



HM Treasury

# **Public Service Pensions and Judicial Offices Bill:**

## **Equality Impact Assessment**

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December 2021



Public Service Pensions and Judicial  
Offices Bill:  
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 Public Service Pensions and Judicial Offices Bill, to enable Ministers to fulfil the requirements placed on them by the Public Sector Equality Duty<sup>1</sup> (PSED) as set out in section 149 of the Equality Act 2010.<sup>2</sup>
- 1.2 This analysis builds on, and in some cases updates, the equality analysis undertaken by HM Treasury, Ministry of Justice (MoJ), the Department for Levelling Up, Housing and Communities (DLUHC) to inform the measures relevant to those departments as set out in the Bill. For the measures in the Bill where previous equality impact assessments have not been published, analysis has also been included to inform the equality impacts of these measures:
- further equality analysis has been undertaken by HM Treasury following the closure of its consultation and publication of its consultation response to inform the final policy measures in the Bill
  - MoJ have carried out equality analysis as part of their consultations to inform the final policy measures in the Bill relating to the judiciary
  - DLUHC have undertaken equality analysis which was published alongside their consultation<sup>3</sup> for the specific measures in the Bill relating to the Local Government Pension Scheme (LGPS)
  - the HMT UKAR sponsor team have considered any equality impacts of establishing new pension schemes for the beneficiaries of the existing Bradford & Bingley Staff Pension Scheme (“the BBS Scheme”) and NRAM Pension Schemes.
- 1.3 The Department of Finance in Northern Ireland has also undertaken its own equality analysis, for devolved schemes within scope of its own policy consultation,<sup>4</sup> of measures to remedy unlawful age discrimination in public service schemes in line with the statutory requirement in s75 of the Northern

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<sup>1</sup> [www.equalityhumanrights.com/sites/default/files/meeting\\_the\\_duty\\_in\\_policy\\_and\\_decision-making.pdf](http://www.equalityhumanrights.com/sites/default/files/meeting_the_duty_in_policy_and_decision-making.pdf)

<sup>2</sup> [www.gov.uk/guidance/equality-act-2010-guidance](http://www.gov.uk/guidance/equality-act-2010-guidance)

<sup>3</sup> <https://www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin>

<sup>4</sup> Schemes for the Northern Ireland civil service, teachers, health and social care, police and firefighters.

Ireland Act 1998.<sup>5</sup> Similar analysis was also undertaken by the Department of Justice in respect of the devolved Judicial Pension Scheme and Department for Communities for the Local Government Pension Scheme (Northern Ireland) in Northern Ireland.

- 1.4 When public service pension reforms were introduced in 2015 the government agreed, following discussions with trade unions, to allow those closest to retirement to stay in their legacy schemes.<sup>6</sup> Following a challenge in the courts which found this to be directly discriminatory on the grounds of age and indirectly discriminatory on the grounds of sex and race, all eligible members will have a choice between legacy and reform scheme benefits in respect of pensionable service from 2015 to 2022. Following a public consultation, members are being given the choice of benefits for this period, so that they can choose the option most beneficial for them. Members will be able to make this choice at retirement<sup>7</sup> when it will be clearer which choice is most beneficial. Eligible judicial scheme members will make an immediate choice given the unique nature of their legacy schemes.
- 1.5 The Public Service Pensions and Judicial Offices Bill (henceforth, the Bill) provides the legislative framework for correcting this discrimination identified in the public service pension reforms implemented in 2014 and 2015, including in respect of local government pension schemes and judicial pension schemes. The Bill also includes other measures, including on judicial pay, judicial mandatory retirement age (MRA), and the creation of a new UK Asset Resolution (UKAR) pension scheme.
- 1.6 All the substantive pension measures correcting the discrimination identified apply UK wide (a legislative consent motion is being sought for devolved pension schemes in Northern Ireland). The increase in MRA and related measures will apply UK wide, however the transitional reinstatement provision for lay magistrates and the provisions relating to sitting in retirement will not apply to holders of judicial offices within the devolved competence of the Scottish Parliament. Judicial pay measures apply to all judicial offices across the UK (for which the Lord Chancellor has the power to decide remuneration), where the statutory provision to provide allowances does not already exist. This includes Northern Ireland and Scotland. Therefore, this equality impact assessment (EqIA) has considered data from a UK wide perspective where applicable, with any scheme specific data aiding analysis for relevant measures in the Bill.
- 1.7 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 equality impacts of all the measures outlined in the Bill, by reference to the protected characteristics identified in the Equality Act 2010 of: sex, age, disability, race, religion or belief,

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<sup>5</sup> <https://www.legislation.gov.uk/ukpga/1998/47/section/75>

<sup>6</sup> Protections were different in the LGPS.

<sup>7</sup> Where the member already has a pension in payment the choice will be offered as soon as practicable after the necessary legal provisions are in force.

gender reassignment, pregnancy and maternity, sexual orientation and marital or civil partnership status.

- 1.8 Full details of the measures in scope of the Bill are set out in more detail in the explanatory notes accompanying this document which were presented to Parliament on 19 July 2021. However, this assessment does not cover secondary legislation made using powers in this Bill. Separate analysis to consider the impact of changes to scheme regulations (beyond those covered and/or directed by the measures in the Bill) will be produced when the powers to do so are exercised.

## Approach

- 1.9 Chapters 3 to 7 of this EqIA consider the potential impact of the proposed measures in scope of the Bill by reference to the protected characteristics identified in the Equality Act 2010. Annexes A to E then provide updated data used for this analysis in more detail.
- 1.10 The analysis in the following chapters is based on the data contained in past equality impact assessments related to policy measures in this Bill and which have been undertaken by relevant departments. For the measures in the Bill where previous EqIAs have not been published, analysis has been included to inform the equality impacts of these measures. The data has first been used to identify both potential and actual differential impacts by reference to each protected characteristic. The impacts identified through this analysis are discussed for each of the protected characteristics in turn.
- 1.11 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 measures in consideration for the Bill have been assessed from an equality perspective.
- 1.12 Any significant changes in past data used in previous EqIAs has also been analysed and considered for this assessment. In each case, thought has been given to whether the measures in scope of the Bill should be changed or altered, considering the identified equality impacts.
- 1.13 The government assumes that no further specific considerations arise in relation to advancing equality of opportunity and fostering good relations. This is further explored in Chapter 2.
- 1.14 Equality impacts were considered throughout the consultation process, through to drafting of primary legislation, and will continue to be considered through to implementation via secondary legislation.

## Data

### *McCloud Judgment*

- 1.15 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.
- 1.16 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), Firefighters (England), Civil Service (Great Britain) and Armed Forces (UK). GAD have produced summarised versions of this data, to be found in Annex A.

- 1.17 GAD have also produced summarised versions of the corresponding data for the public service pensions schemes in Northern Ireland, to be found at Annex E. In Northern Ireland the Department of Finance has published an equality impact assessment in respect of the main Northern Ireland schemes.<sup>8</sup> Equality impact assessments for the NI Judicial Pension Scheme<sup>9</sup> and Local Government Pension Scheme (NI)<sup>10</sup> have also been published.
- 1.18 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 to analyse. Whilst it was not feasible to acquire such data, it was also considered not necessary to do so given the close match of available data with data for the public sector as a whole, which has therefore been used for remaining protected characteristics.
- 1.19 Data on the age and sex for the public service pension population was used to analyse the impact of measures on members of the main unfunded public service pension schemes other than the judiciary.<sup>11</sup> 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 90% of public sector employees were members of a workplace pension scheme in 2020;<sup>12</sup> 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).
- 1.20 It is therefore reasonable to use the Labour Force Survey (LFS) and Annual Population Survey (APS) to analyse the other protected characteristics for the measures in the Bill relating to the *McCloud* judgment (including LGPS measures), rather than commissioning a data gathering exercise. Further limitations of using public sector level data are explored in A.22 to A26.
- 1.21 In considering the impacts of the measures relating to the Local Government Pension Scheme (LGPS) (England and Wales) in this Bill, DLUHC have been supplied with and considered analysis from GAD on how the package would impact different sections of the LGPS membership. This analysis was attached as

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<sup>8</sup> <https://www.finance-ni.gov.uk/publications/response-consultation-proposed-changes-transitional-arrangements-2015-schemes>

<sup>9</sup> <https://www.justice-ni.gov.uk/consultations/consultation-judicial-pensions-proposed-response-mccloud>

<sup>10</sup> <https://www.communities-ni.gov.uk/consultations/consultation-proposed-changes-transitional-arrangements-2015-local-government-pension-scheme>

<sup>11</sup> Members of the Armed Forces, Firefighters', NHS, Police, Civil Service and Teachers pension schemes

<sup>12</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/workplacepensions/bulletins/annualsurveyofhoursandearningspensionables/2020provisionaland2019finalresults>

Annex A within the DLUHC consultation<sup>13</sup> and is summarised in Annex B in this document.

- 1.22 The data used in this analysis was LGPS (E&W) fund membership data as at 31 March 2019, collated from each administering authority and provided to GAD in late 2019. Full information regarding the assumptions used in GAD’s analysis and the limitations of the analysis are set out in the GAD report.<sup>14</sup> Further limitations of using LGPS fund membership data is explored in Annex B.

## Judicial pensions

- 1.23 For the judicial pensions measures in the Bill, the analysis has focussed on the three protected characteristics on which the judiciary have consistently recorded data. These are age, sex and race.
- 1.24 These three protected characteristics were most consistently recorded in both the Judicial Appointments Commission (JAC) recruitment data and the Judicial Office (JO) eHR database, which covers all current judicial office holders. The conclusions about the diversity of the judiciary are discussed in the context of these three characteristics.
- 1.25 From the data, it is assumed that all judges who are in scope of the *McCloud* remedy will choose to accrue benefits under the legacy pension schemes, Judicial Pension Scheme 1993 (JUPRA) and the fee-paid equivalent, Fee-Paid Judicial Pension Scheme (FPJPS), rather than the 2015 scheme, New Judicial Pension Scheme 2015 (NJPS), for the remedy period. This assumption is used because it is expected that the majority of judges are likely to be better off in JUPRA/FPJPS as it is the more generous scheme for most judges in most circumstances.
- 1.26 However, some judges in scope of the *McCloud* remedy may choose NJPS benefits for the remedy period. This will ultimately depend on a judge’s personal circumstances, which the analysis cannot account for, and the analysis is therefore limited by applying the assumption outlined above to all eligible judges.
- 1.27 The sample size for data on race for judges, broken down by pension scheme, is too small to be able to derive any trends with certainty. High-level conclusions have been presented in this document, but these conclusions will not be as robust as those made using data on the age and sex of the judiciary.
- 1.28 In addition to the Public Sector Equality Duty, the Lord Chancellor and the Lord Chief Justice have a statutory responsibility to encourage judicial diversity. Particular attention has therefore been paid to assessing whether the measures in the Bill for judicial pension reforms could affect the diversity of the judiciary.
- 1.29 The newly designed, reformed pension scheme will impact judges differently depending on their personal circumstances, including which scheme they are accruing benefits in before the reformed scheme comes into force. Therefore,

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<sup>13</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/901350/LGPS\\_EW\\_McCloud\\_equalities\\_2019\\_FINAL\\_16\\_July\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901350/LGPS_EW_McCloud_equalities_2019_FINAL_16_July_2020.pdf)

<sup>14</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/901350/LGPS\\_EW\\_McCloud\\_equalities\\_2019\\_FINAL\\_16\\_July\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901350/LGPS_EW_McCloud_equalities_2019_FINAL_16_July_2020.pdf)

when assessing the equality impacts of the measures set out in the Bill, characteristics of the judiciary represented across NJPS, JUPRA and FPJPS have all been looked at.

- 1.30 Since the unlawful transitional protections were based on age, this is the most relevant characteristic for the judicial *McCloud* equality analysis. There may also be indirect impacts on sex and race because the judiciary is becoming more diverse over time.
- 1.31 It is acknowledged that comprehensive data in respect of other protected characteristics across the judiciary is not readily available. Tracking data within the fee-paid judiciary also carries the risk of double or triple counting multiple office holders. Nevertheless, the potential equality impacts of the measures in respect of age, sex and race have been analysed, considering the available information. Where the data sets are incomplete, a representative sample as shown in Annex C has been used. For considering any effects for other protected characteristics, data at a public sector level from the APS and LFS has been used to support the justifications set out.

### Judicial mandatory retirement age

- 1.32 Data on judicial office holders (JOHs) from England and Wales courts and Unified Tribunals is held by the Judicial Office (JO), whilst data on new appointments is held by the Judicial Appointments Commission (JAC). Data on current JOHs from Northern Ireland for which the Lord Chancellor is responsible is held by the office of Lord Chief Justice (Northern Ireland), and for new appointments by the Northern Ireland Judicial Appointments Commission (NIJAC). The data provided by Northern Ireland is summarised in Annex C.
- 1.33 For these measures the assessment has been undertaken on three protected characteristics – sex, race and age – as these are the protected characteristics most consistently recorded in both Judicial Appointments Commission (JAC) recruitment data and Judicial Office eHR database, which covers all current judicial office holders. Analysis was not conducted on the remaining six protected characteristics given the limitations of using this data, as explored in Annex C.
- 1.34 Whilst there are improvements in the recording of protected characteristics in JO and JAC databases, the new data will not be aggregated soon enough to inform this assessment.
- 1.35 Particular attention has also been paid to assessing whether a change to the mandatory retirement age (MRA) could affect the diversity of the judiciary, compared to maintaining the MRA unchanged. A summary of this assessment is set out in this document, where it shows a change to the MRA would be compatible with the statutory responsibility, as it does not reverse current efforts in improving judicial diversity.
- 1.36 Equality data is unfortunately much more limited for coroners, partly due to the lack of centralised data. The Chief Coroner’s Office has provided data on the sex and age for ‘new terms’ coroners and recent appointments, but data on all other protected characteristics is missing. For the purposes of this assessment, it was considered disproportionate to request data from individual local authorities. The Chief Coroner’s Office intends to undertake a Coroners’ Attitude Survey

which may be used to collect data on protected characteristics to support any future analysis.

- 1.37 This EqIA focuses on the likely impacts of raising the MRA from 70 to 75 and does not include those consequential and related measures outlined in paragraphs 1.64 to 1.66. It has not been possible to project the likely impacts of these measures as there are multiple variables which cannot be quantified at this stage. These include the specific business needs which are still to be determined by the subsequent non-statutory policy and the likely uptake from eligible JOHs which may be influenced by the actual retention of JOHs arising from the higher MRA; and, in relation to the new power for coroners, the exceptional circumstances when this power will be exercised.

## Judicial Pay

- 1.38 For the judicial allowances measure in the Bill the analysis focuses on the three protected characteristics on which the judiciary have consistently recorded data for. These characteristics are age, sex and race.
- 1.39 Data for England and Wales is provided primarily through the Judicial Diversity Data 2020, however this data does not break down at the level of some of the specific posts included in these measures, for example 'Wreck Commissioner'.
- 1.40 Data for Scotland is provided through the Judicial Diversity Statistics 2018; however, this only provides information on age and sex. Data for Northern Ireland is provided through the Judiciary in Northern Ireland Equality Monitoring Report 2020.

## UKAR Measures

- 1.41 HM Treasury holds some limited information in anonymised and mostly aggregate form on the individuals in receipt of pension payments that will transfer to the new public schemes as shown in Annex D. Other than age and sex, this data does not contain information on the protected characteristics of these individuals.

## Background

### *McCloud judgment*

- 1.42 In April 2015<sup>15</sup> public service pension schemes were reformed; the cost of the legacy schemes had significantly increased over the previous decades, with most of those costs falling to the taxpayer. To protect against unsustainable increases in costs, new schemes were introduced with career average design and increased Normal Pension Ages alongside the introduction of a cost control mechanism. They were also progressive, providing greater benefits to some lower paid workers.

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<sup>15</sup> April 2014 for the Local Government Pension Scheme (LGPS) for England and Wales.

- 1.43 As part of the 2015 reforms, those members of the unfunded<sup>16</sup> schemes who were within 10 years of their Normal Pension Age (NPA)<sup>17</sup> on 1 April 2012 and had active status<sup>18</sup> on 31 March 2012 and 31 March 2015 remained in their legacy pension schemes for service from 1 April 2015. This transitional protection was provided following discussions with member representatives and was intended to protect and give certainty to people who were close to retirement. In December 2018 the Court of Appeal found that this part of the reforms unlawfully discriminated against younger members of the judicial and firefighters' pension schemes in particular, as transitional protection was only offered to older scheme members.<sup>19</sup> The courts required that this unlawful discrimination be remedied by the government.
- 1.44 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.<sup>20</sup>
- 1.45 Between 16 July and 11 October 2020, HM Treasury consulted on two options (an immediate choice exercise or a Deferred Choice Underpin (DCU)) to remedy discrimination that arose when reformed unfunded public service pension schemes were introduced.<sup>21</sup>
- 1.46 Different remedy models are needed to resolve the discrimination in the judiciary and Local Government Pension Schemes because of the special characteristics of these schemes. MoJ and DLUHC therefore consulted separately.
- 1.47 For Local Government Pension Schemes, separate consultations were undertaken by DLUHC<sup>22</sup>, the Scottish Government and the Department for

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<sup>16</sup> The LGPSs for England & Wales, Scotland and Northern Ireland took a different approach of moving all members to new scheme but providing a pension benefit underpin for members within 10 years of their NPA on 31 March 2012 that offered the better of final salary or career average accrual for service from the date of reform up to the member's NPA.

<sup>17</sup> The 1987 police pension scheme England and Wales and the equivalent schemes for Scotland and Northern Ireland have no Normal Pension Age as such. Individual members can have a pension age based on their length of service and linked to, but not necessarily dependent on, age, or they can have a pension age that depends on their rank. This term NPA is used as shorthand throughout this document, and for these police schemes means the different ages as used in the design of the original transitional protection.

<sup>18</sup> Or a member who, on either or both of those dates, was entitled to return to active status in a legacy scheme within 5 years of leaving with a pension award, who then returned to active status within that 5 year period and whose pensionable service on re-joining was treated as continuous with their previous service.

<sup>19</sup> Lord Chancellor and another v McCloud and others, Secretary of State for the Home Department v Sargeant and others [2018] EWCA Civ 2844.

<sup>20</sup> <https://questions-statements.parliament.uk/written-statements/detail/2019-07-15/HCWS1725>

<sup>21</sup> This covered the following schemes: NHS in England and Wales, NHS Scotland, Teachers in England and Wales, Teachers in Scotland, Firefighters in England, Firefighters in Wales, Firefighters 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.

<sup>22</sup> The consultation was undertaken by DLUHC's predecessor Department, the Ministry of Housing, Communities and Local Government (MHCLG), which for consistency is referred to by its current name, DLUHC, throughout this document.

Communities in Northern Ireland for the LGPSs in England and Wales, Scotland and Northern Ireland respectively. The Department of Justice also consulted separately for the devolved judicial pension scheme in Northern Ireland.

- 1.48 Most responsibility for public service pensions is devolved<sup>23</sup> in Northern Ireland and established under separate primary legislation<sup>24</sup> to that in Great Britain. However, the NI scheme provisions are broadly identical to the comparable schemes in Great Britain and in each case the NI consultations reflected identical policy options.
- 1.49 Following HM Treasury consultation on the approach to implementing a remedy for this discrimination, the government is proceeding with the DCU for all unfunded schemes, other than the judicial schemes. The DCU enables eligible members to make a choice as to whether to take legacy or reformed scheme benefits for the remedy period when their pension benefits become payable or, if a pension is already in payment, as soon as practicable once the necessary legal provisions are in force. This was supported by the majority of respondents to the Treasury's consultation. The judiciary will be offered an "immediate choice" as the respondents to the MoJ consultation supported having the ability to make an earlier decision. In a Written Ministerial Statement,<sup>25</sup> it was confirmed that local government will extend the existing underpin protection provided through the scheme to younger members who satisfy general criteria. The Bill brings forward these changes required for effective implementation of the remedy to the discrimination.
- 1.50 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.
- 1.51 Therefore, all public servants (except members of the judiciary) 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.
- 1.52 Additionally, alongside the response to the consultation, the government also provided an update on the cost control element of the 2016 valuations process. In this update, the government set out that the cost control mechanism, which had been paused as a result of uncertainty caused by litigation, would be restarted. The update also made clear that the costs associated with the increased value of schemes to members as a result of the *McCloud* remedy will be considered in the completion of the process, as these are member costs.
- 1.53 While the valuation process is not yet complete, early estimates indicate that some ceiling breaches are likely, which would result in a reduction to member benefits. The government has decided that there should not be reductions to

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<sup>23</sup> Some public servants in Northern Ireland, such as military personnel and tax officers, are members of non-devolved pension schemes and are covered by the consultations on those schemes.

<sup>24</sup> <https://www.legislation.gov.uk/niu/2014/2/contents>

<sup>25</sup> <https://questions-statements.parliament.uk/written-statements/detail/2021-05-13/hcws26>

member benefits as a result of completing this process for the 2016 valuations, and the Bill includes measures to waive the impact of any such ceiling breaches.

## Local Government

- 1.54 The effect of the *McCloud* judgment also applies to the Local Government Pension Scheme (LGPS), but differences in how transitional protection worked in the LGPS meant the scheme was not in the scope of HM Treasury consultation. DLUHC consulted separately in relation to the Scheme in England and Wales, from 16 July 2020 to 8 October 2020 and separate consultations were undertaken in relation to the LGPS in Scotland and Northern Ireland too.
- 1.55 LGPS transitional protection was provided through an underpin. In England and Wales, all active scheme members moved to the reformed pension scheme in April 2014,<sup>26</sup> but protected members were provided with a guarantee that their pension at retirement would not be any lower than it would have been in the final salary scheme.
- 1.56 Because of the differences in transitional protection, there are separate measures in the Bill allowing the respective Ministers responsible for the various LGPS schemes to remove the discrimination from the LGPS. This will be achieved by extending the underpin to younger qualifying members of the scheme and by ending underpin protection for all members in relation to service after the earlier of their legacy scheme normal pension age and 31 March 2022<sup>27</sup>. From 1 April 2022, all active members will accrue benefits in the reformed scheme, without an underpin in relation to service from that date. This approach remains identical to that proposed for the equivalent scheme in Northern Ireland and would be implemented in the same way under the provisions of the Bill.
- 1.57 Because of this approach to remedying *McCloud*, it is not necessary to move scheme members back to the LGPS legacy scheme, nor do LGPS members need a choice to determine which benefit type is better for their own circumstances. As a result, the LGPS remedy is simpler in legislative and administrative terms than the DCU model and some of the equality issues that arise for the unfunded schemes therefore do not occur in local government.

## Judicial pensions

- 1.58 The introduction of the 2015 pension reforms were particularly detrimental to many judges as membership of the New Judicial Pension Scheme (NJPS) was significantly less financially beneficial compared to the legacy pension schemes. A significant reason for this was because NJPS is a tax-registered scheme, meaning members are subject to annual and lifetime allowance limits on the tax-relieved benefits accrued within the scheme. In 2018, the Senior Salaries Review Body (SSRB) published its Major Review of the Judicial Salary Structure which highlighted escalating recruitment and retention problems at all levels of the judiciary. It concluded that these problems were caused principally by the 2015 pension reforms and subsequent changes to pension tax thresholds.

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<sup>26</sup> April 2015 in Scotland and Northern Ireland.

<sup>27</sup> However, the test as to whether an underpin should apply to a pension award, in relation to any service eligible for underpin protection, can be applied after 31 March 2022 when an individual takes a pension award after that date.

