

This policy fulfils its duty to have due regard to foster good relations in respect of pregnancy and maternity as it does not have an adverse impact on people and groups who have protected characteristic and those who do not, whilst promoting the aims of the Public Sector Equality Duty.

Religion or Belief –

This policy fulfils its duty to have due regard by fostering good relations in respect of religion or belief as it does not have an adverse impact on people and groups who have protected characteristic and those who do not, whilst promoting the aims of the Public Sector Equality Duty.

Sexual Orientation –

This policy fulfils its duty to have due regard by fostering good relations in respect of sexual

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orientation as it does not have an adverse impact on people and groups who have protected characteristic and those who do not, whilst promoting the aims of the Public Sector Equality Duty.

Consideration of how the policy will be received by people who do not benefit from it

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There may be some ill-feeling between those who qualify for the compensation scheme and those who do not. There is also a small risk of ill feeling from those who took steps to ensure that they had appropriate documentation and consider that their peers should also have done so. The scheme has sought to alleviate some of these ill-feelings by ensuring a) that wide range of actions or circumstances are taken into consideration when determining awards, and b) that those who did take reasonable steps, regardless of the point at which they took those steps, are not penalised for this.

The overall impact of the WCS will have a positive impact in terms of fostering good relations, particularly in respect of age and nationality. We have not identified any impacts in relation to other protected characteristics as regards this limb of the duty. We also believe that the overall impact of this policy will have a positive impact in terms of promoting understanding.

Archived

4. Summary of foreseeable impacts of policy proposal, guidance or operational activity on people who share protected characteristics

Protected Characteristic Group	Potential for Positive or Negative Impact?	Explanation	Action to address negative impact
Age	Positive & Negative impacts identified	<p>Positive impacts –</p> <ul style="list-style-type: none"> Policy benefits over 50's as they were disproportionately affected. <p>Negative impacts –</p> <ul style="list-style-type: none"> Policy could disproportionately impact those closer to pension age. Older people may be less likely to provide evidence to support their claim. 	<ul style="list-style-type: none"> Caseworkers help claimants to gather information to support their claim, contact other government departments and third party for supporting evidence, claim is considered holistically, and the scheme operates on the balance of probabilities. The scheme's independent claims assistance provider - We Are Digital (WAD) - helps claimants who want or need support to make a claim and gather documentation to support their claim. WAD delivers support and advice both over the phone, via remote video sessions and in person through centres. The Scheme's application process is accessible to all ages. The scheme has published a redesigned primary claim form which is easier to complete and has a Crystal Mark from the Plain English Campaign ensuring the scheme is accessible and as easy to use as possible. The scheme has developed and updated its email, web, print and social media UK and Overseas partner packs following message testing research with affected communities. Windrush radio adverts have also been developed. Translated partner packs and new multi-language eligibility

			<p>videos have been made available online and shared with partners.</p> <p>The next phase of the campaign is in development and will include new video, audio and editorial content aimed at affected audiences. The scheme has been working with social media community partners to share video, graphics and blog content which have been co-produced with the Home Office to ensure they reflect key messaging and resonate with their communities. Advertorial interviews have also been published in media outlets.</p>
Disability	Negative impact	<p>Negative impacts -</p> <ul style="list-style-type: none"> Disabled people may be less likely to be able to provide evidence to support their claim. 	<ul style="list-style-type: none"> Caseworkers help claimants to gather information to support their claim, contact other government departments and third party for supporting evidence, claim is considered holistically, and the scheme operates on the balance of probabilities. The scheme's independent claims assistance provider - We Are Digital (WAD) - helps claimants who want or need support to make a claim and gather documentation to support their claim. WAD delivers support and advice both over the phone, via remote video sessions and in person through centres. The scheme has published a redesigned primary claim form which is easier to complete and has a Crystal Mark from the Plain English Campaign ensuring the scheme is accessible and as easy to use as possible. The scheme has developed and updated

			<p>its email, web, print and social media UK and Overseas partner packs following message testing research with affected communities. Windrush radio adverts have also been developed. Translated partner packs and new multi-language eligibility videos have been made available online and shared with partners.</p> <p>The next phase of the campaign is in development and will include new video, audio and editorial content aimed at affected audiences. The scheme has been working with social media community partners to share video, graphics and blog content which have been co-produced with the Home Office to ensure they reflect key messaging and resonate with their communities. Advertorial interviews have also been published in media outlets.</p>
Gender Reassignment	Positive impact	We are not aware of any evidence that this policy has differential impacts with respect to this protected characteristic. However, the Scheme may be of particular benefit to those who have undergone gender reassignment or those who identify as transgender.	
Marriage and Civil Partnership	Neutral	We are not aware of any evidence that this policy has differential impacts with respect to this protected characteristic.	
Pregnancy and Maternity	Neutral	We are not aware of any evidence that this policy has differential impacts with respect to this protected characteristic. Many of the individuals who benefit from this policy will not be of childbearing age.	