- 1.59 There are several reasons, closely related to the judiciary's unique constitutional role, that mean pensions tax issues are particularly relevant to judicial pension schemes and are impacting recruitment. For example, salaried judges are not able to work in private practice after taking up office and they are also appointed on the understanding that they will not return to private practice once they have retired. Their options for supplementing their earnings are therefore limited. Furthermore, judges tend to enter the judicial pension arrangements later in life than high earners in other public service schemes who have generally moved through the career grades.
- 1.60 Responding to the SSRB's review in June 2019, the government introduced a temporary Recruitment and Retention Allowance for certain senior salaried judges who were eligible to join NJPS and made a commitment to develop a pensions-based solution for the whole judiciary, which would address the recruitment and retention problems identified by the SSRB. In July 2020, the government published a consultation setting out its plan to introduce a newly designed, reformed judicial pension scheme that would be in line with the main principles of the 2015 reforms but also retain some key elements of the legacy schemes. For this reason, the scheme contains many features of the 2015 schemes, such as being designed so that benefits are based on career average earnings rather than final salary and the Normal Pension age is linked to State Pension age. Crucially, to address the recruitment and retention issues, the reformed scheme will be tax-unregistered, like the legacy schemes. The government's response to the consultation<sup>28</sup> confirmed the implementation of this scheme, as outlined in the consultation, in April 2022.
- 1.61 MoJ conducted a separate consultation<sup>29</sup> on addressing the discrimination for affected judges, given the particular features of the judicial pension schemes. The government's response to that consultation was published on 25 February 2021 and confirmed that judges in scope of the *McCloud* judgment will take part in an 'options exercise' in 2022, allowing them to choose retrospectively whether to have accrued benefits in the legacy schemes or reformed scheme for the remedy period.

## Judicial Mandatory Retirement Age

- 1.62 Having an MRA<sup>30</sup> is a unique requirement of judicial office which helps to preserve public confidence in the health and capacity of the judiciary while protecting judicial independence by alleviating the need for individual assessments. Since the MRA was set at 70 for the majority of JOHs over 25 years ago, the structure and operation of courts and tribunals have developed, alongside the demands placed upon them, while average life expectancy in the UK has increased significantly, with a greater number of people now working until later in life.

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<sup>28</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/964866/reformed-judicial-pension-scheme-consultation-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/964866/reformed-judicial-pension-scheme-consultation-response.pdf)

<sup>29</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/901341/proposals-for-a-reformed-judicial-pension-scheme-consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901341/proposals-for-a-reformed-judicial-pension-scheme-consultation.pdf)

<sup>30</sup> The legacy police schemes have compulsory retirement ages (CRA) which are 60 and 65 depending on scheme/rank. However, officers can apply to serve beyond that point. The CRA for police is, however, not quite the same as the MRA, which is absolute, so a judicial officer holder cannot serve beyond that age.

- 1.63 The government consulted separately on proposals to increase the MRA from 16 July to 16 October 2020. The Bill will now legislate for the MRA to be raised to 75, as set out in the consultation response,<sup>31</sup> to help ensure the judiciary can continue to meet the demands of courts and tribunals by retaining valuable judicial expertise for longer and attracting a greater number of potential candidates from diverse backgrounds.
- 1.64 In addition, to further support the resourcing of magistrates' courts, the Bill will include transitional provision to allow magistrates between the age of 70 and 75 on commencement of the new MRA to apply to return to the bench, where there is a business need. Details of the process for applications for reinstatement by retired magistrates under this transitional provision will be set out in due course.
- 1.65 It will also be provided for coroners to be permitted to sit beyond 75 in order to complete a case which they have started before reaching their MRA. In line with existing provisions for judges and magistrates under s.27 JUPRA and s.13 Courts Act 2003, respectively, this new power will help to ensure the effective administration of justice by preventing the inconvenience, injustice and wasted cost of a new coroner having to take over a case.
- 1.66 Consistent with the overall objective of ensuring the effective operation of the courts and tribunals, the Bill will also make provision in relation to sitting in retirement. Salaried judges are currently able to retire, be appointed to fee-paid office without a Judicial Appointments Commission process and accrue judicial pension benefit in the fee-paid office whilst drawing their pre-retirement benefit. The Bill includes measures which will extend this policy (known as 'sitting in retirement') to fee-paid JOHs who have a relevant salaried comparator. This will help to meet immediate demands of courts and tribunals in exceptional circumstances, where there may be temporary shortages. These measures provide an enabling framework which will be underpinned by non-statutory policy with details on how the new sitting in retirement policy will operate in practice, to be set out in due course.

## Judicial Pay

- 1.67 The Lord Chancellor has the power to set allowances for some, but not all, of the judicial offices for which he has the responsibility for remuneration. The judicial pay measure will provide the ability to pay allowances to judicial office holders where this does not already exist.
- 1.68 As judicial salaries are protected by statute from being reduced, the provision of allowances enables greater pay flexibility and provides options to support judicial recruitment and to recognise judicial office holders who take on temporary additional responsibilities to ensure the effective administration of justice.

## UK Asset Resolution (UKAR)

- 1.69 This Bill also includes measures to take the necessary powers to establish one or more new public service pension schemes for the beneficiaries of the existing

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<sup>31</sup> <https://consult.justice.gov.uk/digital-communications/judicial-mandatory-retirement-age/>

Bradford & Bingley Staff Pension Scheme (“the BBS Scheme”) and NRAM Pension Schemes, which are currently sponsored by UKAR. The existing schemes will then be defunded, reducing public sector net debt (PSND) by £170m in 2023 to 2024.

- 1.70 UKAR was established in 2010 as the 100% government-owned holding company for the closed mortgage books of NRAM (formerly part of Northern Rock) and Bradford & Bingley, two banks that were taken into temporary public ownership in 2008 as part of the then government’s interventions to protect financial stability during the financial crisis.
- 1.71 Both B&B and Northern Rock had pension schemes in place for their employees prior to their nationalisation.
- 1.72 On 29 October 2021, the government completed the return of B&B, NRAM and their remaining assets to private ownership. However, through UKAR, the government has retained the pension schemes, as it was determined that achieving a sale of B&B and NRAM which achieved value for money would be unlikely if the purchaser was required to take on the pension schemes.
- 1.73 The government is seeking an alternative long-term solution so that the members of the pension schemes can be reassured that their pensions will be secure in the long-term and so UKAR can be wound down more quickly than if it retained sponsorship of the schemes.
- 1.74 To achieve this, the government intends to legislate to create one or more new central government pension schemes and transfer the members of the BBS and NRAM pension schemes to these schemes. The BBS and NRAM schemes will then be defunded and closed. Liability for some additional, unfunded, contractual pension payments, which are currently paid directly by UKAR, will be transferred to the Treasury.
- 1.75 This is a similar approach to that taken with certain parts of the Royal Mail pension scheme as part of Royal Mail’s privatisation in 2013.

## Next steps

- 1.76 The government has introduced new legislation in the form of this Bill. 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.
- 1.77 By legislating in this way, the government’s intention is to avoid any uncertainty 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.
- 1.78 The impacts of the measures within the Bill have been assessed via this document (EqIA). This includes the closure of all legacy schemes to future accrual from 1 April 2022 (which will be implemented via the measures in the Bill). Any additional impacts of the consequential amendments needed to scheme regulations will be considered further at a scheme-specific level when

the responsible authority for each scheme consults on detailed regulations implementing the general provisions set out in the Bill.<sup>32</sup>

- 1.79 The PSED is an ongoing duty which will continue to be monitored and reviewed through to implementation of the measures in the Bill. Further analysis on the detailed changes to scheme regulations for the core *McCloud* remedy measures, judicial and local government *McCloud*, and reformed pension scheme measures should be conducted by individual pension schemes, but this should exclude all those measures where the final policy is set out in the primary legislation and where impacts have already been assessed in this EqIA. Mitigations should be considered if and where additional impacts of the policy on protected characteristics are identified, within the scope of the delegated powers available. Any such further potential impacts and mitigations therefore relate only to consequential aspects of enacting the overarching policy and not to the main policy implemented via the measures in the Bill, which have already been assessed.
- 1.80 MoJ publish annual reports on the diversity of the judiciary, judicial selection and the legal profession (the pool of solicitors, barristers and legal executives from which much of the judiciary is drawn). MoJ will continue to work with partners in the Judicial Diversity Forum to monitor the potential impacts of the judiciary measures in this Bill on judicial diversity.

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<sup>32</sup> DLUHC have previously consulted on draft regulations for the LGPS remedy.

# Chapter 2

## Equality impact overview

### General equality impact summary

- 2.1 This chapter provides a high-level overview of the equality impacts identified for the measures in the Bill. Chapters 3 to 7 explore these equality impacts further.
- 2.2 These equality impacts have been explored and grouped by 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 explored as follows:
- A. **Chapter 3** – age
  - B. **Chapter 4** – sex, pregnancy and maternity
  - C. **Chapter 5** – race
  - D. **Chapter 6** – disability
  - E. **Chapter 7** – other protected characteristics (sexual orientation, gender reassignment, religion or belief and marital or civil partnership status)
- 2.3 The government has reached the conclusions set out in this assessment based on consideration of previous equality impact assessments, including at the consultation and consultation response stages, in addition to other available data, as discussed in the annexes. The previous assessments undertaken are set out in Table 1 below.

Table 1: Previous equality impact assessments

Equality impact assessment	Department	Stage produced	Measures covered in this Bill
<a href="#">Public Service Pensions EqIA</a>	HM Treasury	Consultation – July 2020	<i>McCloud</i> judgment

<a href="#">Public Service Pensions Updated EqIA</a>	HM Treasury	Updated for consultation response – February 2021	<i>McCloud</i> judgment
<a href="#">Equality impact assessment</a>	Department of Finance in Northern Ireland	Consultation response – February 2021	Northern Ireland <i>McCloud</i> judgment
<a href="#">Equality Analysis for Local Government Pension Scheme</a>	Ministry of Housing, Community and Local Government	Consultation – June 2020	Local Government <i>McCloud</i> judgment
<a href="#">Local Government Pension Scheme GAD Equality report</a>	Department for Levelling Up, Housing and Communities	Government Actuary’s Department (GAD) LGPS equality analysis – June 2020	Local Government <i>McCloud</i> judgment
<a href="#">Local Government Pension Scheme NI Equality report</a>	Department for Communities in Northern Ireland	Consultation – November 2020	Northern Ireland Local Government <i>McCloud</i> judgment
<a href="#">Local Government Pension Scheme Scotland Equality report</a>	Scottish Public Pensions Agency (SPPA)	Government Actuary’s Department (GAD) LGPS equality analysis – August 2020	Scotland’s Local Government <i>McCloud</i> judgment
<a href="#">Judicial pensions response to McCloud EqIA</a>	Ministry of Justice	Consultation – July 2020	Judiciary <i>McCloud</i> judgment
<a href="#">Response to McCloud EqIA</a>	Ministry of Justice	Updated for consultation response – February 2021	Judiciary <i>McCloud</i> judgment
<a href="#">Judicial pensions proposed response to McCloud EqIA</a>	Department of Justice in Northern Ireland	Consultation – October 2020	Northern Ireland Judiciary <i>McCloud</i> judgment
<a href="#">Judicial Pension Reform EqIA</a>	Ministry of Justice	Consultation – July 2020	Reformed judicial pension scheme
<a href="#">Judicial Pension Reform EqIA</a>	Ministry of Justice	Updated for consultation response – February 2021	Reformed judicial pension scheme
<a href="#">Mandatory Retirement Age equality statement</a>	Ministry of Justice	Reviewing the MRA in the judiciary – July 2020	MRA measures

## Direct discrimination

2.4 Section 13 of the Equality Act (EA) 2010 provides:

“Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim..."

- 2.5 The core measures in the Bill mean all public service workers eligible for a pension would accrue benefits from April 2022 under their respective reformed schemes. Therefore, from this point, there will be a single pension scheme for all active members in each workforce group, thereby ensuring equal treatment.
- 2.6 The measures to waive ceiling breaches following the completion of the cost control element of the 2016 valuations will not result in direct discrimination. They will ensure that no members see a reduction in their benefit entitlements as a result of the completion of the 2016 cost control process.
- 2.7 The measures to reform the judicial pension scheme will also not result in direct discrimination. All judges eligible for a judicial pension scheme would accrue benefits from April 2022 under the same new reformed scheme with the same features for all active members.
- 2.8 The judicial allowances measure provides the Lord Chancellor with the statutory power to give an allowance in respect of posts where this power does not already exist, putting all posts on an equal legal footing.
- 2.9 Imposing an MRA is prima facie direct discrimination on the basis of the protected characteristic of age. However, having a set MRA fulfils the legitimate aims of promoting and preserving judicial independence by avoiding the need to make individual decisions of suitability in every case; preserving the dignity of the judiciary by avoiding the need for individual assessments of health and capacity; and of maintaining public confidence in the capacity and health of the judiciary. These justifications were successfully defended in *White v MoJ*,<sup>1</sup> and the government believes they remain legitimate in relation to the new higher MRA. The government does not consider there will be any other direct discrimination as a result of the measure to raise the MRA as it will apply to judicial office holders (JOHs) equally.
- 2.10 The government also envisages that no other measures in this Bill will result in direct discrimination because no one will be treated differently or less favourably because of a protected characteristic.

## Indirect discrimination

- 2.11 Indirect discrimination is set out under Section 19 of the EA 2010 as follows:

"Indirect discrimination

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

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<sup>1</sup> MR G B N White v. Ministry of Justice, 24 November 2014, London Central Employment Tribunal, case number 2201298/2013. In 2014, the Employment Tribunal in the case of White v. MOJ held that a mandatory retirement age set at the age of 70 was a justified and proportionate measure and Mr White's claim of direct age discrimination was dismissed.

(2) For the purpose of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –

- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
- (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

**2.12** The government recognises and accepts that the design of the remedy measures will impact differently on certain members who may tend to share a protected characteristic. However, where this is the case, it is considered that this can be objectively justified in pursuance of the core principles of this Bill. As noted in previous documents, certain scheme features may impact some cohorts more than others. This is explored further in the relevant protected characteristic chapters.

**2.13** The government is also aware of concerns from some workforces, and especially the police, that the policy decision to move members in scope of remedy into the reformed schemes after the remedy period would negatively impact those who work part time or those who took a career break, who they felt would be more likely to be female. The government has considered these concerns but believes that the most proportionate way of ending the age discrimination identified in the *McCloud* litigation is that, 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. This is explored further in Chapter 4.

## Specific Equality Act legislation

### Harassment and victimisation

**2.14** Harassment under the Act includes unwanted conduct related to a relevant protected characteristic which has the purpose or effect of violating the victim's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

**2.15** The government does not consider there would be a risk of harassment or victimisation as a result of any of the measures in the Bill.

### Advancing equality of opportunity

**2.16** The government has considered how all the measures in the Bill might impact on the advancement of equality of opportunity. The measures in the Bill affect all eligible members, irrespective of their protected characteristics. The government therefore does not think any of these measures would negatively affect equality of opportunity.

## Eliminating unlawful discrimination in relation to disability and duty to make reasonable adjustments

2.17 The government has very limited evidence to assess whether any of the measures in the Bill are likely to indirectly discriminate against people with disabilities, due to limitations in the available data on this characteristic, as set out in the annexes and previously published EqlAs. However, using analysis of the available data, it is reasonable to assume that the measures in the Bill will not unlawfully discriminate in relation to disability. This is further explored in Chapter 6.

## Fostering good relations

2.18 The government does not consider that the measures in the Bill will actively foster good relations between those who share a protected characteristic and those who do not. However, the government has paid regard to the need to foster good relations when formulating the proposals for these measures so that they are not incompatible with this aim.

2.19 The government believes that the measures in the Bill would respect the fostering good relations principle, as the Bill would not create differences in treatment regarding the future pension terms within a particular category of employment.

2.20 The government will continue to update this equality statement in light of any new evidence in accordance with the ongoing nature of responsibilities under the PSED.

# Chapter 3

## Equality impact analysis: Age

### Introduction

- 3.1 This chapter sets out the equality impacts of each of the measures in the Bill on the protected characteristic of age 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.
- 3.2 The government acknowledges that the measures set out in the Bill 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, for all the measures in the Bill.

### Unfunded<sup>1</sup> pension schemes (excluding judicial):<sup>2</sup> *McCloud judgment*

#### Remedying the discrimination

- 3.3 The government's intention is that the deferred choice underpin (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 the remedy and are eligible to make the choice between legacy and reformed scheme benefits.
- 3.4 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.<sup>3</sup>

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<sup>1</sup> Most of the public service pension schemes are unfunded. There are no investments and the schemes operate on a pay-as-you-go basis. The public authorities responsible for meeting the costs of the schemes use pension contributions of employees and employers to help offset the cost of payments to current pensioners. The Local Government Pension Schemes are funded schemes, where employer and employee contributions are used to create investment assets in a pension fund, with those assets and associated returns used to pay for current and future pensions.

<sup>2</sup> This covers the following schemes: NHS in England and Wales, NHS Scotland, Teachers in England and Wales, Teachers in Scotland, Firefighters in England, Firefighters in Wales, Firefighters in Scotland, Police in England and Wales, Police in Scotland, UK Armed Forces, Civil Service in Great Britain, and the Civil Service (Others) scheme.

<sup>3</sup> 'Labour Force Survey (LFS) 2016 and 2012', Quarter 3.

- 3.5 However, the government considers that any such potential age-related impact would be justified. The reasons for this are set out below.
- 3.6 It is acknowledged that more recent joiners to some relevant workforces are likely to 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 are justified in the context of its aim of removing earlier discrimination in a manner which is proportionate, does not create new unjustifiable discrimination and is affordable. That contrasts, with an approach such as simply moving all employees into legacy schemes on 1 April 2015 which would, for example, involve worsening the terms of many members who had moved into those new schemes.
- 3.7 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).
- 3.8 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 final IPSPC (Hutton) reform proposals,<sup>4</sup> acceptance of those by the coalition government<sup>5</sup> and the subsequent proposed introduction of the reformed schemes in the white paper 'Good Pensions That Last'<sup>6</sup> were well publicised at the time and were the subject of widespread media coverage. 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.
- 3.9 Whilst accrual in legacy schemes will end when those schemes are closed on 31 March 2022, any accrual that has been built in the legacy schemes up to that date, and the NPA<sup>7</sup> (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",<sup>8</sup> as calculated when they retire or otherwise leave the scheme, regardless of how many years' service was spent in the reformed schemes, and not their "final salary" at the point when they left the legacy scheme. The

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<sup>4</sup> 'Independent Public Service Pensions Commission', Final Report, Independent Public Service Pensions Commission, March 2011.

<sup>5</sup> 'Budget 2011', HM Treasury, March 2011, Paragraph 1.132.

<sup>6</sup> 'Public service pension schemes, good pensions that last (Cm 8214)', HM Treasury, November 2011.

<sup>7</sup> Or equivalent age – see paragraph 1.43 and footnote 16 in Chapter 1.

<sup>8</sup> The terms for calculating "final salary" vary between schemes and often take account of periods of service before the last year of pensionable service where that is more favourable to the member.

government has also committed to protect weighted accrual beyond 1 April 2022. Some schemes (namely police and fire) have an uneven accrual rate, the effect of which is that the longer a person stays in service, the better the overall accrual rate for the legacy pension. The government is legislating to ensure that the anticipated accrual rate for the legacy pension is maintained for the affected schemes.

- 3.10 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.<sup>9</sup>
- 3.11 Table 4 in Annex A shows there were 245,000 tapered protection members and Chart 1 in Annex A shows the youngest lies between 35 to 49 years of age in 2016, depending on scheme. 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 those particular members would have been within ten and thirteen and a half or fourteen years of their NPA from the 1 April 2012.
- 3.12 Those aged 16 to 34 at the time of the reforms did not receive transitional protection under any of the schemes. 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 and the remainder is more or less evenly split between unprotected and tapered members (c.25% and c.23% respectively). Finally, those aged 65 and older are predominantly protected members, with only 15% unprotected. The 16% of workers aged 65 and older who are unprotected and accruing in reformed schemes would have joined their pension scheme after 31 March 2012 or had a disqualifying break in service.
- 3.13 In Annex A, (Annex E for Northern Ireland) a breakdown of membership by age into protected types is available for each specific scheme. The armed forces have no tapered members because tapered protection was not offered to members of the armed forces pension scheme.

## Taper protected members

- 3.14 In order to receive tapered protection, where it was offered, members had to be between ten and thirteen and a half or, in the case of police and firefighters, fourteen years from Normal Pension Age (NPA)<sup>10</sup> on 31 March 2012. In Annex A, Chart 1 shows that all those who originally received tapered protection were aged between 35 and 64 in 2016.
- 3.15 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

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<sup>9</sup> This includes members who, on 31 March 2012, were entitled to return to active status in a legacy scheme within 5 years of having previously left with a pension award, who then returned to active status within that 5 year period and for whom that pensionable service on re-joining was treated as continuous with their previous service.

<sup>10</sup> Or equivalent age – see paragraph 1.43 and footnote 16 in Chapter 1.

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 considered to be 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.

- 3.16 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 it has been decided arose from unjustifiably discriminatory treatment on the 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 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.
- 3.17 Where pension benefits are adjusted for taper protected members who have already retired, the government committed in its consultation response that schemes take a proportionate approach to the recoupment of any overpaid benefits, including ensuring any overpayment can be collected over time. The government is aware that some members may be disproportionately affected by adjustments to tapered protection. The government will work with pension schemes to identify where this may occur and ensure that mitigations are put in place which mean no member will be subject to an unreasonable individual burden or would suffer significant prejudice.

## Tax measures

- 3.18 The government recognises that the way the *McCloud* remedy interacts with the statutory time limits for collection of tax in previous years, could benefit some members over others.
- 3.19 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.
- 3.20 One aspect where an individual's tax position may change as a result of the *McCloud* remedy is member contributions. Contributions to tax registered

pension schemes are made tax-free, so any adjustment in these contributions will have implications for an individual's tax position.

- 3.21 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.
- 3.22 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.
- 3.23 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 and who would not have overpaid contributions if they remained in their legacy scheme.
- 3.24 Individuals will therefore 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 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.
- 3.25 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 below.
- 3.26 As above, the government is taking steps to ensure that tax relief is recouped on overpaid member contributions with respect to all member contributions for all remedy period years by reducing the compensation for such overpayments accordingly. This will not require the member to take any proactive steps or find funds to pay any charges. However, there is not a straightforward way of recouping underpaid Annual Allowance and Lifetime Allowance in respect of

remedy period years that are out of scope of statutory time limits. 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 able to achieve this that would not place a disproportionate burden on members, including in terms of record keeping. Therefore, setting up alternative approaches to remove the discrepancy would be administratively complex, for both schemes and individuals. In only a minority of cases will younger members receive an advantage over their older counterparts.<sup>11</sup>

- 3.27 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.
- 3.28 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.
- 3.29 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 in this Bill.

## Future pension provision

- 3.30 The government believes that the reformed schemes introduced in 2015, of which all public service workers who joined schemes since 2012 are already members, is an appropriate level of pension provision. The measures in this Bill remove transitional protection and tapered protection from all members, and, from 1 April 2022, all pre-April 2012 joiners who are, or are entitled to be, in active service will accrue future service in their respective reformed schemes.
- 3.31 The measures in the Bill 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.
- 3.32 As the measures to remedy the discrimination give members in scope a choice of scheme benefit designs for the remedy period, a group of people will receive legacy design benefits for the remedy period (those who were originally offered transitional protection and who do not exercise a choice to receive reformed design benefits and those who were not originally offered such protection, but

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<sup>11</sup> 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.

who exercise their choice to receive legacy design benefits). 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 than the active membership as a whole. Those who will be offered a choice of benefits as a result of the remedy measures were in service at the time of the reforms, and thus likely to be generally older than those who have joined since.

- 3.33 However:
- all those in service at the time of the reforms will be treated equally with other members eligible for their particular legacy scheme, for the purposes of determining pensionable service during the remedy period, as a result of the remedy measures; and
  - 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
- 3.34 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.
- 3.35 The government's general policy intention, reflected in legislation passed by Parliament in the Public Service Pensions Act 2013,<sup>12</sup> was that no benefits would be provided under the legacy schemes in relation to employment after 1 April 2015 except for limited exceptions that would be of limited duration because, after 31 March 2022, tapered protection would have ended and transitional protection would only apply to members who had been within 10 years of their NPA<sup>13</sup> under the legacy schemes at 31 March 2012. The majority of these members are expected to have already retired by then and the remainder to retire in the coming years.
- 3.36 These exceptions and the LGPS age-related underpin gave rise to unlawful discrimination and the deferred choice underpin, immediate choice underpin (for the judiciary) and extension of the LGPS underpin will be introduced by the Bill to address that discrimination. Those members who were within 10 years of their NPA<sup>14</sup> at 31 March 2012 will also have reached or exceeded their NPA<sup>15</sup> 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.
- 3.37 The impact on protected characteristics if this group of older members 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

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<sup>12</sup> Public Service Pension Act (NI) 2014 for the equivalent NI Legislation.

<sup>13</sup> Or equivalent age – see paragraph 1.43 and footnote 16 in Chapter 1.

<sup>14</sup> Or equivalent age – see paragraph 1.43 and footnote 16 in Chapter 1.

<sup>15</sup> Or equivalent age – see paragraph 1.43 and footnote 16 in Chapter 1.

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 did not have transitional protection and those who have joined since the 2015 reforms who have only ever been members of the 2015 schemes, and will continue as such. The measures set out in this Bill on future arrangements treat 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.

- 3.38 It is also acknowledged 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, whilst it is one thing to seek to ensure that transitional protection for those who might originally have expected to remain in legacy schemes throughout their employment is extended to everyone in that position, it would be a different matter to extend such protection to members who would never reasonably have had such an expectation.
- 3.39 The government is also aware of an issue specific to a minority of schemes, upon which some of the measures in the Bill may impact. In particular police and firefighter legacy schemes, a member may take their benefits after a certain number of years' service, even where that member has not attained 55 years of age. Two members may therefore have joined the relevant police or firefighter scheme on the same date (but at different ages) and achieve the requisite number of years' service at the same time (but at different ages). Where those members have also accrued benefits in a reformed scheme, the older member is more likely to be able to access those (reformed scheme) benefits simultaneously, as they are more likely to have achieved the minimum pension age in the reformed scheme (which is 55 years of age). A member who has not attained the age of 55 at the point they become eligible to take benefits from the police or firefighter legacy schemes in question will become a deferred member in respect of any connected reformed scheme benefits. As at paragraphs 1.79 to 1.80 above, further analysis will be conducted by individual pension schemes as to the potential impact of this in such cases.
- 3.40 However, it should be noted that 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 are justified in the context of its aim of removing earlier discrimination in a manner respects the rationale for maintaining any transitional protection up to 31 March 2022 and moving all members to a reformed scheme from 1 April 2022.
- 3.41 The government does not believe that the 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 also retire at different ages. When 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.

- 3.42 Under the measures set out in the Bill, the service and benefits accrued under the legacy design arrangements for the remedy period from 2015 to 2022 are protected, if the member so wishes, 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.<sup>16</sup>

## Cost control mechanism

- 3.43 The cost control mechanism is a mechanism designed to ensure a fair balance of risk with regard to the cost of providing public service defined benefit (DB) pension schemes between members of those schemes and the Exchequer (and by extension taxpayers). For each scheme, the mechanism assesses certain aspects of the costs of providing that scheme. Where the cost of the scheme has gone beyond margins on either side of the employer cost cap (a breach of the floor or ceiling), future pension benefits or member contributions must be adjusted to bring costs back to the target cost, a process known as rectification.
- 3.44 Provisional 2016 cost control results indicated a breach of the cost cap floor in all schemes for which results were assessed. In the context of these provisional results, the government announced that it was asking the Government Actuary to review the cost control mechanism. The government was concerned that the cost control mechanism was too volatile and might not be operating in line with its original objectives; in particular, the intention that benefit rectification would only be triggered by ‘extraordinary, unpredictable events’. The Government Actuary has now completed his review of the mechanism and concludes in his final report that a number of changes may be made to improve its functioning. The government has published a consultation on proposed changes to the mechanism to bring it more closely in line with its original objectives.
- 3.45 Since the government was concerned that the mechanism may not be working as intended, it decided that there will be no benefit reductions for members of any schemes at the 2016 valuations. The Bill contains provisions to ensure that any ceiling breaches that occur at the 2016 valuations (or 2017 valuations for the Local Government Pension Scheme (Scotland)) are not rectified. Any floor breaches that occur will be honoured.
- 3.46 This Bill measure means that individuals in any pension scheme that breaches the ceiling at the 2016/17 valuation will not face benefit reductions and/or member contribution increases that would have otherwise occurred once results of the 2016 valuations are confirmed. This policy is implemented for any scheme that breaches the cost control ceiling, and so applies to all members equally, regardless of age. The specific schemes affected by this policy will not be confirmed until the 2016 valuations are finalised (or 2017 valuations for the Local Government Pension Scheme (Scotland)).

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<sup>16</sup> However, continuous service under a connected legacy scheme will still be subject to the “final salary” link provisions in the reformed schemes, so if a member has such continuous “final salary” service their pension award in respect of that service will allow for their future “final salary”.

- 3.47 The government acknowledges that, since the cost control mechanism operates in reformed schemes, waiving ceiling breaches will affect primarily younger generations, since members of reformed schemes are on average younger than members of legacy schemes. Waiving ceiling breaches will also affect members that are eligible for remedy and ultimately choose reformed scheme benefits for the remedy period. There may be a difference in average age of such members, compared to those that are eligible for remedy and ultimately choose legacy scheme benefits. However, the government believes that this policy is nevertheless a proportionate response in order to avoid large benefit reductions for members based on a mechanism that may not be working as intended.
- 3.48 It is also possible that there will be indirect impacts on members of different ages as a result of this policy, but there is not currently sufficient data on what these may be.

### Local Government: *McCloud* judgment

- 3.49 Annex B shows that, broadly, the likelihood of a member either qualifying for the revised underpin or benefitting from the revised underpin reflects the age profile of the LGPS generally.<sup>17</sup> However, it is also clear that there are some differences in how the underpin would apply based on age. In particular:
- members between 41 and 60 are more likely to qualify, and those between 16 and 40 less likely to qualify, and
  - members between 41 and 55 are more likely to benefit (i.e. where the final salary pension would be higher), and those between 16 and 35 and over 55 are less likely to benefit
- 3.50 These trends reflect a number of points. Significantly, in relation to qualification for the underpin, members would need to have been in active membership of the LGPS on 31 March 2012 to qualify for the underpin. The proportion of members active in the scheme as at 31 March 2019 who had been members of the scheme on 31 March 2012 is lower for younger members, as experience shows they have a higher withdrawal rate from active scheme membership and that new entrants are typically younger than the average active member.
- 3.51 Limiting remedy to members who were active in the LGPS on 31 March 2012 corresponds with the intention that transitional protection across public service pension schemes was appropriate only for members who had had reasonable expectations of continuing as members of old scheme designs. In the LGPS, the protection was designed principally in relation to the move from a final salary to a career average structure.
- 3.52 The government therefore considers that it would be inappropriate to grant underpin protection to those joining the LGPS on or after the date reformed LGPS schemes were introduced (1 April 2014 for England and Wales scheme and 1 April 2015 for the others), as they joined the scheme when it had already been reformed.

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<sup>17</sup> The analysis undertaken was regarding those who would benefit from *the extension* of the underpin – members who currently have underpin protection under existing regulations were excluded from the analysis.

- 3.53 In relation to members who joined the LGPS final salary scheme after 31 March 2012 and who were ineligible for transitional protection regardless of their age, they were not subject to the discrimination identified by the Courts. The purpose of the transitional protection was to protect those closest to retirement, and so with least time to prepare, from the changes. The introduction of the reformed schemes was publicised at the time and was the subject of widespread media scrutiny. Anyone joining after 31 March 2012 could, therefore, reasonably be expected to have known when they entered service that they would join or be moved to the reformed scheme. They could not have expected to remain in, or join, the final salary scheme.
- 3.54 The figures also show that members in certain age ranges (particularly those between 41 and 55 as at 31 March 2019) would be more likely to benefit from underpin protection than those in the latter stages of their career and those at the early stages of their career. Partly this is a consequence of the point discussed above – i.e. that members would have to have been in the LGPS on 31 March 2012 to qualify for underpin protection, which is more likely to apply to older scheme members. Specifically, it is anticipated that those aged between 41 to 55 are:
- more likely than younger members to remain in active service until such time as their final salary benefits are higher than their career average benefits. This is reflected in the assumed voluntary withdrawal rates used which are shown in GAD’s annexed data to the LGPS E&W consultation
  - more likely to have salary growth/promotional pay increases over the underpin period (including increases after the end of the underpin period) than their older colleagues, resulting in the final salary benefit being higher. Again, this assumption is reflected in the assumptions made for promotional pay increases shown in the GAD analysis (noting that members aged 41 to 55 in 2019 would be aged between 36 and 50 in 2014)
- 3.55 These differences in outcome between different age groups reflect that final salary schemes typically benefit members with particular career paths (for example, they usually favour members who experience higher salary increases such as from promotions or have a longer service). Over time, it is expected that the age group of LGPS members who have underpin protection and who would be likely to benefit from underpin protection to continue to mature.
- 3.56 In local government, transitional protection was designed so that it would cease when a member reaches their legacy scheme Normal Pension age (normally 65), if they remained in active service at that point. Under the measures in the Bill, this cut-off will be retained when LGPS underpin protection is extended to younger members of the scheme. This could mean that currently protected members, being those who will reach their legacy scheme normal pension age on or before 31 March 2022 could receive a shorter period of underpin protection than their younger colleagues (who would have protection until 31 March 2022). Nevertheless, the government considers that this remains the right approach.

- 3.57 The original commitment to transitional protection in the 2011 Green Paper, *Good Pensions that Last*,<sup>18</sup> envisaged that protections would be intended to ensure that no protected member would be worse off than they would have been at their normal pension age applicable at the time. The subsequent finding that the protections were unlawful in excluding younger members meant that changes need to be made to extend the protections to younger members. However, the government does not believe this necessitates changing the overall approach to underpin protection in the LGPS – i.e. that protection applies until a member’s legacy scheme normal pension age, a point in time which applies consistently to almost all LGPS members, when they reach their 65th birthday.
- 3.58 In the government’s view, it is also important that, as with the other main public service pension schemes, accrual of underpin protection ceases on 31 March 2022 to ensure that, in the future, all LGPS members, including those with and without underpin protection, accrue pension on the same basis – i.e. career average accrual. By necessity, this approach means underpin protection will end for many members before they reach their 2008 Scheme normal pension age, as well as for members who work past 65. However, this simply reflects that 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. Therefore, from 1 April 2022 onwards all LGPS membership will accrue on a career average basis, without ongoing underpin protection.
- 3.59 Nevertheless, to ensure that younger members with underpin protection have protection that is equivalent to their older colleagues, members with underpin protection will retain the benefit of that underpin being linked to final salary until the earlier of the date they leave active service or reach their 2008 Scheme Normal Pension/Retirement age. This will ensure that younger members who are currently at an early stage of their career, and who may have promotions and other salary increases later in their career, have an equivalent underpin test to their older colleagues (i.e. allowing for career progression). Members who return to active membership and aggregate their pension records without a disqualifying break in service (i.e. five years or more) would retain their right to such an underpin based on their final salary.<sup>19</sup>

## Judicial Pensions: *McCloud* Judgment

### Remedy design

- 3.60 The Court of Appeal held that the 2015 reforms constituted unlawful direct discrimination on the grounds of age because older judges could remain in their legacy scheme, Judicial Pension Scheme 1993 (JUPRA), or Fee-Paid Judicial Pension Scheme (FPJPS) due to their age. Because the *McCloud* litigation has resolved the discrimination for claimant judges, the measures set out are

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<sup>18</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205837/Public\\_Service\\_Pensions\\_-\\_good\\_pensions\\_that\\_last\\_Command\\_paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205837/Public_Service_Pensions_-_good_pensions_that_last_Command_paper.pdf)

<sup>19</sup> For all members, who have service accrued before the date of the 2014/2015 LGPS reforms aggregated with their service under the reformed schemes, the calculation of the benefits derived from that earlier service will be linked to their final salary.

intended to address the discrimination for non-claimant judges in scope of the judgment.

- 3.61 The measures relevant to judicial pensions will allow all judges in scope to choose to return to JUPRA/FPJPS, backdated to 1 April 2015 and deals with the effects of this choice, for example in respect of pension benefits and contributions. The measures are designed to, as far as possible, put judges in scope in the position they would have been in but for the discrimination. It is therefore the government's view that the design of these measures does not treat anyone less favourably because of a protected characteristic, e.g. age.
- 3.62 When the New Judicial Pension Scheme 2015 (NJPS) was introduced, in order to be eligible for transitional protection and remain in JUPRA/FPJPS, a judge must have been (i) in service on or before 31 March 2012 and on or after 1 April 2015 and (ii) within ten years of normal pension age on 1 April 2012. The Court of Appeal held that the second criterion was unlawfully discriminatory on the grounds of age (directly) and race and sex (indirectly).
- 3.63 Protected judges, and those who were appointed to judicial office after 31 March 2012, are not in scope of this remedy, since they were not subject to the unlawful discrimination. Protected judges are those who remained in JUPRA/FPJPS because they had been appointed on or before 31 March 2012 and were within ten years of retirement on 1 April 2012. These judges remained in JUPRA/FPJPS rather than being moved to NJPS, and those appointed after 31 March 2012 were ineligible for transitional protection regardless of their age. Respondents to the MoJ consultation agreed with this position.
- 3.64 Protected judges were not subject to the unlawful discrimination identified by the Court of Appeal. Rather, they had certainty regarding their pension provision and remained in a scheme with objectively favourable terms not afforded to others. The forthcoming options exercise has been designed to extend the terms that were offered to protected judges to others, enabling both unprotected and taper-protected judges to be treated in this way, i.e. as though they never left their legacy schemes, JUPRA/FPJPS.
- 3.65 The requirement to have been in office on or before 31 March 2012 may disproportionately affect younger judges, since those who take up office after this date are likely to be younger. However, the unlawful discrimination identified in *McCloud* was between protected judges who were in service by 31 March 2012, on the one hand, and unprotected and taper-protected judges who were also in service on that date, on the other hand. It is the latter two groups that the government must retrospectively provide a remedy, to remove the discrimination.
- 3.66 Because those appointed after 31 March 2012 were not subject to the unlawful discrimination, the government does not consider it appropriate to extend the choice of scheme membership to these members. While more recent appointees may be disproportionately younger, changes to pension arrangements or other terms and conditions of appointment by their nature impact differently on those who join or leave judicial service at different times. The government therefore remains of the view that the limited impacts on younger judges are justified in the context of removing earlier discrimination in a manner which is affordable and respects the rationale for having transitional

protection at all. Moreover, the government remains of the view that by 1 April 2012 new joiners would have been aware that there was a strong likelihood changes would be made to the pension scheme. There were clear indications long before 1 April 2012 that change was afoot.

- 3.67 While it is arguable that maintaining the 31 March 2012 criterion has the potential to lead to indirect discrimination, the government considers that reasons for doing so are justifiable.

## Tapered protection

- 3.68 The measures set out in the Bill mean that taper-protected judges will choose either JUPRA/FPJPS or NJPS membership for the remedy period, i.e. they will not be able to split accrual across schemes. While this will have a positive impact on most taper-protected members (since most will be better off in JUPRA/FPJPS or NJPS for the entire remedy period rather than being a member of JUPRA/FPJPS until their taper date and NJPS thereafter), there may be some individuals for whom retaining tapered protection would have been advantageous.
- 3.69 It remains the government's view that any advantage conferred on this group was not the intended effect of tapered protection, but rather is as a result of a policy that has been identified as giving rise to unjustified age discrimination. Retaining tapered protection for some judges' risks treating judges who were not taper-protected less favourably. This less favourable treatment would be on account of age, since tapered protection was only given to those aged between 51½ and 55 on 1 April 2012.
- 3.70 Maintaining an age-based system of tapered protection would therefore perpetuate or even extend the discrimination identified in *McCloud*. The government has considered alternative options to test whether it would be possible to construct an alternative system of tapered protection not based on age. However, even if it were possible, any such system would be much more complicated for schemes and members and, since it would 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.
- 3.71 The government therefore remains of the view that it is necessary to remove the taper entirely so that taper-protected judges must make a choice between JUPRA/FPJPS or NJPS for the remedy period.
- 3.72 The government is aware that some members may be disproportionately affected by adjustments to tapered protection and will work with pension schemes to ensure that no member will be subject to an unreasonable individual burden or would suffer significant prejudice. For example, where pension benefits are adjusted for taper protected members who have already retired, the government will take a proportionate approach to the recoupment of any overpaid benefits, including ensuring any overpayment can be collected over time.

## Reformed judicial pension scheme

- 3.73 To analyse the impact that the introduction of the newly designed, reformed judicial pension scheme would have on judges, data was broken down by

pension scheme membership and used to look at certain protected characteristics of judges. This data demonstrates that NJPS (salaried and fee-paid judges) contains a higher proportion of younger judges compared to JUPRA and FPJPS. For example, in NJPS, 16% of judges are aged 60 and above, compared to JUPRA where 84% of judges are within this age range. There is also generally a higher proportion of younger judges in the more junior salary bands compared to those in the more senior positions. For example, in NJPS, 2% of the judges in Salary Group 4 are aged between 41 to 50, compared to 32% of judges in Salary Group 7. JUPRA judges in the more senior tiers are also generally older compared to the junior tiers. For example, 11% of judges in Salary Group 4 are aged 59 or younger, compared to 21% of judges aged 59 or younger in Salary Group 7.

- 3.74 In general, judges who are in JUPRA or FPJPS, whether because they were transitionally protected or chose JUPRA or FPJPS for the *McCloud* remedy period, would find the reformed scheme less financially beneficial than if they remained in their current pension scheme. This cohort are more likely to be older.
- 3.75 Additionally, judges who are in NJPS, whether because they were appointed after 31 March 2012 or chose to become members of NJPS for the *McCloud* remedy window, would likely find the new arrangements more financially beneficial than if they remained in their current pension scheme. This cohort are more likely to be younger.
- 3.76 From the date of implementation of the reformed scheme, there will only be one scheme that judges are able to accrue benefits in and the same scheme design would apply to all judges. Therefore, the government does not consider that the introduction of the reformed scheme results in indirect discrimination on the grounds of age.
- 3.77 However, while the same scheme features would apply to all judges in the reformed scheme, certain scheme features are likely to affect judges differently based on their length of service (and indirectly age) when they transfer to the new reformed scheme in 2022. For example, JUPRA/FPJPS feature an automatic lump sum and accrual is based on the member's final salary, but these will not be features of the reformed scheme. This is therefore likely to impact judicial members in these pension schemes, who are more likely to be older.
- 3.78 The government considers that these changes are necessary in order to make the reformed scheme more equitable and sustainable in the long-term. Instead of an automatic lump sum, the reformed scheme will offer all members of the judiciary the option to commute part of their pension into a lump sum payment, with a commutation supplement calculated to compensate for the tax-unregistered status of the scheme.
- 3.79 In the reformed scheme there will be no service cap, which was a feature of the JUPRA scheme. Removing the service cap will more likely benefit members who have reached or almost reached the JUPRA cap but have not yet retired. Those judges in JUPRA that have retired recently or will retire before the reformed scheme is implemented, who are likely to be older, will therefore not realise these benefits. However, these judges will have been able to benefit from belonging to a final salary pension scheme for 20-years and have had the

opportunity to contribute to an additional voluntary contribution scheme between reaching their cap and retiring in order to help increase their retirement income.

- 3.80** In the reformed scheme, the Normal Pension Age (NPA) will be linked to the State Pension Age (SPA) in order to align with the 2015 pension reforms. While this will impact younger judges that are moving from JUPRA/FPJPS, the government considers that the impact of this is balanced by the option in the reformed scheme for judicial office holders to take early retirement from the normal minimum pension age, which is currently set at 55<sup>20</sup> (with an early retirement reduction to reflect the fact that their pension will be in payment for longer).
- 3.81** Dependants' pension in the reformed scheme is set at 37.5%, compared to the 50% level in JUPRA. This change would have the biggest impact on younger JUPRA members, as, had they been allowed to continue to build up a JUPRA entitlement, their spouse or civil partner would have been entitled to more pension. The government considers this change is justified in order to make the reformed scheme more equitable and sustainable in the long-term.
- 3.82** The overall design of the reformed scheme is intended to achieve the policy objective of addressing significant recruitment and retention issues which are particularly acute at the more senior tiers of the salaried judiciary and to ensure that the scheme is affordable and sustainable. When all scheme features are considered, no judge should be worse-off compared to moving or remaining in NJPS in terms of the overall value of their pension. Therefore, to the extent that the move to the reformed scheme results in differential impacts, the government considers that that this is a proportionate means of meeting the policy aim.

## Judicial Mandatory Retirement Age

- 3.83** Imposing an MRA is prima facie direct discrimination on the basis of the protected characteristic of age. However, having a set MRA fulfils the legitimate aims of promoting and preserving judicial independence by avoiding the need to make individual decisions of suitability in every case; preserving the dignity of the judiciary by avoiding the need for individual assessments of health and capacity; and of maintaining public confidence in the capacity and health of the judiciary. These justifications were successfully defended in *White v MoJ*, and the government believes they remain legitimate in relation to the new higher MRA.
- 3.84** Raising the MRA to 75 and the potential retention of older judicial office holders (JOHs) resulting from this change could have an indirect impact by slowing the flow of new, younger appointees to judicial office. However, the government considers that this is proportionate in relation to the following two aims, considered legitimate:

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<sup>20</sup> In 2014, the government announced it would increase the minimum pension age to 57 from 2028. From then on, the minimum pension age will remain 10 years below State Pension age, with the SPA being reviewed every 5 years.

- workforce planning: ensuring there is an appropriate number of JOHs at the necessary levels of seniority to meet the needs of various jurisdictions and enabling reasonable accurate forecasts of future need
  - inter-generational fairness: ensuring that experienced JOHs can continue in office for a reasonable time, given recent increases in life expectancy, while ensuring a balance of opportunity between generations and accounting for effects on judicial diversity
- 3.85** The higher MRA will help to ensure there is a sufficient number of JOHs to cope with the current and future jurisdictional caseload. This aim is aligned with the constitutional duty of the Lord Chancellor to ensure provision of resources for the efficient and effective support of the courts for which he is responsible. The analysis of retirement trends suggested that with an MRA of 75, the number of judges and non-legal members in post could be around 400 higher than if the MRA had remained at 70 (the equivalent of 5% of the judicial complement at the time the modelling was run). For magistrates, this figure was 2,000 (the equivalent of 15% of the magistrates complement).
- 3.86** The retention impact can vary by type of office due to the age profile of different types of offices. In the courts, a higher proportion of High Court, Deputy High Court, Deputy District Judges and Deputy District Judges (Magistrates Courts) might be retained, whilst retention impacts might be smaller for District Judges and Circuit Judges. In tribunals, non-legal and medical members might have higher retention rates than tribunal judges. The numbers for the Court of Appeal and Supreme Court judges are too small to warrant reliable analysis.
- 3.87** It is difficult to make similar assessments of turnover and impact on diversity on 'new terms' coroners, as the numbers involved are significantly smaller. Annual turnover of 'new terms' coroners is likely to be very small (up to 1%), due to their age profile. The Chief Coroner's Office has advised that diversity is not such a key concern for coroners as it is for judges, although efforts are made during recruitment to account for diversity of candidates.
- 3.88** Finally, a higher MRA could have a positive impact by attracting and promoting opportunities for individuals considering a judicial career later in life, such as those who may have had non-linear careers or taken career breaks to balance professional and family responsibilities.
- 3.89** The government therefore consider that an increase of MRA to 75 constitutes a proportionate means of achieving the legitimate aim of enabling experienced JOHs to continue in their role, whilst balancing their interests against the desire of new generations to accede to judicial roles. Annex C presents the current age breakdown of the current complement and of new entrants for all jurisdictions affected.

## Judicial Pay

- 3.90** There is no evidence that this measure is discriminatory on the basis of age as its purpose is to put all judicial offices for which the Lord Chancellor has responsibility for remuneration on an equal footing. Any allowances introduced using this power would require their own equality impact assessments.