<p>Race</p>	<p>Positive and Negative impacts identified</p>	<p>Positive impacts – Scheme disproportionately benefits members of the Windrush generation and their children (and grandchildren) as they were predominantly affected.</p> <p>Negative impacts -</p> <ul style="list-style-type: none"> • Applicants to the Windrush compensation scheme, due to their age and race might disproportionately have criminal convictions which could impact on the level of compensation payment they receive. • People who worked in lower-paid, temporary or insecure jobs and black and mixed households may be less able to provide evidence to support their claim 	<ul style="list-style-type: none"> • Only awards for Impact on Life will be affected by criminality and only where individuals have received sentences of imprisonment of four years or longer for offences such as murder, rape or sex/sexual offences with a minor. We will consider whether there are circumstances since the individual's release from prison which mean a reduction in their award for Impact on Life may be more appropriate, rather than declining it, e.g. community or charity work. All decisions to withhold or reduce compensation are signed off by Ministers. • Scheme amended so both actual and general awards are made on the balance of probabilities and the 12-month cap on general awards removed. The category criteria has also been amended so more individuals will be entitled to compensation. • Caseworkers help claimants to gather information to support their claim, contact other government departments and third party for supporting evidence, claim is considered holistically, and the scheme operates on the balance of probabilities. • The scheme's independent claims assistance provider - We Are Digital (WAD) - helps claimants who want or need support to make a claim and gather documentation to support their claim. WAD delivers support and advice both
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over the phone, via remote video sessions and in person through centres.

- The scheme has published a redesigned primary claim form which is easier to complete and has a Crystal Mark from the Plain English Campaign ensuring the scheme is accessible and as easy to use as possible.
- The scheme has developed and updated its email, web, print and social media UK and Overseas partner packs following message testing research with affected communities. Windrush radio adverts have also been developed. Translated partner packs and new multi-language eligibility videos have been made available online and shared with partners.

The next phase of the campaign is in development and will include new video, audio and editorial content aimed at affected audiences. The scheme has been working with social media community partners to share video, graphics and blog content which have been co-produced with the Home Office to ensure they reflect key messaging and resonate with their communities. Advertorial interviews have also been published in media outlets.

<ul style="list-style-type: none"> Religion or Belief 	<ul style="list-style-type: none"> Neutral 	<ul style="list-style-type: none"> We are not aware of any evidence that this policy has differential impacts with respect to this protected characteristic. Those who practise religions other than Christianity will also benefit. 	
<ul style="list-style-type: none"> Sex 	<ul style="list-style-type: none"> Negative impacts identified 	<p>Negative impacts –</p> <ul style="list-style-type: none"> Male applicants to the Windrush compensation scheme might disproportionately have previous criminal convictions which could impact on what compensation payment they receive. Men may be disproportionately impacted by a general award for lost income that does not fully reflect their losses. Women may be negatively impacted if they have had breaks in their career history potentially as a result of caring responsibilities 	<ul style="list-style-type: none"> The employment category criteria was expanded to take into account people's circumstances, so more individuals are entitled to compensation. The category was also amended so both actual and general awards are made on the balance of probabilities and the 12-month cap on general awards was removed. This mitigates against individuals disproportionately impacted by a general award for lost income that does not fully reflect their losses.
Sexual Orientation	<ul style="list-style-type: none"> Neutral 	<ul style="list-style-type: none"> We are not aware of any evidence that this policy has differential impacts with respect to this protected characteristic. The policy applies equally to individuals of all sexual orientation. 	

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5. In light of the overall policy objective, are there any ways to avoid or mitigate any of the negative impacts that you have identified above?

The Windrush Compensation Scheme has been designed to ensure that any detrimental impact of the policy is not detrimental to the people the compensation scheme is intended to assist. The policy changes that have been made to the scheme are intended to reinforce this.

We have taken the following steps to mitigate the negative impacts that have been identified:

Caseworkers help claimants to gather information to support their claim, contact other government departments and third party for supporting evidence, claim is considered holistically, and the scheme operates on the balance of probabilities.

The scheme's independent claims assistance provider - We Are Digital (WAD) - helps claimants who want or need support to make a claim and gather documentation to support their claim. WAD delivers support and advice both over the phone, via remote video sessions and in person through centres.

The Scheme's application process is accessible to all ages.

The scheme has published a redesigned primary claim form which is easier to complete and has a Crystal Mark from the Plain English Campaign ensuring the scheme is accessible and as easy to use as possible.

The scheme has developed and updated its email, web, print and social media UK and Overseas partner packs following message testing research with affected communities. Windrush radio adverts have also been developed. Translated partner packs and new multi-language eligibility videos have been made available online and shared with partners.

The next phase of the campaign is in development and will include new video, audio and editorial content aimed at affected audiences. The scheme has been working with social media community partners to share video, graphics and blog content which have been co-produced with the Home Office to ensure they reflect key messaging and resonate with their communities. Advertorial interviews have also been published in media outlets.

Only awards for Impact on Life will be affected by criminality and only where individuals have received sentences of imprisonment of four years or longer for offences such as murder, rape or sex/sexual offences with a minor. We will consider whether there are circumstances since the individual's release from prison which mean a reduction in their award for Impact on Life may be more appropriate, rather than declining it, e.g. community or charity work. All decisions to withhold or

reduce compensation are signed off by Ministers.

The loss of access to employment category was amended so both actual and general awards are made on the balance of probabilities and the 12-month cap on general awards was removed. This mitigates against individuals disproportionately impacted by a general award for lost income that does not fully reflect their losses.

The category criteria was also expanded to take into account a wider range of people's circumstances, so more individuals will be entitled to compensation.

6 Review date

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