- 3.91 The measure applies equally to all offices in scope regardless of age; however, judicial office holders included in these measures are generally older, 90% of Masters and Deputy Masters and 65.3% of District judges and Deputy District judges (County Courts) are over the age of 50.<sup>21</sup>

## UK Asset Resolution

- 3.92 Based on the data HM Treasury holds about the individuals affected by the UKAR clauses, many of these have pensions in payment including some for many decades (and some may therefore be considered vulnerable by virtue of their age). Given that all the individuals will be affected by the policy in the same manner irrespective of age, the government does not envisage this policy to have a differential impact on individuals based on age. All individuals should be affected by the UKAR measures in the same manner.

## Further measures

- 3.93 The measures in Clause 79(5-6) change the list of schemes exempt from seeking Treasury consent for making scheme regulations and the process through which this list can be amended. As this does not involve a change in scheme rules and is not linked to any envisaged changes in scheme rules, the government does not envisage this measure to have a differential impact on individuals on the basis of any age-related protected characteristics.
- 3.94 The measures in Clause 83(1-6) clarify that non-scheme benefits can only be paid to persons who are members of a section 1 scheme, by virtue of s1(2) or s25, in addition to persons who would be such members but for the fact they are members of a stakeholder or personal pension scheme. Given this Clause is a clarification of existing legislation, the government does not envisage this measure to have any differential impact on individuals on the basis of age.

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<sup>21</sup> Judicial Diversity Statistics 2020.

# Chapter 4

## Equality impact analysis: Sex, pregnancy and maternity

### Introduction

- 4.1 Chapter 4 considers the impacts of the policy changes set out in the Bill 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 may arise.
- 4.2 In 2018 the Court of Appeal 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.
- 4.3 The government acknowledges that the measures set out in the Bill may have different impacts on people depending on these protected characteristics. It has considered whether those potential impacts are proportionate and justified and has concluded that they are, as set out below, for all the measures in the Bill.

### Unfunded pension schemes (excluding judicial): *McCloud* judgment

- 4.4 The government has considered the issues raised around potential indirect sex discrimination. Its decision to implement the deferred choice underpin (DCU) for unfunded pension schemes other than the judiciary has been in part informed by concerns raised in responses about the impact that making a choice before retirement would have for women who may be more likely to take a career break. The government's intention in implementing the DCU is that it will be fairer for women and other groups who are more likely to take career breaks or work part-time. This is because the DCU will allow members to make a decision at retirement or the point when benefits are payable, based on known benefit entitlements. This will result in a well-informed choice for members as it will be based on their career accounting for any career breaks or part-time working.
- 4.5 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.<sup>1</sup> 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.

- 4.6 The government acknowledges that it is likely that more recent joiners to some of the 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.
- 4.7 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 sex, pregnancy or maternity. Schemes will carry out subsequent analysis of equality impacts alongside consultations on changes to scheme regulations. The government will then be able to consider the impacts for each scheme at this stage too.

## Remedying the discrimination

- 4.8 The courts identified that those joining some relevant workforces on or after 1 April 2012 were more likely to be women. This is true in both 2012<sup>2</sup> and 2016,<sup>3</sup> 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. It is likely that in some workforces, there will be a higher proportion of women who have not benefitted from the measures because post-2012 joiners are not in scope.
- 4.9 Nevertheless, and despite these impacts, for the reasons as set out in paragraph 3.6, the government considers that these potential impacts on the protected characteristics of sex and pregnancy and maternity are justified.
- 4.10 Individuals who were in service on or before 31 March 2012 but subsequently left and re-joined are also 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

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205840/Central\\_Equalities\\_Impact\\_Analysis.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205840/Central_Equalities_Impact_Analysis.pdf)

<sup>2</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205840/Central\\_Equalities\\_Impact\\_Analysis.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205840/Central_Equalities_Impact_Analysis.pdf) – Table A.1.

<sup>3</sup> 'Labour Force Survey (LFS) 2016', Quarter 3.

elderly relatives, to maintain parity with their colleagues who joined at the same time in respect of the nature of their pension terms.

4.11 The government recognises that women are more likely to take a career break than men. Analysis supports this at the UK population level,<sup>4</sup> 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%<sup>5</sup> of those who work part-time are women. A higher proportion of women working part time is also consistent with the NHS workforce demographic report 2018<sup>6</sup> and so it is assumed that 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 Agenda for Change (AFC) Bands 4 to 8d<sup>7</sup>

4.12 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. This has informed the government's decision to provide a choice to members at retirement (or when benefits become payable), because this means individuals can make an informed choice, as this decision will be based on facts rather than assumptions. This will minimise any unequal effects of the DCU as a result of the above working patterns in the relevant workforces.

## Future pension provision

4.13 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 (including those who have joined since 2012, and are not therefore eligible for remedy), and the aim is to ensure equal treatment in this respect.

4.14 Members who 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 or eligible to re-join at 31 March 2012, and who will accrue service in the legacy scheme up to 1 April 2022, whether benefits accrue

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<sup>4</sup>[www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/economicactivityandemploymenttypeformenandwomenbyageoftheyoungestdependentchildlivingwiththetables](https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/economicactivityandemploymenttypeformenandwomenbyageoftheyoungestdependentchildlivingwiththetables)

<sup>5</sup>[www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/fulltimeparttimeandtemporaryworkersseasonallyadjustedemp01sa](https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/fulltimeparttimeandtemporaryworkersseasonallyadjustedemp01sa)

<sup>6</sup> [www.digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/how-we-support-diversity-and-inclusion/our-workforce-demographics-2018](https://www.digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/how-we-support-diversity-and-inclusion/our-workforce-demographics-2018)

<sup>7</sup> 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 AFC pay band scale.

under the legacy or reformed design, and who will be offered the choice of scheme benefits through the DCU). They will move to the reformed schemes from 1 April 2022.

- 4.15 Data on this specific subset of members is not currently available for analysis. For the purpose of this analysis, it is therefore considered 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 does not align with the whole public service pension workforce.
- 4.16 The government is aware of concerns from some workforces, and especially the police, that the policy decision to move members in scope of remedy into the reformed schemes after the remedy period would negatively impact those who work part time or took a career break, who they felt would be more likely to be female. The government has considered these concerns but believes that the most proportionate way of ending the age discrimination identified in the *McCloud* litigation is that, 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. If the government extended the date of transfer to the reformed scheme for a certain cohort then it would face further claims for direct age discrimination. The government has given 20 months' notice that the government was considering remedying the discrimination caused by the transitional provisions by closing the legacy schemes to future accrual.
- 4.17 As noted above, one reason for the CARE scheme structure in the reformed schemes is that it offers fairer outcomes to those who have tended to experience lower salary progression, which is more likely to affect women than men.<sup>8</sup> Many lower earning men, as with many other lower earners, will also be better off under a CARE scheme structure due to the accrual rate. Therefore, under present career patterns, a CARE scheme structure is likely to be relatively more beneficial to women than to men, although many, perhaps the considerable majority, of lower earners will benefit.
- 4.18 The pension age elements of the remedy measures should not have a differential impact between men and women. For example, although reformed scheme designs link Normal Pension Ages to the State Pension Age (except for members of the uniformed services who take pension while in active service, for whom it is age 60), that is subject to a minimum NPA of age 65 where a link to State Pension Age otherwise applies. That means that, although female and male State Pension Ages were not fully equalised until 6 December 2018, for determining pension scheme accrual over the remedy period men and women with the same date of birth would have the same scheme NPA under their particular reformed design; and all men and women in the same membership category would have the same legacy design NPA.

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<sup>8</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205840/Central\\_Equalities\\_Impact\\_Analysis.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205840/Central_Equalities_Impact_Analysis.pdf)

## Cost Control Mechanism

- 4.19 As set out above, the Bill contains provisions to ensure that any ceiling breaches that occur at the 2016 valuations (or 2017 valuations for the Local Government Pension Scheme (Scotland)) are not rectified. This means that there will be no benefit reductions for members of any schemes at these valuations. Any floor breaches that occur will be honoured.
- 4.20 This Bill measure means that individuals in certain pension schemes will not face benefit reductions that would have otherwise occurred. This policy is implemented for any scheme that breaches the cost control ceiling, and so applies to all members equally, regardless of sex. The specific schemes affected by this policy will not be known until the 2016 valuations are finalised (or 2017 valuations for the Local Government Pension Scheme (Scotland)). It is possible that there will be indirect impacts on members of different sexes, but there is not currently sufficient data on what these may be.

## Local Government: *McCloud* judgment

- 4.21 The proportion of men and women who would qualify for underpin protection and benefit from that protection closely match the profile of the scheme. However, as a proportion of their membership, men are marginally more likely to qualify for the proposed underpin and also more likely to benefit from that underpin protection.
- 4.22 Based on the data used in this analysis, it is anticipated that men would be marginally more likely to qualify for the underpin, in part because, reflecting LGPS experience, the average man would be expected to have a lower voluntary withdrawal rate than the average woman. This reflects the fact that women are more likely to have breaks in employment due to childcare and other caring responsibilities.<sup>9</sup> Another reason, also in line with previous scheme experience, is that the average male LGPS member would be expected to have higher salary progression than the average woman.
- 4.23 Under the Bill measures, it is proposed that LGPS regulations retain an approach whereby relevant scheme members must have been in active service on 31 March 2012 to obtain underpin protection. As female workers are more likely to have career breaks, it's possible that this approach could be relatively disadvantageous to female members in the scheme. This has been a feature of the underpin since it was introduced in 1<sup>st</sup> April 2014 and meets the original policy intent within the LGPS – i.e. that transitional protection is appropriate only for members who had a reasonable expectation of continuing as members of old scheme designs.
- 4.24 The proposed reforms were well publicised and it's the government's view that local government workers joining or re-joining the LGPS after 31 March 2012, considered as a group, can reasonably be expected to have known they would not remain in the legacy schemes. Whilst the finding in *McCloud* means the government is making changes to extend underpin protection to younger workers who were found to have been discriminated against, the government does not consider the judgment necessitates changing other fundamental

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<sup>9</sup> <https://researchbriefings.files.parliament.uk/documents/SN06838/SN06838.pdf>

aspects of underpin protection, such as the requirement to have been in active service on 31 March 2012.

- 4.25 Active LGPS members on 31 March 2012 who have breaks in service after this date will be able to retain underpin protection if they return to the scheme without a continuous break of more than five years. Allowing for breaks in service of up to five years after 31 March 2012 will help reduce the risk of female members being disadvantaged by their increased likelihood of having breaks in employment. This would mitigate any impact on those that share this protected characteristic.
- 4.26 GAD's analysis is based on the LGPS's active membership in March 2019. As these measures will be applied retrospectively to April 2014, a number of members who would be expected to benefit from the proposed underpin are not included in this analysis (being mostly those who were previously in the scheme on 31 March 2012 and re-joined after 1 April 2014 without a five-year break in service). As female members are assumed to have a higher rate of voluntary withdrawal, it is possible that a greater proportion of female members would be included in this tranche of membership.
- 4.27 Members with longer scheme membership and with higher salary progression would be more likely to receive an addition to their pension through the underpin (i.e. where the final salary benefit is higher). These differential impacts reflect the workings of a final salary scheme and demonstrate some of the effects that can arise under that design. This inherent issue with final salary schemes is one of the reasons why the government will end underpin protection from April 2022, meaning all future LGPS benefit accrual will be on a career average basis.

## Judicial Pensions: *McCloud* judgment

- 4.28 In addition to the finding of direct age discrimination in *McCloud*, the Court of Appeal was satisfied that the equal pay claim was made out because the increased number of women in the younger age group meant they were disproportionately adversely affected by the 2015 reforms. In addressing the direct age discrimination, the Bill measures will also remove any indirect discrimination on the grounds of sex for those in scope of the judgment.
- 4.29 However, given that those who took up office after 31 March 2012 are not in scope of *McCloud*, this may have a disproportionate impact on female judges. This may be in part due to concerted efforts to improve judicial diversity in recent years. However, to the extent that maintaining the 31 March 2012 criterion may lead to the potential for indirect discrimination on the grounds of sex, the government considers the above justification in respect of age would also apply.

## Reformed Judicial Pension Scheme

- 4.30 Data shows that the New Judicial Pension Scheme 2015 (NJPS) (salaried and fee-paid) contains a higher proportion of women compared to Judicial Pension Scheme 1993 (JUPRA), and Fee-Paid Judicial Pension Scheme (FPJPS). The total percentage of salaried female judges in NJPS is 46% compared to 31% in JUPRA. The percentage of female fee-paid judges in NJPS is 45% compared to 26% in FPJPS.

- 4.31 There is also generally a higher proportion of female judges in the more junior salary bands compared to those in the more senior positions. For example, in JUPRA female judges make up 33% of all office holders in Salary Group 7, compared to 14% in Salary Group 4. This difference is, however, smaller in NJPS where 47% of judges in Salary Group 7 are female, compared to 43% in Salary Group 4.
- 4.32 In general, judges in JUPRA or FPJPS would find the reformed scheme less financially beneficial. This cohort are more likely to be male. Conversely, judges who are in NJPS, would likely find the new arrangements more financially beneficial. This cohort is more likely to contain a higher percentage of female judges than JUPRA and FPJPS. However, a move to the reformed scheme is not considered to result in indirect discrimination based on sex, as all judges will accrue benefits in the same scheme once it comes into force.

## Judicial Mandatory Retirement Age

- 4.33 A higher MRA would apply to all existing and future judicial office holders (JOHs) when it comes into force. It will be for each JOH to decide whether they wish to remain in office until their MRA.
- 4.34 To assess whether the increase in the MRA may create sex discrimination, the proportion of men and women JOHs approaching retirement was compared to the proportion of men and women that have been recently recruited by the Judicial Appointments Commission (JAC). The same methodology relating to yearly turnover was applied.
- 4.35 Based on JAC diversity statistics from 2015 to 2019, 46% of applicants recommended for appointment by the JAC were women compared to 27% of JOHs (other than magistrates and coroners) who are approaching retirement (aged 65 and over). Similarly, 58% of new magistrates were women, compared to 50% of magistrates approaching retirement. This might suggest that an increase in MRA could retain a bigger proportion of men. There is no evidence to suggest that either men or women are more likely to wish to remain in office. The Office for National Statistics (ONS) national-level data does not include data on the sex of those who continue to work aged 70 and over, to assess whether men or women are more likely to continue to work.
- 4.36 An increase in the MRA leading to increased retention, specifically retention of a higher proportion of males, varies across judicial offices. Annex C shows the proportion of JOHs approaching retirement who are women, the proportion of newly-appointed JOHs who are women, and the difference factor, which shows the magnitude of difference for this effect.
- 4.37 This would suggest that District Judges (Magistrates' Courts), Deputy District Judges (Magistrates' Courts), Recorders and Employment Tribunal Fee Paid Judges are most affected, i.e. a change in MRA would more likely retain men in those posts, but that generally the effects on male / female ratio are mixed depending on judicial office.
- 4.38 Nonetheless, this snapshot assessment does not accurately reflect the fact that:
- it is likely that only a small proportion of JOHs will take advantage of the new raised MRA; and

- the departures will take place successively, year by year, as JOHs reach the age of 70 and over

It also does not take into account the size of the current cohorts, and the small difference new appointments contribute annually to increased sex diversity.

- 4.39 The potential year-by-year additional retention rate of retiring JOHs has been modelled and the difference that could make to the male / female ratio of the overall judiciary has been assessed. To do this, current retirement patterns (accounting for the fact that a small proportion of JOHs stay until they reach MRA), current diversity efforts, and the age profile of current JOHs (with protected characteristics and without) were all taken into account. It was not considered proportionate to conduct any analysis on the effects of a change in MRA to the proportion of JOHs sitting in extensions or retirement, as they constitute an exceptional category (although there are some statistics on this in Annex C).
- 4.40 The main conclusion is that, compared to the option of not changing the MRA:
- an increase in MRA to 75 will result in a 1.5% to 2.1% annual decrease of women JOHs (as a proportion of new JOH appointments) in the short term (within the first year of implementation), and 1.2 to 2.8% in the medium-long term (within 10 years of implementation)
  - there will be a marginal impact on the proportion of magistrates who are women (a maximum of 1.3% fewer women magistrates could be retained). Recent magistrate appointments have been 58% women, so in effect this change would contribute to a balancing of the male / female ratio on the magistrate bench
- 4.41 However, the overall impact is marginal and would not be likely to constitute a particular disadvantage on the basis of sex. These minimal impacts are justified as a proportionate means of achieving the legitimate aims set out above. The government will continue to monitor the impacts of a raised MRA on female retention by monitoring the male / female ratio of JOHs who stay beyond 70.
- 4.42 Available data on the male / female ratio from the Chief Coroner's Office (CCO) suggests 'new terms' coroners who will be approaching retirement in the next decade are only slightly less sex diverse than recent appointments (35% vs 49% women), which suggests an increase in MRA would affect diversity slightly. That said, these effects are probably negligible, due to the very small number of yearly retirements, compared to the overall complement.
- 4.43 There is no available evidence that suggests that a change in MRA would constitute direct discrimination on protected characteristics other than age. The new MRA will apply across JOHs equally, with no JOH with other protected characteristics being treated less favourably compared to those JOHs who do not share the protected characteristic.

## Judicial offices in Northern Ireland

- 4.44 Given the Lord Chancellor also has a responsibility for setting the terms and conditions for most judicial office holders in Northern Ireland, the office of the Lord Chief Justice of Northern Ireland was approached for any evidence that

might inform this assessment of a change in MRA on JOHs with protected characteristics in excepted Northern Ireland offices.

- 4.45 The Lord Chief Justice for Northern Ireland's Office (OLCJ) has provided a breakdown of male to female ratio for JOHs for which the Lord Chancellor is responsible. This data can be found in Annex C, Table 15.
- 4.46 This data in Annex C suggests a lower proportion of women are approaching retirement, compared to newly appointed JOHs. As before, there was no available evidence that suggested that increasing MRA would particularly disadvantage women.
- 4.47 Regarding race, OLCJ indicated that 100% of excepted NI judiciary are white. This seems to be lower than the judicial applicant pool which might suggest increasing MRA might decrease turnover and therefore slow down an increase in racial diversity, but the numbers are too small to warrant reliable conclusions.

## Judicial Pay

- 4.48 There is no evidence that this measure is discriminatory on the basis of sex as its purpose is to put all judicial offices, for which the Lord Chancellor has responsibility for remuneration, on an equal legal footing. Any allowances introduced using this power would require their own equality impact assessments.
- 4.49 The measure applies equally to all offices in scope regardless of sex, however a majority of holders of the judicial office holders included in the measures are generally male; 33% of Masters and Deputy Masters and 41% of District judges and Deputy District judges (County Courts) are female (based on Judicial Diversity Statistics 2020).

## UK Asset Resolution (UKAR)

- 4.50 The data which HM Treasury holds regarding those who will be affected by the UKAR measures is minimal and does not include significant information on these individuals' protected characteristics. However, the government does not envisage this policy having a differential impact on individuals on the basis of any sex and/or pregnancy and maternity-related protected characteristics. All individuals affected by this policy will be affected in the same manner.

## Further measures

- 4.51 The measures in Clause 79(5-6) change the list of schemes exempt from seeking Treasury consent for making scheme regulations and the process through which this list can be amended. As this does not involve a change in scheme rules and is not linked to any envisaged changes in scheme rules, the government does not envisage this measure to have a differential impact on individuals on the basis of any sex and/or pregnancy and maternity-related protected characteristics.
- 4.52 The measures too in Clause 83(1-6) clarify that non-scheme benefits can only be paid to persons who are members of a section 1 scheme, by virtue of s1(2) or s25, in addition to persons who would be such members but for the fact they are members of a stakeholder or personal pension scheme. Given this Clause is a clarification of existing legislation, the government does not envisage this

measure to have any differential impact on individuals on the basis of any sex and/or pregnancy and maternity-related protected characteristics.

# Chapter 5

## Equality impact analysis: Race

### Introduction

- 5.1 This chapter sets out the equality impacts of each of the measures set out in the Bill on the protected characteristic of race 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.
- 5.2 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. For the measures in the Bill where these impacts specifically arise, the government has set out its analysis below.
- 5.3 The government recognises that younger members who may be affected by other measures in the Bill are also more likely to be from ethnic minorities, specifically within the LGPS and Judicial membership. Where this arises, the government has also set out its analysis below.

### Unfunded pension schemes (excluding judicial): *McCloud* judgment

- 5.4 There are potential differential impacts by race for these measures in the Bill. This happens in circumstances in which younger members are more likely to be from ethnic minorities, evidenced by the analysis below, and in Annex A.
- 5.5 The government has considered the indirect race discrimination, especially the impact on younger members, and believes the impacts are justifiable for remedying the discrimination through the delegated powers in the Bill.

### Remedying the discrimination

- 5.6 The proportion of individuals from ethnic minority groups has increased in the public sector between 2012<sup>1</sup> and 2020<sup>2</sup> 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. The overall proportion of individuals from ethnic minority groups within the public sector is also broadly consistent with the proportions in some public sector workforces:

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205840/Central\\_Equalities\\_Impact\\_Analysis.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/205840/Central_Equalities_Impact_Analysis.pdf) – Table A.4.

<sup>2</sup> ‘Labour Force Survey (LFS) 2020’, Quarter 3.

- NHS: the proportion of employees from an ethnic minority group in the NHS workforce has risen by 1.5 percentage points from 2015 to 2019<sup>3</sup> (11.2% to 12.7%) suggesting new starters are more likely to be from ethnic minority groups
  - Civil service: the proportion of employees from an ethnic minority group in the civil service has increased between 2012<sup>4</sup> and 2020<sup>5</sup> by 3.9 percentage points (9.3% to 13.2%). This is slightly higher than the public sector average, and indicates that new starters in the civil service are more likely to be from an ethnic minority group
- 5.7 There are some variations within other unfunded public service pension schemes as some don't match the public sector-wide trend. The government holds some other race data for individual public sector workforces, such as is referenced in Annex A. These still show a pattern of increasing ethnic minority representation in recent years, although this might not match the wider public sector race proportions over these recent years.
- 5.8 It is acknowledged that more recent joiners to some relevant workforces will typically be younger and that in some 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.
- 5.9 For the reasons as set out above, the government considers that the impacts on the protected characteristics of race are justified. Schemes will also consider the implementation of the measures in the Bill in due course which may provide further analysis on this protected characteristic.

## Future pension provision

- 5.10 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.
- 5.11 The measures in the Bill on 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 Bill.
- 5.12 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 have tended in the past to experience lower salary progression.

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<sup>3</sup> [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](https://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)

<sup>4</sup> [www.ons.gov.uk/employmentandlabourmarket/peopleinwork/publicsectorpersonnel/bulletins/civilservicestatistics/2012-10-24](https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/publicsectorpersonnel/bulletins/civilservicestatistics/2012-10-24)

<sup>5</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/940284/Statistical\\_bulletin\\_Civil\\_Service\\_Statistics\\_2020\\_V2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940284/Statistical_bulletin_Civil_Service_Statistics_2020_V2.pdf)

## Cost control mechanism

- 5.13 The Bill implements the policy of waiving ceiling breaches for any scheme that breaches the cost control ceiling, and so applies to all members equally, regardless of race. The specific schemes affected by this policy will not be known until the 2016 valuations are finalised (or 2017 valuations for the Local Government Pension Scheme (Scotland)).
- 5.14 It is possible that there will be an indirect racial impact, but there is not currently sufficient data on what this may be. However, the government believes that this policy is nevertheless a proportionate response in order to avoid large benefit reductions for members based on a mechanism that may not be working as intended.

## Local Government: *McCloud* judgment

- 5.15 Table 5 in Annex B indicates that the breakdown of race within the public sector is broadly consistent with the UK population. This is assumed to be the same within the LGPS membership. Black/African/Caribbean individuals are slightly overrepresented in the public sector relative to the UK population by a small proportion. However, Black/African/Caribbean individuals are not anticipated to be affected by the changes to underpin protection to a larger extent relative to the UK population averages.
- 5.16 The changes to transitional arrangements of 2014 pension schemes from the measures in the Bill will arguably affect white people the most as this group represent 88% of the public sector. However, a differential impact in relation to the application of the underpin in relation to this race is not expected.

## Judicial Pensions: *McCloud* judgment

- 5.17 In *McCloud* the courts were also satisfied that the indirect race claim was made out because the increased number of minority ethnic judges in the younger age group meant they were disproportionately adversely affected by the reforms. In addressing the direct age discrimination, the Bill will also remove any indirect discrimination on the grounds of race for those in scope of the judgment.
- 5.18 However, given that those who took up office after 31 March 2012 are not in scope of *McCloud*, this may have a disproportionate impact on minority ethnic judges. This may be in part due to concerted efforts to improve judicial diversity in recent years, as reflected in the increase from 4.2% to 8% in the proportion of minority ethnic judges in the courts between 2012 and 2020. However, to the extent that maintaining the 31 March 2012 criterion may lead to the potential for indirect discrimination on the grounds of race, this is considered to be objectively justified for the same reasons as described above in respect of the age criterion.

## Reformed Judicial Pension Scheme

- 5.19 The data available on the race of the judiciary broken down by pension scheme is too small to be able to draw any trends with certainty, however, it does indicate that the New Judicial Pension Scheme 2015 (NJPS) (salaried and fee-paid) judges may be more likely to be from a Black, Asian, or ethnic minority background than judges in Judicial Pension Scheme 1993 (JUPRA), and Fee-Paid Judicial Pension Scheme (FPJPS). This data is also supported by the judicial

diversity statistics which show that the proportion of judges from an ethnic minority group in the courts has increased from 6% to 8% between 2014 and 2020.<sup>6</sup> Therefore, it is reasonable to expect a higher proportion of judges from ethnic minority groups to be members of NJPS, as this is the only scheme that judges can accrue benefits in if they were appointed after 31 March 2012.

- 5.20 In general, judges who are members of JUPRA or FPJPS would find the reformed scheme less financially beneficial. This cohort is likely to have a higher proportion of members who are white compared to NJPS. Conversely, judges who are in NJPS, would likely find the new arrangements more financially beneficial. This cohort is likely to have a higher proportion of members from ethnic minority groups compared to JUPRA and FPJPS.
- 5.21 For the reasons outlined above, the government does not consider that the judiciary reformed scheme measures in the Bill will result in indirect discrimination on the basis of race. To the extent that there is the potential for scheme features to have differential impacts, this is justified to meet the policy objective of addressing the recruitment and retention issues and mitigated by the scheme design to ensure that judges are not worse-off under the reformed scheme compared to NJPS.

## Judicial Mandatory Retirement Age

- 5.22 An increased MRA would be available to all existing and future judicial office holders (JOHs) at the time of implementation, irrespective of their race. It will be for each JOH to decide whether they wish to remain in office until their new MRA or leave the judiciary sooner.
- 5.23 A preliminary evaluation has been made as to whether an MRA increase might create race based indirect discrimination. The same methodology as for male / female ratio was used – comparing the race of JOHs approaching retirement with newly-appointed JOHs.
- 5.24 Based on the Judicial Appointments Commission (JAC) diversity statistics from 2015 to 2019, around 13% of applicants recommended for appointment by the JAC were BAME compared to 9% of JOHs who are approaching retirement. Similarly, 11% of new magistrates are BAME compared to 5% of magistrates approaching retirement. This might suggest that an increase in MRA could disproportionately retain non-BAME JOHs on the bench. There is no available evidence to suggest that either BAME or non-BAME JOHs are more likely to wish to stay. The Office for National Statistics (ONS) national-level data on the race of workers above 70 was also reviewed to see whether some groups are more likely to continue working, but statistics were unavailable.
- 5.25 This relative difference in retention effects between racial groups can vary across judicial offices. Annex C shows the proportion of JOHs approaching retirement who are from an ethnic minority group, the proportion of newly appointed JOHs who are from an ethnic minority group, and the difference factors, which shows how big the difference is between the former and the latter. Annex C suggests that for all offices below High Court, the JOHs approaching retirement tend to be less racially diverse than the most recent JAC

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<sup>6</sup> Judicial Diversity Statistics: <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2020-statistics>

appointments. Racial diversity at the Court of Appeal and the High Court level is too small to have any impact.

- 5.26 As with the ratio of males to females, this snapshot does not truly capture the impacts on racial diversity, because it does not account for:
- the fact that only some JOHs approaching MRA will stay in office past 70
  - that the effect of departures will be staggered over the years, and
  - that the effect of the turnover is limited compared to the diversity of the overall judicial complement
- 5.27 The same methodology has therefore been applied as for the male to female ratio to assess the overall racial diversity impacts over time, forecasting departures based on current patterns and accounting for the overall size of the cohorts. The main conclusion was that, compared to the option of not changing the MRA, there is little impact of an MRA of 75 on the proportion of paid JOHs who are BAME, with 0.3 to 0.4% fewer office holders from an ethnic minority group in the short term, and 0.3% to 0.6% fewer office holders from an ethnic minority group in the long term. Similarly, there is a small impact on the proportion of magistrates who are from an ethnic minority group (a maximum of 1% fewer), given a lot of retiring magistrates are expected to wish to remain based on current retirement patterns.
- 5.28 The overall impact is therefore believed to be marginal and is not likely to result in any particular disadvantage on the basis of race. The minimal impacts are justified as a proportionate means of achieving the legitimate aim of these measures in the Bill. The government will continue to monitor the impacts of a raised MRA on retention on the bench post-implementation, by gathering data on the race of JOHs who stay beyond 70.
- 5.29 There is no centralised data on the race of coroners or other protected characteristics.

## Judicial Pay

- 5.30 There is no evidence that this measure is discriminatory on the basis of race as its purpose is to put all judicial offices for which the Lord Chancellor has responsibility for remuneration on an equal footing. Any allowances introduced using this power would require their own equality impact assessment.
- 5.31 The measure applies equally to all offices in scope regardless of race, however a majority of holders of the judicial office holders included in the measures are white, 2% of Masters and Deputy Masters and 8.3% of District judges and Deputy District judges (County Courts) are BAME (based on Judicial Diversity Statistics 2020).

## UK Asset Resolution (UKAR)

- 5.32 The data which HM Treasury holds regarding those who will be affected by the UKAR measures is minimal and does not include information on protected characteristics such as race. However, the government does not envisage this policy to have a differential impact on individuals on the basis of race. All individuals affected by this policy should be affected in the same manner.

## Further measures

- 5.33 The further measures in Clause 79(5-6) change the list of schemes exempt from seeking Treasury consent for making scheme regulations and the process through which this list can be amended. As this does not involve a change in scheme rules and is not linked to any envisaged changes in scheme rules, the government does not envisage this measure to have a differential impact on individuals on the basis of race.
- 5.34 The measures in Clause 83(1-6) clarify that non-scheme benefits can only be paid to persons who are members of a section 1 scheme, by virtue of s1(2) or s25, in addition to persons who would be such members but for the fact they are members of a stakeholder or personal pension scheme. Given this Clause is clarifying existing legislation, this measure is not expected to have any differential impact on individuals on the basis of race.

# Chapter 6

## Equality impact analysis: Disability

### Introduction

6.1 Chapter 6 sets out the equality impacts of each of the measures set out in the Bill on the protected characteristic of disability 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.

### Unfunded pension schemes (excluding judicial): *McCloud* judgment

- 6.2 The proportion of individuals reporting a disability in the public sector has increased over time, for example in 2013<sup>1</sup> 11% of individuals in the public sector reported a disability (as defined under the Equality Act 2010), compared to in 2020<sup>2</sup> where 16% of the public sector reported a disability. This aligns with trends from individual workforces, for example the proportion of individuals who reported a disability in the civil service is also increasing over time.<sup>3</sup>
- 6.3 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.<sup>4</sup> 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”<sup>5</sup> 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 measures as outlined in the Bill are not expected to have a disproportionate impact on those with a disability or caring responsibilities.
- 6.4 In addition, the government believes the CARE scheme structure is likely to offer fairer outcomes to those with disabilities, who in some public sector workforces tend to experience lower salary progression, given that disabled people are more likely to work part-time.

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<sup>1</sup> ‘Labour Force Survey (LFS) 2013’, Quarter 3

<sup>2</sup> ‘Labour Force Survey (LFS) 2020’, Quarter 3

<sup>3</sup> [www.instituteforgovernment.org.uk/explainers/disability-civil-service](http://www.instituteforgovernment.org.uk/explainers/disability-civil-service)

<sup>4</sup> ‘Annual Population Survey (APS) 2019’, Disability statistics

<sup>5</sup> <https://civilservice.blog.gov.uk/wp-content/uploads/sites/86/2020/06/2020-06-02-Carers-Strategy-v0e.pdf> - page 4

- 6.5 The government realises the challenges that those in firefighter and police workforces face in maintaining fitness until the reformed scheme Normal Pension Age (NPA). Under the reforms, 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 physical 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 Minimum Pension Age and the pension is actuarially reduced to reflect the fact that it is likely to be paid for longer.
- 6.6 The DCU model might have some negative implications for some individuals whose disabilities or health conditions deteriorate over time. Although they could then exercise their choice in light of their position near to their retirement, some might then find it more difficult to deal with the choice process. Where support is needed by members this will be provided on a scheme by scheme basis, which 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 the capacity, and appropriate information to make relevant pensions decisions notwithstanding disability.
- 6.7 As set out more fully in paragraphs 3.19 to 3.24 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 from the measures in the Bill. This could have some implications for some members with disabilities.
- 6.8 For individuals who retire with a pension in payment 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 remedy period years where tax cannot be collected.
- 6.9 Where an individual has underpaid or overpaid contributions, they may be subject to the payment of interest to a pension scheme or in receipt of interest from a pension scheme in the respective scenarios. The interest payments are not designed to be punitive, or impact younger people disproportionately. A member who underpaid employee contributions could have invested the additional money needed for those contributions over time and earned interest on that investment; or spent it on items that they might otherwise not have been able to afford. Their comparators in the scheme will have been paying the correct level of contributions throughout, so would not have had the benefit of the additional money over time.
- 6.10 It is likely that individuals retiring with pensions in payment during the remedy period have protected characteristics compared with the overall membership

entitled to remedy. They will typically be older and, where they are retiring due to ill health, they may have a disability.<sup>6</sup>

- 6.11 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 annual allowance (AA) or lifetime allowance (LTA) charges, or where tax is owed on repaid contributions, which will all be retrospectively corrected. As set out in paragraphs 3.25 to 3.27 the government has not been able to identify a proportionate means of addressing this issue with regards to the AA or LTA within the existing legislative framework. However, the government will take action in this Bill to address it regarding tax owed on repayments of contributions.

## Cost control mechanism

- 6.12 The Bill implements the policy of waiving ceiling breaches for any scheme that breaches the cost control ceiling, and so this applies to all members equally, regardless of disability. The specific schemes affected by this policy will not be known until the 2016 valuations are finalised (or 2017 valuations for the Local Government Pension Scheme (Scotland)).
- 6.13 It is possible that there will be an indirect disability impact, but there is not currently sufficient data on what this may be. However, the government believes that this policy is nevertheless a proportionate response in order to avoid large benefit reductions for members based on a mechanism that may not be working as intended.

## Local Government: *McCloud* judgment

- 6.14 There is limited data on the protected characteristic of disability for the LGPS membership, Table 6 in Annex B shows the distribution of those with disabilities as defined under the Equality Act 2010 in the working population and in the public sector population (used as a proxy for LGPS membership). It suggests that individuals with disabilities are overrepresented in the public sector. However, the government does not consider that the measures in the Bill for local government are likely to have differential impacts on individuals with a disability, although the government recognises that the extension of the underpin may be relatively less beneficial for those with disabilities (who may benefit more from the CARE schemes) than for the membership as a whole.
- 6.15 However, as the local government *McCloud* remedy does not require a choice to be taken by the member, the government does not consider that the scenario referred to in the 'Unfunded pension schemes' section (paragraph 6.6), whereby the remedy may make the choice process more difficult for some members with a condition that deteriorates over time, will arise. LGPS underpin protection is designed so that it automatically gives members the most favourable pension applicable under the rules for the underpin. Similarly, differences between the

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<sup>6</sup> Ill health criteria may differ between legacy and reformed schemes, but whether one set might be more or less beneficial than the other for a particular individual will depend on the circumstances of their case and the scheme-specific details of the particular legacy and reformed schemes to which the member might belong.

LGPS and unfunded scheme measures mean there are not likely to be differential impacts between disabled and non-disabled members of the LGPS in respect of the tax issue described (paragraphs 6.7 to 6.11).

## **Judicial Pensions: *McCloud* judgment and reformed judicial pension scheme**

- 6.16 The data on disability is recorded and reported by the Judicial Appointments Commission (JAC). However, until recently, Judicial Office (JO) only collected this information on a non-mandatory basis by self-declaration. It is therefore not currently possible to differentiate between those without a disability and those who previously chose not to declare. This is due to the limits in the data set used as explored in Annex C. JO has changed the way it collects this information to provide improved data in the future.
- 6.17 The government does not believe that it would be proportionate to obtain such data on disability, as the government does not envisage that the scheme design for the judiciary will have any differential impact in regard to the protected characteristic of disability.

## **Judicial Mandatory Retirement Age**

- 6.18 There is no evidence available to assess whether the increase in the MRA as set out by the measures in the Bill are likely to indirectly discriminate against people with disabilities, due to limits in data set used as explored in Annex C.
- 6.19 The judiciary are changing the way disability data of existing judicial office holders (JOHs) is recorded to help more accurate future analysis. In any event, HM Courts & Tribunals Service (HMCTS) will ensure that JOHs with disabilities continue to receive reasonable adjustments in line with the 'Reasonable Adjustments for Disabled Judicial Office Holders' policy.
- 6.20 Disability data is recorded or reported by the JAC. However, until recently, the JO only collected this information on a non-mandatory basis by self-declaration. It is not currently possible to differentiate between those without a disability and those who chose not to respond to the disability question. JO are changing the way they collect diversity information to help resolve this issue. This will allow JOHs to self-record and update their diversity information.
- 6.21 However, if disability data at a public sector level is used as a proxy for the judiciary, there is a distribution of those with disabilities as defined under the Equality Act 2010. This data suggests that individuals with disabilities are overrepresented in the public sector. Given this, the government believes that the measures in the Bill to raise the MRA to 75 should not disproportionately impact groups with the protected characteristic of disability.

## **Judicial Pay**

- 6.22 There is no evidence that this measure is discriminatory on the basis of disability as its purpose is to put all judicial offices for which the Lord Chancellor has responsibility for remuneration on an equal footing. Any allowances introduced using this power would require their own equality impact assessment.
- 6.23 There is insufficient data to provide further analysis for this measure. This is because the data for England and Wales is provided primarily through the

Judicial Diversity Data 2020, however this data does not break down at the level of some of the specific posts included in these measures, for example ‘Wreck Commissioner’.

## **UK Asset Resolution (UKAR)**

- 6.24 The data which HM Treasury holds regarding those who will be affected by the UKAR measures is minimal and does not include information on protected characteristics such as disability. However, the government does not envisage that this policy would have a differential impact on individuals on the basis of disability. All individuals affected by this policy should be affected in the same manner.

## **Further measures**

- 6.25 The further measures in the Bill in Clause 79(5-6) change the list of schemes exempt from seeking Treasury consent for making scheme regulations and the process through which this list can be amended. As this does not involve a change in scheme rules and is not linked to any envisaged changes in scheme rules, the government does not envisage this measure to have a differential impact on individuals on the basis of the protected characteristic, disability.
- 6.26 The measures in Clause 83(1-6) clarify that non-scheme benefits can only be paid to persons who are members of a section 1 scheme, by virtue of s1(2) or s25, in addition to persons who would be such members but for the fact they are members of a stakeholder or personal pension scheme. Given this Clause is a clarification of existing legislation, the government does not envisage this measure to have any differential impact in regard to the protected characteristic of disability.

# Chapter 7

## Equality impact analysis: Other protected characteristics

### Introduction

- 7.1 Chapter 7 sets out the equality impacts of each of the measures set out in the Bill on the other protected characteristics; marital and civil partnership status, religion and belief, gender reassignment and sexual orientation, 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.
- 7.2 Taking into consideration the limited evidence available, including as set out in previous equality impact assessments, the government does not envisage any unjustified differential impacts caused 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 from the measures in the Bill.
- 7.3 The government has analysed these characteristics below for all the measures in the Bill following best practice.

### Unfunded pension schemes (excluding judicial): *McCloud* judgment

- 7.4 Data on sexual orientation, gender reassignment, marital and civil partnership status and religion and belief, covered by the Equality Act 2010, within the public service pension schemes is not available, but the government has considered the very limited data it has regarding these protected characteristics.
- 7.5 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%).
- 7.6 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 which has a lower proportion of people who are married or in a civil partnership (50%) and single (30%).<sup>1</sup>

- 7.7 The government believes that certain measures in the Bill will be beneficial for some members with these protected characteristics as, for example, the DCU can be beneficial for unmarried partners. This is because where the member of one of the older legacy schemes dies before retirement, or will take or has taken benefits that scheme is unlikely to provide survivor pensions for unmarried partners. The DCU allows a choice to be made between legacy and reformed design benefits that can take account of the existence of an unmarried partner and whether or not the legacy scheme provides for such a partner. However, this does not come with a corresponding disadvantage to married partners.
- 7.8 The government also expects that the prospective remedy measures 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 from moving all members into 2015 reformed schemes in April 2022 on individuals with these protected characteristics.
- 7.9 The government does not envisage any differential impact for the protected characteristic of sexual orientation and gender reassignment. Given the limited data available on these protected characteristics the government is therefore unable to conduct analysis on whether the *McCloud* remedy measures, will have a disproportionate impact on those with these protected characteristics. Although there was limited data for these characteristics, it was also proportionate not to obtain such data on them as the government does not envisage that the *McCloud* remedy have any differential impact in regard to the protected characteristic of sexual orientation and gender reassignment.
- 7.10 The Bill implements the policy of waiving ceiling breaches for any scheme that breaches the cost control ceiling at the 2016 valuations, and so applies to all members equally, regardless of other protected characteristics as defined under the Equality Act 2010. The specific schemes affected by this policy will not be known until the 2016 valuations are finalised (or 2017 valuations for the Local Government Pension Scheme (Scotland)). It is possible that there will be an indirect impact on other protected characteristics, but there is not currently sufficient data on what this may be. However, the government believes that this policy is nevertheless a proportionate response in order to avoid large benefit reductions for members based on a mechanism that may not be working as intended.

## Local Government: *McCloud* judgment

- 7.11 Data on the other protected characteristics covered by the Equality Act 2010 within the LGPS is not available, but the government has considered the very limited data it has regarding these protected characteristics.
- 7.12 With respect to religion, the data provided in Annex B shows that most religions are underrepresented in the public sector workforce relative to the UK working

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<sup>1</sup> [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](https://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)

population. As shown in Chart 1 in Annex B, those identifying as Christian or no religion are overrepresented in the public sector workforce, whereas the other religions are underrepresented in the public sector workforce, relative to the UK working population. This is assumed to hold true for LGPS membership too.

- 7.13 With respect to marital or civil partnership status, the data in Annex B 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. This is also assumed to hold true for LGPS membership.
- 7.14 Given the limited data on LGPS membership for the protected characteristics covered by this section (marital and civil partnership status, religion and belief, gender reassignment and sexual orientation), the government is unable to conduct detailed analysis on whether the *McCloud* remedy measures will have a disproportionate impact on those with these protected characteristics. Nevertheless, the government does not envisage there being differential impacts from the local government measures in the Bill on members with these protected characteristics.

## Judicial Pensions: *McCloud* Judgment and reformed judicial pension scheme

- 7.15 The government was not able to conduct analysis on the other protected characteristics covered by the Equality Act 2010 for the judicial *McCloud* judgment measures or for the reformed judicial pension scheme. This is due to limitations in the data, as explored in Annex C.
- 7.16 However, the government does not envisage this policy to have a differential impact on individuals on the basis of these other protected characteristics other than those explored for the protected characteristics of age and sex.

## Judicial Mandatory Retirement Age

- 7.17 The government was not able to conduct analysis on the other protected characteristics covered by the Equality Act 2010 for the MRA measures, due to limitations in the data, as explored in Annex C.
- 7.18 The government envisages that individuals with other protected characteristics will not experience any disproportionate impact from the judicial MRA measures in this Bill.

## Judicial Pay

- 7.19 There is no evidence that this measure is discriminatory on the basis of any other protected characteristics, as its purpose is to put remuneration for all judicial offices for whom the Lord Chancellor has responsibility for on an equal footing. Any allowances introduced using this power would require their own equality impact assessments.
- 7.20 Sufficient data is not available to provide further analysis for these protected characteristics. Despite this, the government does not envisage that individuals in the judiciary with other protected characteristics will experience any disproportionate impact from the judicial pay measures in this Bill, as it will put all judicial offices on an equal footing.

## UK Asset Resolution (UKAR)

- 7.21 HM Treasury does not hold detailed data on the other protected characteristics of those who will be affected by the UKAR clauses. However, the government does not envisage this policy would have a differential impact on individuals on the basis of these characteristics. All individuals affected by this policy should be affected in the same manner.

## Further measures

- 7.22 The further measures in Clause 79(5-6) change the list of schemes exempt from seeking Treasury consent for making scheme regulations and the process through which this list can be amended. As this does not involve a change in scheme rules and is not linked to any envisaged changes in scheme rules, the government does not envisage this measure to have a differential impact on the other protected characteristics.
- 7.23 The measures in Clause 83(1-6) clarify that non-scheme benefits can only be paid to persons who are members of a section 1 scheme, by virtue of s1(2) or s25, in addition to persons who would be such members but for the fact they are members of a stakeholder or personal pension scheme. Given this Clause is a clarification of existing legislation, the government does not envisage that this measure will have any differential impact on individuals in regard to the other protected characteristics as defined in the Equality Act 2010.

# Annex A

## Data for the main unfunded public service pension schemes

### Public Service pension data

A.1 This part of the annex contains further detail on the updated data which has been used to assess the *McCloud* remedy measures in this Bill. The analysis of this updated data has supported the analysis of the protected characteristics in the previous chapters above.

### Method

A.2 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 chapters 3 to 7 above.

A.3 The high-level impact of the measures within this assessment has been considered by reference to a combination of sources; the 2021 Q1 Labour Force Survey (LFS), the 2020 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, race, 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 measures in the Bill
- 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 measures outlined by the Bill
- 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), Firefighters (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 and Firefighters (Wales), however the data available is assumed to be reflective of those missing schemes.<sup>1</sup> Data for the local government and Judicial pension

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<sup>1</sup> Firefighters' (Wales) and Scotland pension schemes are not included in this data.

schemes can be found in Annex B and C and has been excluded from the assessments for the other schemes as those two aforementioned schemes have separate measures in the Bill which are specific for their workforces

- the corresponding data for Northern Ireland public service pension schemes is summarised in Annex E

**A.4** The affected population for the *McCloud* Judgment measures are members of most of the unfunded public service pension schemes.<sup>2</sup> 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. This is because scheme specific data (including for pension schemes in Northern Ireland) is not currently available to the Government Actuary’s Department (GAD) for them to provide a summary for these 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 90% of public sector employees were members of a workplace pension scheme in 2020.<sup>3</sup> 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 on using public sector level data are explored in A.22 to A.26.

## High-level equality impact on groups

### Sex

**A.5** 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 Q1 2021 and public service pension scheme data

**A.6** 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 population of the unfunded

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

<sup>3</sup> [www.ons.gov.uk/employmentandlabourmarket/peopleinwork/workplacepensions/bulletins/annualsurveyofhoursandearningspensionables/2019provisionaland2018finalresults](https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/workplacepensions/bulletins/annualsurveyofhoursandearningspensionables/2019provisionaland2018finalresults)

public service pension schemes in 2016 as shown in Table 9, 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).

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

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

Source: Public service pension scheme data

## Age

**A.7** As shown in Table 3, those aged 25 to 64 are over-represented when comparing the population of the unfunded public service pension schemes 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, as shown in Table 10 below, 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% below the age of 34.

**A.8** 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	Unfunded 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 Q1 2021 and public service pension scheme data

**A.9** 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.

**Table 4: Total active membership of unfunded schemes by protection type**

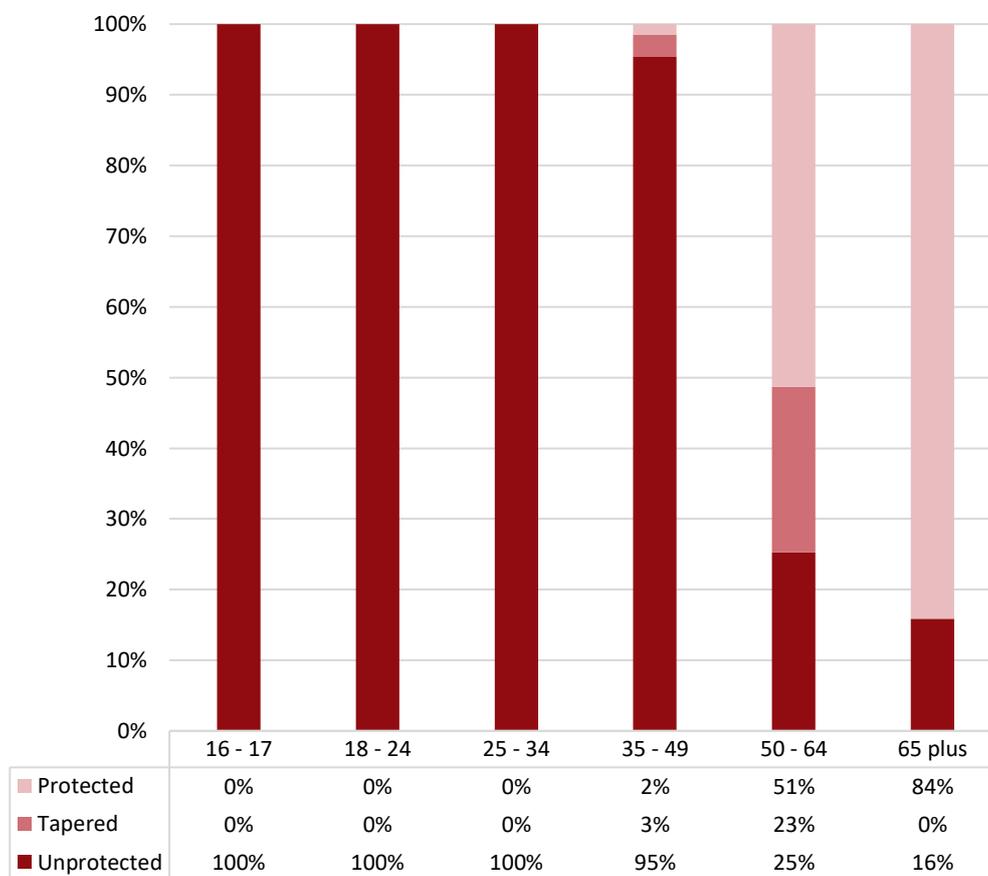
Protection type	Total active membership (headcount 000s)	Total active membership (%)
Unprotected	2,255	75%

Tapered	245	8%
Protected	499	17%
Total	3,000	100%

Source: Public service pension scheme data

**A.10** Chart 1 shows the breakdown of total membership by age and eligibility for protection. 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 the above chapters.

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



types)

Source: Public service pension scheme data

### Race, religion, disability and marital status

**A.11** There is limited membership data available for public service pension schemes on race, 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.12** The LFS does however break down results to public sector level, which, as explored in A.4, is used as a proxy for public service pension scheme members for race 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.13** The government holds race data for public sector workforces including the NHS,<sup>4</sup> Firefighters,<sup>5</sup> Police,<sup>6</sup> Teachers,<sup>7</sup> Armed Forces<sup>8</sup> and the Civil Service.<sup>9</sup> The data shows that there are quite pronounced demographic differences in the workforce profiles of each of these employers by race, which is explored below:

- **NHS** - For those whose race was known in March 2019, 77.9% were white (including white ethnic minorities), and 22.1% 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
- **Firefighters** - In 2020, for those whose race was known, 95.6% of firefighters in England 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 2020
- **Police** - In March 2020, 92.7% of police officers in England and Wales were from white ethnic groups and 7.3% compared with 4.7% in 2011 were from other ethnic groups
- **Teachers** - In 2019, for those whose race was known, 85.7% 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. Another 3.8% of teachers were from White Other ethnic groups
- **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 the UK civil service<sup>10</sup> had broadly the same level of representation of ethnic minority groups as the UK population

**A.14** Although there is no available data on religion, race, disability or marital status data at a pension scheme level, the government recognises the need to

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<sup>4</sup> [www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/nhs-workforce/latest](http://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/nhs-workforce/latest)

<sup>5</sup> [www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/fire-and-rescue-services-workforce/latest](http://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/fire-and-rescue-services-workforce/latest)

<sup>6</sup> [www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/police-workforce/latest](http://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/police-workforce/latest)

<sup>7</sup> [www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/school-teacher-workforce/latest](http://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/school-teacher-workforce/latest)

<sup>8</sup> [www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/armed-forces-workforce/latest](http://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/armed-forces-workforce/latest)

<sup>9</sup> [www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/civil-service-workforce/latest](http://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/civil-service-workforce/latest)

<sup>10</sup> UK civil servants working in the UK and excluding the Northern Ireland civil service - for which there is separate data.

continually monitor race, disability and marital status in public service workforces. It also acknowledges the importance of using the latest data to inform this EqIA. The use of this data will be kept under review as the measures in the Bill are implemented.

**A.15** Table 5 indicates that the breakdown of race within the overall 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.16** Those categorised as white (excluding white minorities) represent 88% and those from an ethnic minority<sup>11</sup> 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).

**Table 5: Total and public sector population by race**

Race	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 Q1 2021

**A.17** 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%

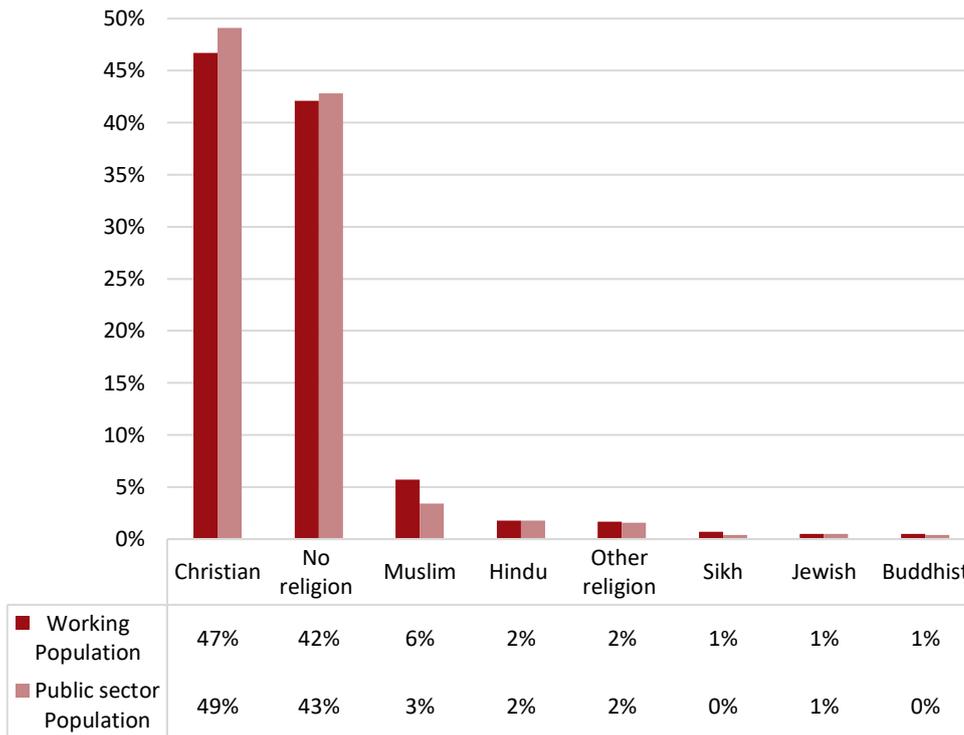
Source: LFS Q1 2021

**A.18** Chart 2 shows the breakdown of religion in the public sector workforce compared to the total working population. This shows that those identifying as

<sup>11</sup> Includes all people stating their ethnicity as 'Mixed', 'Indian', 'Pakistani', 'Bangladeshi', 'Chinese', 'Black/African/Caribbean' or 'Other'.

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. The NHS has a higher proportion of people who are Hindu (2.15%) and Sikh (1.02%) than the public sector more generally.<sup>12</sup> However, this data is not specific to the NHS pension scheme as it is based on the overall NHS workforce.

**Chart 2: Total and public sector population by religion**



Source: APS 2020

**A.19** Table 7 shows that people who are married, cohabiting or in a civil partnership are overrepresented in the public sector and that 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 Q1 2021<sup>13</sup>

<sup>12</sup> [www.digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/how-we-support-diversity-and-inclusion/our-workforce-demographics-2019/religion](http://www.digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/how-we-support-diversity-and-inclusion/our-workforce-demographics-2019/religion)

<sup>13</sup> 'Labour Force Survey and Mid-year population estimates', Office for National Statistics.

**A.20** Data on sexual orientation, gender reassignment, pregnancy and maternity (other groups covered by the Equality Act 2010) is not available for the public sector workforce.

## Limitations

**A.21** 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)<sup>14</sup> is from a specific snapshot in time. This is not the specific point in time at which these measures will come into force; however, for the purposes of this analysis it is assumed that the percentages calculated here will be the same for the basis of this equality analysis.

**A.22** 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, race, 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.23** 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:

- 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

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<sup>14</sup> Pension scheme data from the 2016 valuation reports has been provided by GAD; therefore, the data is based on membership in 2016 and 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.

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 for each characteristic, as the percentages for religion also 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.24** 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 religion<sup>15</sup> and marital or civil partnership status.<sup>16</sup> This has been used to verify the accuracy of using the England and Wales data on which to base this analysis.

**A.25** This EqIA is based on available data but there are some limitations to the scheme data used throughout this document. These include:

- a considerable proportion of active members 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 Higher Education and independent schools, staff employed by private sector contractors and admitted to public service pension schemes under the new Fair Deal and staff employed by charities and other private sector organisations who are covered by public service pension schemes under provisions such as admission agreements. It is estimated these might represent around 10% of the total public service pension scheme active membership in the data used

**A.26** Based on the evidence available, the government does not envisage any differential impact on persons or groups with protected characteristics within each scheme other than those set out above in this equality analysis for the public sector as a whole.

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<sup>15</sup> 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](http://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](http://www.scotlandscensus.gov.uk/ods-analyser/jsf/tableView/tableView.xhtml)

<sup>16</sup> Data for marital or civil partnership status for **Northern Ireland**: [www.nisra.gov.uk/publications/registrar-general-annual-report-2018-marriages](http://www.nisra.gov.uk/publications/registrar-general-annual-report-2018-marriages) and **Scotland**: [www.scotlandscensus.gov.uk/ods-analyser/jsf/tableView/tableView.xhtml](http://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: <a href="http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/mgsa/lms">www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/mgsa/lms</a>	LFS 2021 Q1	UK
	Female: <a href="http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/mgsb/lms">www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/mgsb/lms</a>		
Race	<a href="http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusbyethnicgroupa09">www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusbyethnicgroupa09</a>	LFS 2021 Q1	UK
Age	<a href="http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/employmentunemploymentandeconomicinactivitybyagegroupnotseasonallyadjusteda05nsa">www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/employmentunemploymentandeconomicinactivitybyagegroupnotseasonallyadjusteda05nsa</a>	LFS 2021 Q1	UK
Religion	<a href="http://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/datasets/religioneducationandworkinenglandandwales">www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/datasets/religioneducationandworkinenglandandwales</a>	APS 2020	England and Wales <sup>1</sup>
Marital or civil partnership status	<a href="http://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesbymaritalstatusandlivingarrangements">www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesbymaritalstatusandlivingarrangements</a>	LFS 2021 Q1	England and Wales <sup>2</sup>
Disability	<a href="http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusofdisabledpeoplea08">www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusofdisabledpeoplea08</a>	LFS 2021 Q1	UK
Sexual orientation	Data unavailable		
Gender reassignment	Data unavailable		
Pregnancy and maternity	Data unavailable		

<sup>1</sup> 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](http://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](http://www.scotlandscensus.gov.uk/ods-analyser/jsf/tableView/tableView.xhtml)

<sup>2</sup> Data for marital or civil partnership status for **Northern Ireland**: [www.nisra.gov.uk/publications/registrargeneral-annual-report-2018-marriages](http://www.nisra.gov.uk/publications/registrargeneral-annual-report-2018-marriages) and **Scotland**: [www.scotlandscensus.gov.uk/ods-analyser/jsf/tableView/tableView.xhtml](http://www.scotlandscensus.gov.uk/ods-analyser/jsf/tableView/tableView.xhtml)

## Scheme specific data

A.27 Tables 9 to 15 show a breakdown of unfunded public service pension scheme data by age and protective status of members, as at 31 March 2016. This data has been valuable in accessing the differential impacts the measures in the Bill will have for the specific unfunded public service pension schemes for the protected characteristic of age.

**Table 9: Membership in public service pension schemes 2016**

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

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

**Table 10: 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 11: 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 12: 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 13: 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 14: 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 15: 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

# Annex B

## Data for the local government measures

### Local government pension data

- B.1** Annex B contains further detail on the data which has been used for the analysis of the equality impacts for the local government *McCloud* judgment measures in the Bill. The analysis in the above chapters for each protected characteristic is aided by the data provided in this annex for all the local government measures in this Bill.
- B.2** The data described here is that used by the Department for Levelling Up, Housing and Communities (DLUHC) in relation to their equality analysis on the impacts of the measures for the Local Government Pension Scheme (LGPS) in England and Wales. Whilst scheme-specific data and analysis will be different for the LGPS in Scotland<sup>1</sup> and the LGPS in Northern Ireland,<sup>2</sup> the general trends in this document for local government is assumed to be broadly reflective of all three local government schemes, due to the similarities in the protections.

### Method

- B.3** In considering the impacts of the measures relating to the LGPS in this Bill on the LGPS membership, DLUHC have been supplied with and considered analysis from the Government Actuary's Department (GAD) on how the package would impact on different sections of the LGPS membership. This is attached as Annex A to their consultation and is summarised in this annex.
- B.4** The data used in this analysis was LGPS fund membership data for England at Wales as at 31 March 2019, collated from each administering authority and provided to GAD for E&W in late 2019. Full information regarding the assumptions used in GAD's analysis and the limitations of the analysis are set out in Annex A<sup>3</sup> to DLUHC's equality impact assessment accompanying their consultation on the LGPS E&W underpin of 16 July 2020. Further limitations of using LGPS fund membership data is explored in B.18 to B.20.

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<sup>1</sup> LGPS Scotland EqIA available at – <https://pensions.gov.scot/sites/default/files/2020-08/LGPS%20Consultation%20-%20McCloud%20Sargeant%20litigation%20-%20Equalities%20Impact.pdf>

<sup>2</sup> LGPS Northern Ireland EqIA available at – <https://www.communities-ni.gov.uk/consultations/consultation-proposed-changes-transitional-arrangements-2015-local-government-pension-scheme>

<sup>3</sup> Available with the main consultation of 16 July 2020 and the related equality impact assessment at – [www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin](http://www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin)

**B.5** The high-level impact of the measures for the local government within this assessment have also been considered by reference to a combination of different sources; the 2021 Q1 Labour Force Survey (LFS) and the 2020 Annual Population Survey (APS):

- from the LFS, the public service workforce population can be broken down by age, sex, race, marital status and disability. The LFS does not record whether the individual is a member of a LGPS, so it is not possible to identify those directly affected by the policies for the other protected characteristics
- 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 LGPS, so it is not possible to identify those directly affected by the policies outlined within this assessment

## High-level equality impact on groups

### Sex

**B.6** The data supplied to GAD by LGPS administrators in March 2019 shows that the LGPS active membership is predominately female.

**Table 1: Sex breakdown of active LGPS membership**

Sex	Total number of members (000s)	Proportion of total
Male	439	26%
Female	1,238	74%
Total	1,676	100%

*Source: March 2019 data supplied to GAD by LGPS administrators*

### Age

**B.7** Table 2 shows that LGPS active membership is not uniformly distributed through age ranges and the group who make up the highest proportion of the total membership are in the 51-55 age group.

**Table 2: Age breakdown of active LGPS membership**

Age range	Total number of members (000s)	Proportion of total
16-20	26	2%
21-25	86	5%
26-30	122	7%
31-35	153	9%
36-40	189	11%
41-45	202	12%
46-50	261	16%
51-55	278	17%
56-60	222	13%
61-65	112	7%

66-70	20	1%
71-75	5	0%
All	1,676	100%

*Source: March 2019 data supplied to GAD by LGPS administrators*

**B.8** Based on the measures in the Bill, GAD have analysed which members would qualify for the underpin, and have broken this down by age in Table 3.

**Table 3: Age breakdown of active LGPS membership expected to qualify for measures<sup>4</sup>**

Age range	Total number of members expected to qualify (000s)	Proportion of total
16-20	0	0%
21-25	1	0%
26-30	12	2%
31-35	39	6%
36-40	68	10%
41-45	84	12%
46-50	135	20%
51-55	171	25%
56-60	145	21%
61-65	20	3%
66-70	0	0%
71-75	0	0%
All	675	100%

*Source: March 2019 data supplied to GAD by LGPS administrators*

**B.9** GAD have also considered which members would be expected to benefit from the proposed underpin (i.e. where the final salary benefit is higher) and broken this down by age in Table 4.

<sup>4</sup> Table 3: This analysis does not include members who already have underpin protection – i.e. those aged 62 or above at 31 March 2019.

Table 4: Age breakdown of active LGPS membership expected to benefit from measures<sup>5</sup>

Age range	Total number of members (000s)	Proportion of total
16-20	0	0%
21-25	1	0%
26-30	9	3%
31-35	25	8%
36-40	35	11%
41-45	45	15%
46-50	89	29%
51-55	105	34%
56-60	0	0%
61-65	0	0%
66-70	0	0%
71-75	0	0%
All	309	100%

Source: March 2019 data supplied to GAD by LGPS administrators

## Race, religion, disability and marital status

- B.10** There is limited membership data available across public service pension schemes on race, religion, disability and marital status as the LFS has no information about pension membership specifically for LGPS membership. The LFS does however break down results to public sector level, which is used as a proxy for LGPS membership for race and disability. For religion the APS has been used as a proxy for LGPS membership as it can be broken down to a public sector level too. Tables 5 to 7 and Chart 1 show the distribution of the total population compared to the public sector population.
- B.11** Although there are limitations with formal religion, race, disability and marital status data, the government recognises the need to continually monitor the race and disability status of public service workforces and the relationship with scheme membership. It also acknowledges the importance of using new data obtained to inform these reviews.
- B.12** Table 5 indicates that the breakdown of race within the public sector is broadly consistent with the UK population. This is assumed to be the same within public service pension schemes. Black/African/Caribbean individuals are slightly overrepresented in the public sector relative to the UK population by a small proportion. However, Black/African/Caribbean individuals are not expected to

<sup>5</sup> Table 4: This analysis does not include members who already have underpin protection – i.e. those aged 62 or above at 31 March 2019.

be affected by the changes to underpin protection to a larger extent relative to the UK population averages.

**B.13** The changes to transitional arrangements of 2014 pension schemes from the measures in the Bill will arguably affect a larger proportion of white people than other ethnic groups as this group represent 88% of the public sector. However, no differential impact in relation to the application of the underpin in relation to this race is anticipated.

**Table 5: Total and public sector population by race**

<b>Race</b>	<b>Working population</b>	<b>Public sector population</b>
White	88%	88%
Mixed	1%	1%
Indian	3%	2%
Pakistani	2%	8%
Bangladeshi	1%	1%
Chinese	0%	0%
Black/African/Caribbean	3%	4%
Other ethnic groups	3%	3%

*Source: LFS Q1 2021*

**B.14** 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. Based on analysis of the data available, the measures in the Bill for LGPS are not considered likely to have differential impacts on individuals with a disability.

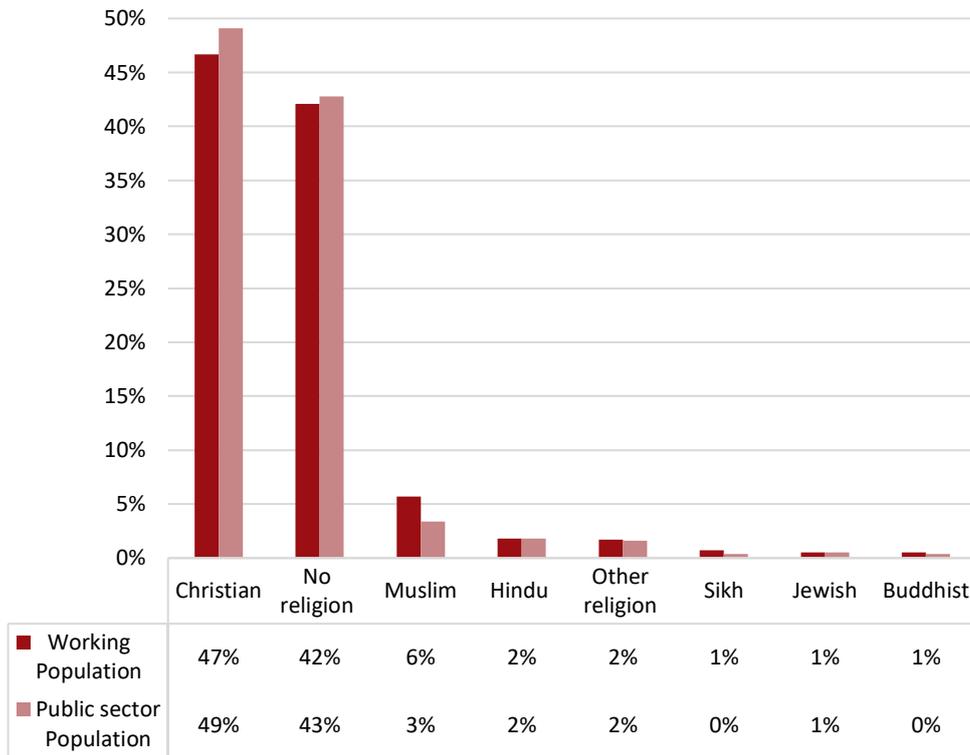
**Table 6: Total and public sector population by disability**

<b>Disability</b>	<b>Working population</b>	<b>Public sector population</b>
Equality act disabled	14%	16%
Not equality act disabled	86%	84%

*Source: LFS Q1 2021*

**B.15** Chart 1 shows a visual representation of the public sector workforce compared to the total population. This shows that those identifying as Christian or no religion are overrepresented in the public sector relative to the UK. The other religions are underrepresented in the public sector relative to the UK population. The measures in this Bill which are specific for the LGPS are not considered likely to have differential impacts on individuals with a religious affiliation.

Chart 1: Total and public sector population by religion



Source: APS 2020

**B.16** Table 7 shows that people who are married, cohabiting or in a civil partnership are overrepresented in the public sector and therefore the measures in the Bill which allow changes to transitional arrangements from the 2014 pension schemes will have a larger than expected effect on those people. Those who are not married are underrepresented in the public sector compared to the working population. However, the measures are not likely to have differential impacts on individuals of different marital statuses.

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 Q1 2021<sup>6</sup>

**B.17** Data on sexual orientation, gender reassignment, pregnancy and maternity (other groups covered by the Equality Act 2010) is not available.

<sup>6</sup> 'Labour Force Survey and mid-year population estimates', Office for National Statistics.

## Limitations

- B.18** Table 8 contains the data collected and used for comparison with public sector data and the public service pension population for the local government measures in this Bill.
- B.19** There are some limitations with the Government Actuary's Department's equality analysis on age and sex characteristics for the local government judgment measures in the Bill. Particular attention should be drawn to the following limitations:
- GAD's analysis has principally considered those who would benefit. So, members who already have underpin protection under existing provisions (being those aged 62 and older on 31 March 2019) have not been considered directly
  - GAD's analysis is based on active membership records totalling 1.68 million. The analysis has been conducted on a per-member basis, meaning additional records where members have more than one active employment have been removed
  - the proportion of the protected membership which is eventually likely to be better off as a result of underpin protection is strongly dependent on what future pay growth is in the LGPS. In this analysis, the annual future pay growth assumption used is CPI +2.2%. This is in line with HM Treasury's Directions for the 2016 scheme valuation. If future pay growth differs from this it may impact on the proportion of the membership who will benefit from underpin protection. Significantly, if future pay growth is closer to more recent pay growth trends in the public sector, it is likely more members will benefit from the reformed scheme. In that situation some of the trends noted in this assessment of who the underpin is more likely to benefit may not materialise
  - the analysis is based on the LGPS's active membership as at 31 March 2019. Under the Bill measures, the proposed changes to the underpin would apply retrospectively in England and Wales to 1 April 2014. It is therefore expected that a number of additional members would benefit. However, this limitation significantly affects the results of the analysis
  - the analysis is based on an "average" member at each particular age. Allowing for variations in individual members' future service or salary progression could produce different figures
- B.20** The equality analysis also considers data from the 2021 Q1 Labour Force Survey and the Annual Population Survey in relation to the below populations. These data sets have some limitations as explored in Annex A for the equality analysis of the *McCloud* judgment measures in this Bill.

Table 8: Data used for the other protected characteristics

Protected characteristic	Data collected	Data style	Country
Race	<a href="http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusbyethnicgroupa09">www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusbyethnicgroupa09</a>	LFS 2021 Q1	UK
Religion	<a href="http://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/datasets/religioneducationandworkinenglandandwales">www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/datasets/religioneducationandworkinenglandandwales</a>	APS 2020	England and Wales
Marital or civil partnership status	<a href="http://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesbymaritalstatusandlivingarrangements">www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesbymaritalstatusandlivingarrangements</a>	LFS 2021 Q1	England and Wales
Disability	<a href="http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusofdisabledpeoplea08">www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusofdisabledpeoplea08</a>	LFS 2021 Q1	UK
Sexual orientation	Data unavailable		
Gender reassignment	Data unavailable		
Pregnancy and maternity	Data unavailable		

# Annex C

## Data for the judiciary measures

### Judiciary data

- C.1** Annex C contains further detail on the data which has been used to assess the equality impacts of the judiciary measures in the Bill. The analysis in the above chapters is aided by the data provided in this annex for all the judiciary measures in the Bill.
- C.2** This annex explores the data used for the equality analysis of the Judicial Pensions, Judicial MRA and Judicial pay measures in turn for this Bill.

### Judicial Pensions

- C.3** This part of Annex C 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 judicial pension measures in the Bill can be found in Chapters 3 to 7.

### Method

- C.4** As noted previously, age, sex and race are the most materially relevant to the measures in the Bill and evaluation of any potential equality impacts has been conducted using the available judicial diversity data for these characteristics.
- C.5** Comprehensive data is not available in respect of each protected characteristic across the judiciary. Tracking data within the fee-paid judiciary also carries the risk of double or triple counting multiple office holders. Nevertheless, analysis of the potential equality impacts in respect of age, sex and race has considered the available information. Where the data sets are incomplete, a representative sample has been used.
- C.6** The equality impacts have first been considered on those judges in scope in respect of the design of the measures, and then on judges out of scope.
- C.7** The following salary groups have been analysed, as they contain the majority of the judiciary:
- Salary Group 4 (which includes High Court Judges)
  - Salary Group 5 (which includes Senior Circuit Judges)
  - Salary Group 5.2 (which includes Circuit Judges), and
  - Salary Group 7 (which includes District Judges and Judges of the First-tier Tribunal)

- C.8** For fee-paid appointments, analysis has been conducted for the following roles:
- Deputy High Court Judge
  - Recorder
  - Deputy District Judge, and
  - Tribunal Judge
- C.9** The analysis has not been extended to other salary groups and fee-paid roles as they contain an insufficient number of judges to be able to draw any meaningful conclusions.
- C.10** This assessment has only been undertaken on the three protected characteristics for which data have been consistently recorded: age, sex and race. Those three protected characteristics were most consistently recorded in both Judicial Appointments Commission (JAC) recruitment data and the Judicial Office (JO) eHR database, which contains all current judicial office holders. The conclusions about the diversity of the judiciary are discussed in the context of these three characteristics.
- C.11** Analysis of the race data available for judges, broken down by pension scheme, was too small a sample size to be able to draw any trends with certainty. High-level conclusions were presented, but they should not be considered as robust as the information included on the age and sex of the judiciary.
- C.12** When assessing the equality impacts of the judicial pension measures in the Bill, characteristics of the judiciary represented across the New Judicial Pension Scheme 2015 (NJPS), Judicial Pension Scheme 1993 (JUPRA), and its fee-paid equivalent, Fee-Paid Judicial Pension Scheme (FPJPS) have been analysed.

## High-level equality impact on groups

### Age

- C.13** The tables below show the data from the judiciary that has been used to analyse the equality impacts on the protected characteristic of age.

**Table 1: Age of members of judiciary, by percentage**

<b>Scheme</b>	<b>Under 40</b>	<b>41 – 49</b>	<b>50 – 59</b>	<b>60 and above</b>
NJPS - Salaried <sup>1</sup>	3%	27%	54%	16%
JUPRA <sup>2</sup>	0%	1%	15%	84%
NJPS – Fee-Paid <sup>3</sup>	8%	36%	45%	10%
FPJPS <sup>4</sup>	0%	1%	5%	94%
Total	4%	21%	34%	41%

*Source: Data taken from Judicial Office data matched with pension scheme data. The match rate between these two datasets is around 80% therefore the tables represent ~80% of scheme members*

**Table 2: Age of salaried members of the NJPS, by percentage**

<b>Salary group</b>	<b>Under 40</b>	<b>40 – 49</b>	<b>50 – 59</b>	<b>60 and above</b>
4	0%	2%	80%	17%
5	0%	3%	60%	37%
5.2	0%	18%	60%	22%
7	3%	32%	54%	12%
Total	1%	24%	58%	17%

*Source: Judicial Office data*

**Table 3: Age of JUPRA members, by percentage**

<b>Salary group</b>	<b>Under 40</b>	<b>40 – 49</b>	<b>50 – 59</b>	<b>60 and above</b>
4	0%	0%	11%	89%
5	0%	0%	24%	76%
5.2	0%	1%	16%	83%
7	0%	1%	20%	79%
Total	0%	1%	18%	82%

*Source: Judicial Office data*

<sup>1</sup> Includes 82% of NJPS15 salaried members.

<sup>2</sup> Includes 83% of JUPRA members.

<sup>3</sup> Includes 87% of NJPS15 fee paid members.

<sup>4</sup> Includes 78% of FPJPS members.

**Table 4: Age of fee-paid members of NJPS, by percentage**

Salary group	Under 40	40 – 49	50 – 59	60 and above
Deputy High Court Judge	0%	9%	81%	9%
Recorder	3%	33%	52%	12%
Deputy District Judge	15%	41%	34%	9%
Tribunal Judge	10%	36%	41%	13%
Total	10%	36%	41%	13%

*Source: Judicial Office data*

**Table 5: Age of FPJPS members, by percentage**

Salary group	Under 40	40 – 49	50 – 59	60 and above
Deputy High Court Judge	0%	0%	0%	100%
Recorder	0%	0%	2%	98%
Deputy District Judge	0%	0%	0%	100%
Tribunal Judge	0%	2%	3%	95%
Total	0%	1%	2%	97%

*Source: Judicial Office data*

## Sex

**C.14** The data in the below tables has supported the analysis for the judiciary measures in the Bill when looking at the equality impacts on the protected characteristics of sex.

**Table 6: Analysis of sex of judiciary, by percentage**

Scheme	Female	Male
NJPS – Salaried	46%	54%
JUPRA	31%	69%
NJPS – Fee-Paid	45%	55%
FPJS	26%	74%
Total	37%	63%

*Source: Judicial Office data*

**Table 7: Analysis of sex of salaried members of the NJPS, by percentage**

Salary group	Female	Male
4	43%	57%
5	23%	77%
5.2	42%	58%
7	47%	53%
Total	44%	56%

*Source: Judicial Office data*

**Table 8: Analysis into the sex of members of JUPRA, by percentage**

Salary group	Female	Male
4	14%	86%
5	24%	76%
5.2	42%	58%
7	33%	67%
Total	34%	66%

*Source: Judicial Office data*

**Table 9: Analysis of the sex of fee paid members of the NJPS, by percentage**

Salary group	Female	Male
Deputy High Court Judge	26%	74%
Recorder	32%	68%
Deputy District Judge	43%	57%
Tribunal Judge	53%	47%
Total	44%	56%

*Source: Judicial Office data*

**Table 10: Analysis of the sex of the members of FPJPS, by percentage**

Salary group	Female	Male
Deputy High Court Judge	10%	90%
Recorder	9%	91%
Deputy District Judge	24%	76%
Tribunal Judge	41%	59%
Total	26%	74%

*Source: Judicial Office data*

## Race

**C.15** New entrants recruited since April 2012 – including those recruited in the last 4 years whose data has been used to compile Table 11 - will be in NJPS. However, judicial office holders (JOHs) aged 65 and above are likely to have remained in JUPRA/FPJPS, indicating that NJPS will likely be more racially diverse than JUPRA/FPJPS.

**Table 11: Breakdown of judiciary by race**

JOH type	Number of JOHs in post	JOH % BAME 65 and above	Recent recruits <sup>5</sup> % BAME	Difference factor
<b>Courts</b>				
Court of Appeal	51	0%	0%	0%
High Court Judges	98	3%	3%	0%
Deputy High Court Judge	165	17%	11%	-5%
Circuit Judges	642	1%	5%	4%
Recorders	1,108	4%	7%	3%
District Judges (County Courts)	421	5%	8%	3%
Deputy District Judges (County Courts)	609	3%	12%	8%
District Judges (Magistrates' Courts)	131	0%	14%	14%
Deputy District Judges (Magistrates' Courts)	106	0%	6%	6%
High Court and above	314	10%	7%	-3%
All court judges	3,331	4%	8%	4%
<b>Tribunals</b>				
Upper Tribunal Salaried	55	22%	No JAC data available	
Upper Tribunal Fee-paid	122	19%	No JAC data available	

<sup>5</sup> Recent recruit % based on JAC data (last 4 years where available), except for magistrates where figure is based on recent entrants.

First-tier Tribunal Salaried	249	10%	11%	1%
First-tier Tribunal Fee-paid	1,162	4%	12%	8%
Employment Tribunal Salaried	106	0%	11%	11%
Employment Tribunal Fee-paid	183	0%	11%	11%
FtT - Non-legal member	1,575	18%	24%	6%
Employment Tribunal - Non-legal member	736	7%	No JAC data available	
All tribunal judges	1,700	4%	12%	8%
All tribunal members (including non-legal)	3,275	11%	18%	7%
Total: courts and tribunals <sup>6</sup>	6,606	7%	13%	6%
Magistrates	14,218	5%	11%	5%

Source: Judicial Office data

## Limitations

**C.16** For the following reasons, the government was not able to conduct analysis on the remaining protected characteristics:

- disability – this is recorded and reported by the Judicial Appointments Commission (JAC). However, until recently, Judicial Office (JO) only collected this information on a non-mandatory basis by self-declaration. It is therefore not currently possible to differentiate between those without a disability and those who previously chose not to declare. JO has changed the way it collects this information in order to provide improved data in the future
- gender reassignment – no data was available at the time of this assessment. The JAC have recently revised their candidate equality monitoring form to collect information, but data has yet to be reported. The JO will include this as a field for JOHs to self-record during the current reporting year

<sup>6</sup> Only those roles for which data is available are included in the totals.

- marriage and civil partnership – no data was available at the time of this assessment because the JAC does not record this information. JO will include this as a field for judicial office holders to self-record during the current reporting year
- pregnancy and maternity – no data was available at the time of this assessment. The JAC and JO do not record this information
- religion or belief – no data was available at the time of this assessment. The JAC record and report this information at an aggregate level (i.e. for all exercises during a financial year). JO will include this as a field for judicial office holders to self-record during the current reporting year
- sexual orientation – the JAC records and reports this information at an aggregate level (i.e. for all exercises during a financial year). JO will include this as a field for judicial office holders to self-record during the current reporting year

## Judicial Mandatory Retirement Age

**C.17** This part of Annex C looks at the data used to support the equality analysis in Chapters 3 to 7 for the judicial mandatory retirement age (MRA) measures in this Bill.

### Method

**C.18** Data on JOHs from courts in England and Wales and Unified Tribunals is held by JO, whilst data on new appointments is held by the JAC. Data on current JOHs from Northern Ireland for which the Lord Chancellor is responsible is held by the office of the Lord Chief Justice (Northern Ireland), and for new appointments by the Northern Ireland Judicial Appointments Commission (NIJAC).

**C.19** The government has undertaken its assessment for the judiciary MRA measures on three protected characteristics – sex, race, and age – as these are the protected characteristics most consistently recorded in both JAC recruitment data and JO database, which contains all current JOHs.

## High-level equality impact on groups

### Age

**C.20** The data in Table 12 looks at the age breakdown of current complement and new entrants which has been used for the equality analysis of the judiciary MRA measures in this Bill.

### England and Wales

**C.21** This section presents the most recent data available on the protected characteristic of age. For England and Wales, the most recent Judicial Diversity Statistics 2019 (published in July 2019) provide an age breakdown (by band) for all current judicial office holders. This is presented below in Table 12.

**Table 12: Age breakdown for current JOHs and new entrants (courts)**

JOH type	Age (current complement)				Age (new entrants)			
	Under 40	40-49	50-59	60 and over	Under 40	40-49	50-59	60 and over
Heads of Division	0	0	0	5	0	0	0	1
Court of Appeal Judges	0	0	3	36	0	0	2	4
High Court Judges	0	3	46	48	0	1	8	2
Deputy High Court Judges	0	16	42	29	1	10	11	1
Judge Advocates, Deputy Judge Advocates	0	0	1	5	0	0	0	0
Masters, Registrars, Costs Judges	0	3	11	13	0	2	2	0
Deputy Masters, Deputy Registrars, Deputy Costs Judges	0	3	10	14	0	0	0	0
Circuit Judges	3	78	250	339	4	22	20	5
Recorders	25	173	287	388	33	70	17	2
District Judges (County Courts)	6	90	183	145	9	32	29	1
Deputy District Judges (County Courts)	93	221	193	241	142	121	26	2
District Judges (Magistrates' Courts)	4	21	43	59	0	1	3	0
Deputy District Judges (Magistrates' Courts)	6	15	20	39	0	0	0	0
<b>Total</b>	<b>137</b>	<b>623</b>	<b>1,089</b>	<b>1,361</b>	<b>189</b>	<b>259</b>	<b>118</b>	<b>18</b>

Source: *Judicial Diversity Statistics 2019, tables 1.1 (current complement) and 4.1. (new entrants).*

**C.22** A significant percentage of new court entrants are aged 40-49 (44%), and offices below the High Court have a high proportion of younger entrants (e.g. 49% of DDJs are under 40), while unsurprisingly, given the need for greater legal experience, more senior offices attract older entrants (e.g. 91% of High Court Judges are aged 50+). 95% of leavers are aged 60 and over.<sup>7</sup> 52% of magistrates are also aged 60 and over as shown in Table 13.

**Table 13: Age breakdown for current magistrates**

Magistrates Total in post	Age				
	18-29	30-39	40-49	50-59	60 and over

<sup>7</sup> The leavers tables have not been reproduced, but they can be found in the *Judicial Diversity Statistics 2019, table 7.1.*

England and Wales total	14,348	123	609	1,604	4,569	7,443
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Source: Judicial Diversity Statistics 2019, table 3.

**C.23** Table 14 shows data for Tribunals. It shows 42% of judges and 58% of non-legal members are aged 60 and over. In contrast, 46% of new judicial entrants are aged under 40.

**Table 14: Age breakdown for current JOHs and new entrants (tribunals)**

JOH type	Total in post	Age (current complement)				Age (new entrants)				
		Under 40	40-49	50-59	60 and over	Under 40	40-49	50-59	60 and over	
<b>Judges</b>										
Presidents, Chamber Presidents, Deputy and Vice Presidents	14	0	0	6	8	0	0	2	1	
Upper Tribunal Judge	54	1	11	18	24	0	0	0	0	
Deputy Upper Tribunal Judge	26	1	6	4	15	2	1	0	0	
Tribunal Judge	1,430	113	301	416	600	132	107	38	2	
Regional, Deputy Regional Tribunal Judge	30	0	1	12	17	0	0	3	0	
Circuit Judge	2	0	0	2	0	0	0	1	0	
288	288	2	63	118	105	0	0	2	0	
Regional Employment Judge	10	0	2	1	7	0	1	0	0	
<b>Total Judges</b>	<b>1,854</b>	<b>117</b>	<b>384</b>	<b>577</b>	<b>776</b>	<b>134</b>	<b>109</b>	<b>46</b>	<b>3</b>	
<b>Non-Legal Members</b>										
Tribunal Member	3,121	100	353	843	1825	29	53	97	20	
<b>Total Judges and Non-Legal Members</b>	<b>4,975</b>	<b>217</b>	<b>737</b>	<b>1,420</b>	<b>2,601</b>	<b>163</b>	<b>162</b>	<b>143</b>	<b>23</b>	

Source: Judicial Diversity Statistics 2019, tables 2.3 (current complement) and 4.4. (new entrants).

**C.24** In addition, at 1 October 2018 there were 367 JOHs in office aged 70-75, with approximately one third aged 71 and another third aged 72. 191 JOHs are sitting in retirement, with just over half aged 70 and over.

### Northern Ireland

**C.25** The average age for current JOHs aged 65 and over in Northern Ireland is 67 for women and 69 for men, the current average age for office holders recruited in

the past five years 56 for women and 62 for men. The JOHs aged 65 and over represent 30% of the current complement.

- C.26** The data in Table 15 has been provided by The Lord Chief Justice for Northern Ireland’s Office (OLCJ). It provides a breakdown of the male to female ratio of JOHs for which the Lord Chancellor is responsible.
- C.27** This data suggests a lower proportion of women are approaching retirement, compared to newly appointed JOHs. As before, there is no evidence that increasing MRA would particularly disadvantage women.

**Table 15: Difference between sex for retiring JOHs and newly appointed JOHs**

Total in Post	New appointments (past 5 years)	New female appointments	% New female	JOHs aged 65+	Female Aged 65+	% Female Aged 65+	Difference factor
120	45	10	22%	36	4	11%	11

Source: OLCJ data for Northern Ireland

## Sex

- C.28** The data in Table 16 has been used to identify the proportion of female JOHs to see what the impact of the MRA measures in this Bill will have on the protected characteristic of sex as identified in the Equality Act 2010.
- C.29** The data below indicates that although participation for female JOHs is generally low, there is significant variation between different JOH types. For example, recently recruited Deputy High Court JOHs make up a much higher proportion of their complement than Court of Appeal JOHs.

**Table 16: Female proportion of retiring JOHs and new entrants**

JOH type	Number of JOHs in post <sup>8</sup>	JOH % women 65 and above	Recent recruits <sup>9</sup> % women	Difference factor
Courts				
Court of Appeal	51	10%	21%	11%
High Court Judges	98	11%	37%	26%
Deputy High Court Judge	165	9%	34%	25%
Circuit Judges	642	14%	38%	23%
Recorders	1,108	6%	42%	36%
District Judges (County Courts)	421	17%	51%	33%

<sup>8</sup> At the time of this analysis, the most recent available dataset from Judicial Office was from 1 Oct 2018.

The more recent JOH headcount data would not have any significant impact on this analysis, given the small degree of turnover of JOHs in a year compared to the overall complement. In contrast, diversity of new appointments could be more affected by large recruitment –the JAC recruitment figures have been updated to account for recent large exercises.

<sup>9</sup> Recent recruit % based on JAC data (last 4 years where available), except for magistrates where figure is based on recent entrants.

Deputy District Judges (County Courts)	609	17%	44%	27%
District Judges (Magistrates' Courts)	131	14%	53%	39%
Deputy District Judges (Magistrates' Courts)	106	14%	53%	39%
High Court and above	314	10%	33%	23%
All court judges	3,331	12%	42%	31%
<b>Tribunals</b>				
Upper Tribunal Salaried	55	20%	No JAC data available	
Upper Tribunal Fee-paid	122	37%	No JAC data available	
First-tier Tribunal Salaried	249	33%	61%	27%
First-tier Tribunal Fee-paid	1,162	28%	46%	17%
Employment Tribunal Salaried	106	31%	44%	13%
Employment Tribunal Fee-paid	183	11%	44%	33%
FtT - Non-legal member	1575	36%	60%	24%
Employment Tribunal - Non-legal member	736	42%	No JAC data available	
All tribunal judges <sup>10</sup>	1,700	27%	48%	20%
All tribunal members (including non-legal)	3,275	32%	54%	22%
Total: courts and tribunals	6,606	22%	48%	26%
Magistrates	14,218	50%	58%	8%

Source: Dataset from Judicial Office 1 Oct 2018

## Race

**C.30** The data below in Table 17 has been used to support MoJ equality analysis in the above chapters for the protected characteristic of race.

<sup>10</sup> Only those roles for which JAC data is available are included in the totals.

**Table 17: Breakdown of race of retiring JOHs and new entrants**

<b>JOH type</b>	<b>Number of JOHs in post</b>	<b>JOH % BAME 65 and above</b>	<b>Recent recruits<sup>11</sup> % BAME</b>	<b>Difference factor</b>
<b>Courts</b>				
Court of Appeal	51	0%	0%	0%
High Court Judges	98	3%	3%	0%
Deputy High Court Judge	165	17%	11%	-5%
Circuit Judges	642	1%	5%	4%
Recorders	1,108	4%	7%	3%
District Judges (County Courts)	421	5%	8%	3%
Deputy District Judges (County Courts)	609	3%	12%	8%
District Judges (Magistrates' Courts)	131	0%	14%	14%
Deputy District Judges (Magistrates' Courts)	106	0%	6%	6%
High Court and above	314	10%	7%	-3%
All court judges	3,331	4%	8%	4%
<b>Tribunals</b>				
Upper Tribunal Salaried	55	22%	No JAC data available	
Upper Tribunal Fee-paid	122	19%	No JAC data available	
First-tier Tribunal Salaried	249	10%	11%	1%
First-tier Tribunal Fee-paid	1,162	4%	12%	8%
Employment Tribunal Salaried	106	0%	11%	11%
Employment Tribunal Fee-paid	183	0%	11%	11%
FtT - Non-legal member	1,575	18%	24%	6%
Employment Tribunal - Non-legal member	736	7%	No JAC data available	
All tribunal judges	1,700	4%	12%	8%
All tribunal members (including non-legal)	3,275	11%	18%	7%
<b>Total: courts and tribunals<sup>12</sup></b>	<b>6,606</b>	<b>7%</b>	<b>13%</b>	<b>6%</b>

<sup>11</sup> Recent recruit % based on JAC data (last 4 years where available), except for magistrates where figure is based on recent entrants.

<sup>12</sup> Only those roles for which data is available are included in the totals.

Magistrates	14,218	5%	11%	5%
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Source: JAC data (last 4 years available)

## Data used for Coroners

**C.31** The data in Tables 18 to 20 below have been provided by the Chief Coroners' Office to support this equality analysis for the MRA measures in the Bill when looking at the equality impacts on coroners specifically.

**Table 18: Breakdown of coroners by type of post and terms of service (including MRA) as at May 2020**

	'New terms' coroners	'Old terms' coroners	Total coroners by type	Recent 'new terms' appointments (2017-2020)	Recent retirements (2017-2020)
Senior coroners	21	56	77	9	11 (0% new terms)
Area coroners	26	5	31	10	No data
Assistant coroners	339	223	562	213	No data
Total coroners by terms	386	284	670	232	No data

Source: Data provided by the Chief Coroners' Office

**Table 19: Breakdown of coroners by male / female ratio and terms of service (including MRA) as at May 2020**

	New terms	Old terms	Diversity difference
Female	189	77	
Female %	49%	27%	22%
Male	197	207	
Male %	51%	73%	-22%
Total	386	284	

Source: Data provided by the Chief Coroners' Office

Table 20: All ‘new terms’ coroners, new appointments and ‘new terms’ coroners approaching retirement (aged 60-67), by male / female ratio, as at May 2020

	All ‘new terms’ coroners	% female	New appointments (2017-2020)	% female	‘New terms’ coroners approaching retirement (aged 60-67)	% female	Diversity difference between new appointment and future retirements
Senior coroner	26	23%	8	25%	2	50%	-25%
Area coroner	27	30%	10	40%	3	33%	7%
Assistant coroner	333	53%	216	50%	57	35%	15%
Total coroners	386	49%	234	49%	62	35%	13%

Source: Data provided by the Chief Coroners’ Office

## Limitations

**C.32** Limitations of the data used to analyse the equality impact of the judiciary measures in this Bill are explored below for the protected characteristics for which the MoJ do not hold data, and are therefore unable to carry out in-depth equality analysis:

- disability – this is recorded and reported by the JAC. However, until recently, the JO only collected this information on a non-mandatory basis by self-declaration. It is not currently possible to differentiate between those without a disability and those who chose not to respond to the disability question. JO are changing the way they collect diversity information to help resolve this issue. This will allow JOHs to self-record and update their diversity information
- gender reassignment – no data was available at the time of this assessment. The JAC have recently revised their candidate equality monitoring form to collect information, but data has yet to be reported yet. The JO will include this as a field for JOHs to self-record during the current reporting year
- marriage and civil partnership – no data was available at the time of this assessment because the JAC do not record this information. The JO will include this as a field for JOHs to self-record during the current reporting year
- pregnancy and maternity – no data was available at the time of this assessment for the Bill as the JAC and JO do not record this information through their diversity monitoring forms
- religion or belief – no data was available at the time of this assessment. The JAC record and report this information at an aggregate level (i.e. for all exercises during a financial year). The JO will include this as a field for JOHs to self-record during the current reporting year

- sexual orientation – the JAC record and report this information at an aggregate level (i.e. for all exercises during a financial year). The JO will include this as a field for JOHs to self-record during the current reporting year

**C.33** Although there is limited data for these protected characteristics, the government envisages that these groups will not experience any disproportionate impact from the measures in the Bill for the judiciary other than those explored under the protected characteristics of age and sex.

## Judicial Pay

**C.34** This section of Annex C provides a high-level overview of the data used to support the MoJ’s equality analysis for the judicial pay measures in this Bill.

## Method

**C.35** This measure applies to all posts in scope regardless of the protected characteristic of the post holder and aims to put all posts on an equal legal footing regarding the provision of allowances.

**C.36** Where information was available for posts in scope, a review of Judicial Diversity statistics 2020 was used to assess which protected characteristics would likely be most affected by the introduction of the measure.

## High-level equality impact on groups

### Age

**C.37** The Data below in Table 21 has been used to support the government’s equality analysis in Chapters 3 to 7 for the protected characteristic of age. This shows that the vast majority of JOHs in these posts are over the age of 50.

**Table 21: Age of ‘In Post’ Masters and District Judges**

Appointment	Total	Under 40	40-49	50-59	60 and over
Masters, Registrars, Costs Judges	29	0	3	14	12
Deputy Masters, Deputy Registrars, Deputy Costs Judges	22	0	2	8	12
District Judges (County Courts)	419	7	95	189	128
Deputy District Judges (County Courts)	683	80	200	179	224

*Source: JOHs data*

### Sex

**C.38** The data in below in Table 22 has been used to support the governments equality analysis in the above chapters for the protected characteristic of sex. The data indicates that the majority of JOH’s in these posts are male.

**Table 22: Sex of 'In Post' Masters and District Judges**

Appointment	Total	Men	Women	Women (%)
Masters, Registrars, Costs Judges	29	19	10	34%
Deputy Masters, Deputy Registrars, Deputy Costs Judges	22	15	7	32%
District Judges (County Courts)	419	235	184	44%
Deputy District Judges (County Courts)	683	412	271	40%

Source: JOHs data

## Race

**C.39** The data below in Table 23 has also been used to support the government's equality analysis of the judicial pay measures in the above chapters for the protected characteristic of race. This data below shows that the majority of JOHs in these posts are white.

**Table 23: Sex of 'In Post' Masters and District Judges**

Appointment	Total	Asian or Asian British	Black or Black British	Mixed	Other Ethnic Group	Total Black, Asian and minority ethnic (BAME)	White	% BAME
Masters, Registrars, Costs Judges	29	1	0	0	0	1	23	4%
Deputy Masters, Deputy Registrars, Deputy Costs Judges	22	0	0	0	0	0	12	~
District Judges (County Courts)	419	25	6	7	2	40	356	10%
Deputy District Judges (County Courts)	683	28	6	10	8	52	546	9%

Source: JOHs data

## Limitations

**C.40** There are some limitations with the data used for analysing the equality impacts of the judicial pay measures in this Bill. These limitations are explored in paragraph C.33 for the protected characteristics for which MoJ do not hold data for and are therefore unable to carry out in-depth equality analysis on these.

**C.41** Although there is limited data for these protected characteristics the government envisages that these groups will not experience any disproportionate impact from the judicial pay measures in the Bill, other than those explored under the protected characteristics of age and sex.

# Annex D

## Data for UKAR pensions BBS and NRAM pension schemes

### UKAR pensions data

D.1 This annex details the data used for the equality impact analysis of the UK Asset Resolution (UKAR) measures in the Bill.

### Method

D.2 The data in Table 1 outlines the membership of the NRAM Pension Scheme as of 5 April 2019. The beneficiaries of the scheme will see their pension benefits transferred to a new public pension scheme, which this Bill seeks to take necessary powers to create. This data, which originates from the latest triennial valuation of the NRAM scheme, includes:

- the number of members alongside a break-down of active and deferred members;
- a breakdown of male/female members;
- the average ages of the scheme members;
- the annual pensions paid by the scheme and the accrued rights of deferred members.

Table 1: NRAM pension scheme: membership as of 5 April 2021

	Males	Females	Total
<b>Number of members</b>			
Deferred pensioners	292	753	1045
Pensioners	397	1112	1509
Total	689	1865	2554
<b>Annual pension (actual and potential current values) (£ million)</b>			
Deferred pensioners (assumed future pensions discounted to current values)	1.571	2.801	4.372
Pensioners (current pensions in payment)	6.964	6.039	13.003
<b>Average ages</b>			
Deferred pensioners	50.2	51.2	50.9

Pensioners	70.4	69.9	70
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Source: WillisTowersWatson<sup>1</sup>

**D.3** The data in Tables 2 and 3 outline the membership of the BBS Pension Scheme as of 30 June 2020. These individuals will also have their pension benefits transferred to a new public pension scheme. This data, which originates from the latest triennial valuation of the BBS scheme, includes:

- the number of members alongside a break-down of active and deferred members;
- average ages;
- male to female members and average pensions;
- the annual pensions paid by the scheme and the accrued rights of deferred members.

**Table 2: BBS Pension Scheme – membership as of June 2020**

	Deferred pensioners	Pensioners
Number	3569	2623
Total deferred pensions revalued to valuation date/total pensions payable (£000s per annum)	13,174	19,832
Average pension (£ per annum)	3691	7561
Average age	52.9	70.9

Source: Mercer

<sup>1</sup> Figures in respect of pensioners include dependents and children, Deferred pension amounts are as at the date of valuation and average ages are weighted by number.

Table 3: BBS Pension Scheme – membership as of June 2020

	Males	Females	Total
<b>Deferred pensioners</b>			
Number	1,125	2,444	3,569
Total deferred pensions revalued to valuation date (£000s per annum)	5,610	7,575	13,174
Average deferred pension (£ per annum)	4,986	3,095	3,691
Average age	53.9	52.1	52.9
<b>Pensioners</b>			
Number	895	1,728	2,623
Total deferred pensions revalued to valuation date (£000s per annum)	12,113	1,728	2,623
Average deferred pension (£ per annum)	13,534	4,467	7,561
Average age	71.1	70.7	70.9
Source: Mercer			

## High-level equality impact on groups

### Age

- D.4** The age distribution of the individuals affected by these clauses is, on average, higher than that of the general population. This is due in large part to the fact that the BBS and NRAM pension schemes have been closed to new members and accruals since the government took on the liabilities of the schemes at the point of nationalisation.
- D.5** Although the majority of the members of the NRAM scheme are pensioners (and thus some may be considered vulnerable on the grounds of age), a significant number are deferred pensioners not yet in receipt of their pension payments, and most a much lower average age (average 50.9).
- D.6** In contrast, the majority of BBS Pension Scheme members are deferred members.
- D.7** All individuals affected by the UKAR clauses will be affected in the same manner irrespective of age.

### Sex

- D.8** There are significantly more women members in the BBS and NRAM schemes than men. This means that the individuals who will transfer to new public schemes as a result of the powers taken under Part 2 of this Bill will be predominantly female.

- D.9 The total liability paid out by the NRAM scheme to male/female pensioners is broadly similar for male and female members (both between £6 million to £7 million per annum). However, as Table 3 shows, the average pension payments payable to women members of the BBS scheme are significantly smaller than those paid to male members.
- D.10 However, individuals affected by the UKAR clauses will be affected in the same manner, irrespective of sex. All members should experience minimal change as a result of the Bill, and the impact of the regulations being made should be mostly administrative.

## Race

- D.11 Data on the race of the individuals who will be affected by the UKAR clauses is not held. However, individuals affected by these clauses will be affected in the same manner, irrespective of race.

## Other protected characteristics

- D.12 Data on the other protected characteristics of the individuals who will be affected by the UKAR clauses is also not held. However, individuals affected by these will be affected in the same manner, irrespective of other protected characteristics.

## Limitations

- D.13 Data on the other protected characteristics of the individuals who will be affected by the UKAR clauses, such as race, is not available.
- D.14 The lack of this data limits our ability to understand how the individuals affected by the UKAR clauses compare to the wider population.
- D.15 However, the policy intention of the UKAR clauses is to maintain pension payments and accrued rights as part of the transfer to the new public pension schemes. Therefore, members should be in the same position before and after the transfer. This means that the actual impact on members of the BBS and NRAM schemes will be minimal and primarily administrative (i.e. the provider of their pension will change but their benefit entitlement will not).

# Annex E

## Data for the Public Service Pension Schemes in Northern Ireland

### Northern Ireland pensions data

- E.1 This annex contains details on the data for Public Service Pension Schemes in Northern Ireland (NI).

### Method

- E.2 The data in this annex was collected from Public Service Pension schemes data produced by GAD for the 2016 valuations. Data collated from the Department of Finance review of the effects of the Public Service Pensions Act (NI) 2014 is also referenced.<sup>1</sup>
- E.3 This data has been valuable in assessing the equality impacts for any measure affecting the Northern Irish pension schemes.
- E.4 Table 1 below shows the active scheme membership as at 31 March 2016. The data shows the Health and Social Care Pension schemes have the largest membership in Northern Ireland. Thus, the government would expect any measures in the Bill that have influence on pension schemes in NI to impact this scheme the most, though the government does not expect any disproportionate impact to arise here.

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<sup>1</sup> <https://www.finance-ni.gov.uk/publications/report-2016-review-effects-public-service-pensions-act-northern-ireland-2014>

**Table 1: Active scheme membership as at 31 March 2016**

<b>Scheme</b>	<b>Membership</b>	<b>Proportion</b>
Health and Social Care Pension Schemes	61,800	35%
Local Government Pension Scheme (NI)	52,000	29% <sup>2</sup>
NI Civil Service Pension Scheme	30,600	17%
NI Teachers Pension Scheme	24,800	14%
NI Police Pension Scheme	6,700	4%
NI Fire and Rescue Service Pension Scheme	1,700	1%
NI Judicial Pension Scheme	~	~
<b>Total</b>		<b>181,520</b>

*Source: Scheme data collated from GAD 2016 Valuation Data Reports (active membership data)*

**E.5** Table 2 shows the breakdown of the sex demographics for active scheme members in each public sector pension scheme as at 31 March 2016. The NI Police and the Fire (NI) pension schemes are heavily male dominant with proportions above 70%, whereas the H&SC and Teachers Pension Scheme are heavily female dominant. In the Civil Service Pension Scheme, there is a more even split between male and female members (Table 2 shows 48% are male and 52% are female members in the Civil Service Pension Scheme).

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

<b>Scheme</b>	<b>Male</b>	<b>Female</b>
Health and Social Care Pension Schemes	20%	80%
Local Government Pension Scheme (NI)	33%	67% <sup>3</sup>
NI Civil Service Pension Scheme	48%	52%
NI Teachers Pension Scheme	24%	76%
NI Police Pension Scheme	71%	29%
NI Fire and Rescue Service Pension Scheme	97%	3%
NI Judicial Pension Scheme	~	~

*Source: Scheme data collated from GAD 2016 Valuation Data Reports (active membership data)*

## **Scheme specific data**

**E.6** Tables 3 to 7 provide scheme specific data for NI public service pension schemes based on the 2016 GAD valuation reports. This data is broken down by age and

<sup>2</sup> Local Government Pension Scheme (NI) data extracted from scheme valuation reports as at 31 March 2016.

<sup>3</sup> Local Government Pension Scheme (NI) data extracted from scheme valuation reports as at 31 March 2016.

protective status and has been valuable for assessing the equality impacts of the measures in this Bill influencing pension schemes in NI.

**Table 3: HSC (NI) 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%	2%
25 – 34	100%	0%	0%	20%
35 – 49	97%	2%	1%	43%
50 – 64	20%	23%	57%	34%
65 plus	5%	0%	95%	1%

*Source: HSC (Northern Ireland) Pension Scheme data*

**Table 4: Teachers (NI) 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%	25%
35 – 49	100%	0%	0%	48%
50 – 64	15%	31%	54%	25%
65 plus	11%	0%	89%	0%

*Source: TPS (Northern Ireland) Pension Scheme data*

**Table 5: Civil Service (NI) 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%	0%
25 – 34	100%	0%	0%	17%
35 – 49	100%	0%	0%	45%
50 – 64	14%	33%	53%	37%
65 plus	2%	0%	98%	1%

*Source: CS (Northern Ireland) Pension Scheme data*

**Table 6: Firefighters' (NI) 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%	1%
25 – 34	100%	0%	0%	15%
35 – 49	70%	27%	3%	57%
50 – 64	6%	4%	90%	26%
65 plus	64%	0%	36%	0%

Source: Firefighters' (Northern Ireland) Pension Scheme data

**Table 7: Police (NI) 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%	23%
35 – 49	59%	23%	18%	60%
50 – 64	7%	0%	93%	16%
65 plus	0%	0%	100%	0%

Source: Police (NI) Pension Scheme data

## Additional data analysis

**E.7** The additional data analysis below charts the age, sex and protected status breakdown for NI schemes collated by the Department of Finance for the purposes of its review of the effects of the Public Service Pensions Act (NI) 2014.<sup>4</sup>

**Table 8: Health and Social Care Pension Scheme (HSC) – Age and sex as at 31 March 2015**

Active members by sex	Age group								
	16-24	25-39	40-49	50-55	56-60	61-65	66-70	71-75	75 plus
Male	258	3,716	3,538	2,233	1,325	408	48	5	0
Female	1,088	16,235	13,863	8,957	4,500	1,260	179	16	0

Source: HSC age and sex data as at 31 March 2015

<sup>4</sup> See report laid in the NI Assembly in October 2016 – <https://www.finance-ni.gov.uk/publications/report-2016-review-effects-public-service-pensions-act-northern-ireland-2014>

Table 9: Local Government Pension Scheme (Northern Ireland) [LGPS (NI)] – Age and sex as at 31 March 2015

Active members by sex	Age group								
	16-24	25-39	40-49	50-55	56-60	61-65	66-70	71-75	75 plus
Male	543	4,418	5,116	3,952	2,608	1,412	347	79	0
Female	1,485	9,025	10,685	7,149	4,204	1,587	326	40	0

Source: LGPS (NI) age and sex data as at 31 March 2015

Table 10: Civil Service Pensions (Northern Ireland) [CSP (NI)] – Age and sex as at 31 March 2015

Active members by sex	Age group								
	16-24	25-39	40-49	50-55	56-60	61-65	66-70	71-75	75 plus
Male	108	4,392	3,598	3,659	1,560	705	141	13	~
Female	83	5,259	4,084	2,941	1,443	334	57	8	~

Source: CSP (NI) age and sex data as at 31 March 2015

Table 11: Northern Ireland Teachers Pension Scheme (NITPS) – Age and sex as at 31 March 2015

Active members by sex	Age group								
	16-24	25-39	40-49	50-55	56-60	61-65	66-70	71-75	75 plus
Male	153	2,364	1,786	1,046	689	140	18	~	0
Female	523	8,489	5,836	2,510	1,606	268	13	~	0

Source: NITPS age and sex data as at 31 March 2015

Table 12: Police Pension Scheme (PPS) – Age and sex as at 31 March 2015

Active members by sex	Age group								
	16-24	25-39	40-49	50-55	56-60	61-65	66-70	71-75	75 plus
Male	83	1,753	2,297	595	35	0	0	0	0
Female	26	1,040	684	136	13	~	0	0	0

Source: PPS age and sex data as at 31 March 2015

**Table 13: Firefighters' Pension Scheme (FFPS) – Age and sex as at 31 March 2015**

Active members by sex	Age group								
	16-24	25-39	40-49	50-55	56-60	61-65	66-70	71-75	75 plus
Male	25	568	743	296	58	13	~	0	0
Female	~	26	15	~	0	0	0	0	0

Source: FFPS age and sex data as at 31 March 2015

**Table 14: Northern Ireland Judicial Pension Scheme (NJPS) – Age and sex as at 31 March 2015**

Active members by sex	Age group								
	16-24	25-39	40-49	50-55	56-60	61-65	66-70	71-75	75 plus
Male	0	~	5	~	~	~	0	0	0
Female	0	7	6	7	0	0	0	0	0

Source: NJPS age and sex data as at 31 March 2015

**E.8** Table 15 and 16 show a breakdown of each scheme in Northern Ireland by full transitional protection and by tapered transitional protection.

**Table 15: Full transitional protection in public service schemes**

Scheme	Full protection as at 1 April 2012
Health and Social Care Pension Schemes	12,266
Local Government Pension Scheme (NI)	*5
NI Civil Service Pension Scheme	9,466
NI Teachers Pension Scheme	4,242
NI Police Pension Scheme	2,056
NI Fire and Rescue Service Pension Scheme	494
NI Judicial Pension Scheme	0
Total	33,645

Source: Data collated from CCWG representatives April-October 2016

<sup>5</sup> All members moved to the new scheme on 01/04/2015, but NILGOSC had 5,121 active members with 'underpin' transitional protections.

**Table 16: Tapered transitional protection in public service pension schemes**

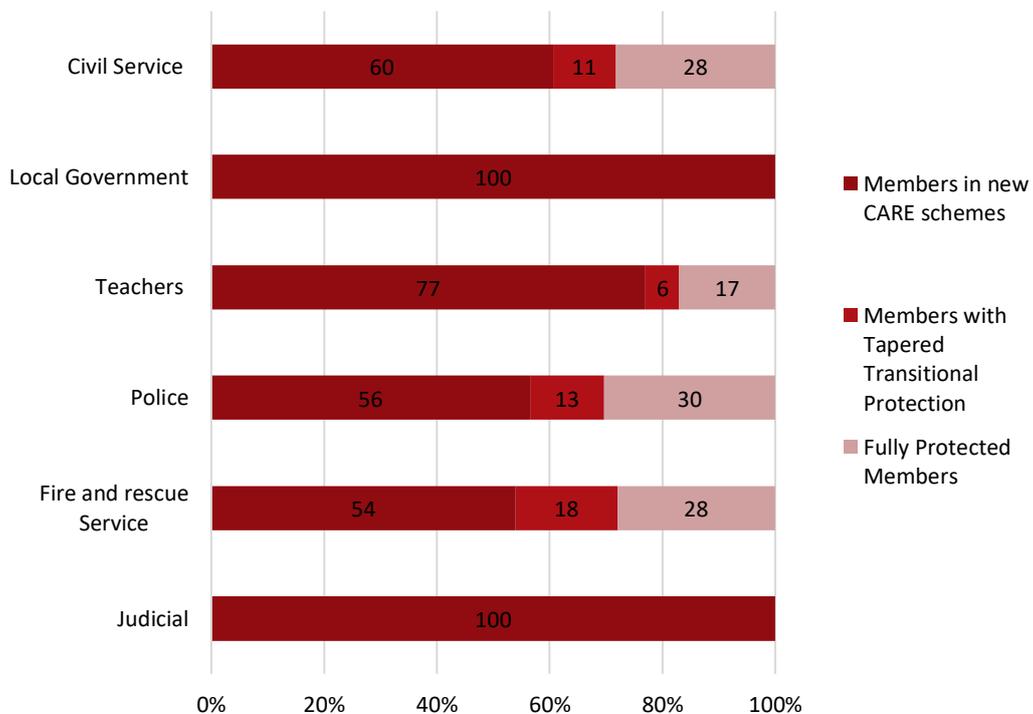
Scheme	Tapered transitional protection as at 1 April 2012
Health and Social Care Pension Schemes	5,401
NI Civil Service Pension Scheme	3,777
NI Teachers Pension Scheme	1,572
NI Police Pension Scheme	906
NI Fire and Rescue Service Pension Scheme	315
NI Judicial Pension Scheme	16
<b>Total</b>	<b>11,987<sup>6</sup></b>

Source: Data collated from CCWG representatives April-October 2016

**E.9** Chart 1 represents a breakdown of members in new CARE scheme, members with tapered transitional protection and fully protected members by percentage.

**E.10** The data in Chart 1 and Tables 15 to 16, has been valuable in assessing the equality impacts for individuals in Northern Ireland with full transitional protection, tapered transitional protection, members in new CARE scheme and fully protected members.

**Chart 1: Transitional protection – percentage breakdown**



Source: Data collated by the Department of Finance from NI schemes April-October 2016<sup>7</sup>

<sup>6</sup> Tapered transitional protection does not apply to LGPS (NI).

<sup>7</sup> The totals here may not sum due to rounding.

## Other protected characteristics

**E.11** Data for the other protected characteristics for NI public service pension schemes is currently not readily available to be provided by GAD.<sup>8</sup> However, the government does not envisage any differential impact on members of public service pension schemes in NI for these protected characteristics.

## Limitations

**E.12** The data for NI has some limitations as set out below:

- all pension data is from a specific snapshot in time. This is not the specific point in time at which these measures will come into force; however, for the purposes of this analysis it is assumed that the percentages calculated here will be the same for the basis of this equality analysis
- the results of the valuation of data supplied to GAD for the 2016 valuation were dependent on the quality and accuracy of the data used. In preparing the 2016 valuation reports, GAD relied on data and other information supplied by schemes without carrying out further independent verification of quality and accuracy. However, the government does not expect this to be an issue because the data provided is sufficient for this equality analysis

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<sup>8</sup> Please see the Equality Screening analysis undertaken by the Department of Finance as part of their consultation that covered some of these characteristics – <https://www.finance-ni.gov.uk/consultations/consultation-proposed-changes-transitional-arrangements-2015-schemes>



## **HM Treasury contacts**

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