

Police Federation
Of England and Wales



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Established by Act of Parliament

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NATIONAL SECRETARY'S OFFICE

29 December 2021

Police Pension Team
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Sent via email to: Policepensionspublicservicepensionsremedy@homeoffice.gov.uk

Dear Sir/Madam,

Public Service Pensions: Police Pensions (Amendment) Regulations 2022 - Consultation

Enclosed is the formal response from the Police Federation of England and Wales (PFEW) to the consultation *Public Service Pensions: Police Pensions (Amendment) Regulations 2022 McCloud / Sargeant remedy: phase one (prospective)* which commenced on 8 November 2021 and closes on 2 January 2022.

We have provided comment on phase one of the draft regulations and policy amendments required to implement the prospective remedy, in addition to items which are related to or impacted by the Remedy, such as pensionable pay and the Immediate Detriment guidance.

Whilst cognisant that HM Treasury (HMT) have withdrawn the Immediate Detriment guidance which was originally issued in August 2020 due to the complexities around its interaction with Section 61 of the Equality Act 2010, and tax legislation, PFEW continue to be of the view that those members who have already retired or are imminently due to retire should not be subject to any delay in formally rectifying the detriment they have or will imminently suffer.

PFEW's response to this consultation, and the questions raised within it, are based on our current understanding of how both the prospective and retrospective elements of the Remedy will interact in order to successfully implement the Remedy. Our understanding of the intended approach is detailed below:

The proposed changes to regulations in the current prospective consultation provide fully protected members with a "closing date" of 31 March 2022 (unless they exit earlier), but maintain the existing "closing dates" for unprotected members (31 March 2015) and tapered protection members (between 1 April 2015 – 31 March 2022). Consequently, the current position will continue to prevail so that affected scheme members putting their benefits into payment prior to the full and final implementation of the Remedy (October 2023) will have their benefits calculated and paid on the existing (unremedied) basis, in spite of the fact that the Remedy will actually be effective from 1 April 2022.

When the retrospective Remedy is effected by regulations (by October 2023), in addition to providing for the Deferred Choice Underpin, further retrospective changes will be made to amend the definition of "closing date". This will ensure that all members (fully protected, tapered protected, and unprotected) will potentially have the same closing date of 31 March 2022. This will then be subject to the choice made by the member at retirement, and if they opt for Reformed Scheme benefits for the Remedy Period their "closing date" will default to 31 March 2015.

Please confirm that our above understanding is correct. If it is not, please provide a detailed explanation of how it is envisaged that the prospective and retrospective elements of the Remedy will be implemented in terms of the intended interaction between changes to regulations now and in the future.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Alex Duncan', with a stylized flourish at the end.

**ALEX DUNCAN, NATIONAL SECRETARY
POLICE FEDERATION OF ENGLAND AND WALES**

Consultation response to the Public Service Pensions: Police Pensions (Amendment) Regulations 2022 *McCloud/Sargeant* remedy: phase one (prospective)

29 December 2021

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Prepared on behalf of Alex Duncan, PFEW National Secretary

Authorised by:



National Secretary
PFEW

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1. Introduction

1.1. General position

- 1.1.1. For the avoidance of doubt, PFEW remains of the view that only new joiners from 1 April 2015 should be admitted to the Reformed Scheme. It is acknowledged that this position is not shared by government, and our response is therefore provided in the context of the current position and proposals in the consultation.
- 1.1.2. Although the consultation is stated to be about proposed amendments to the PPR 2015, it includes two new policy statements. In our view, these policies have not been fully thought through and this is explained in further detail in response to the specific questions in the consultation.
- 1.1.3. Whilst it is beneficial that the consultation confirms that members who have commenced the purchase of additional service prior to 1 April 2022 can continue to the end of those agreements, PFEW notes that this is in fact a statutory right and the existing agreement cannot be legally removed from these members anyway.
- 1.1.4. The apparent lack of consideration towards how government intend to approach the issue of members in scope of the Remedy who transitioned to the PPS 2015 from 1 April 2015, and who may have been deprived of the opportunity to elect to purchase additional service, is of concern. PFEW awaits government's proposed solution to this omission and suggest that a failure to ensure that such members have the same opportunity as those who were fully protected may constitute indirect sex and age discrimination.

Immediate Detriment

- 1.1.5. It would be remiss of PFEW not to again raise the issue of Immediate Detriment (ID). Whilst cognisant that HM Treasury have withdrawn the guidance, this has created an ongoing detriment and actual loss to some officers. This is particularly concerning for those who are retiring due to ill-health, where the uncertainty over when the Remedy will be implemented for them is particularly distressing.

1.1.6. PFEW does not wish to see a repeat of the confusion, lack of clarity, and inconsistent treatment caused by a poorly worded and non-binding guidance note, as was the case with the previous Immediate Detriment guidance. Nonetheless, it should not be outside of government’s capability and resources to implement a solution which at least minimises, if not entirely resolves the ongoing detriment to those affected. PFEW are willing to discuss with Home Office officials how this can be addressed and resolved, should they have the appetite to do so.

1.2. Quality of consultation

1.2.1. The overall quality of the consultation document is unsatisfactory. Some of the technical terms and wording used are not in keeping with pension terminology, and in particular the policy intent around ill-health retirements (commencing at §3.5) is confusing and not well explained.

1.2.2. Ambiguous explanations and poor wording hamper understanding and restrict our ability to respond to this consultation. We have, in places, had to interpret wording and provide a response based on that understanding. Previous consultations (for example, the 2020 Remedy consultation, 2021 consultation on proposed reform of the Cost Control Mechanism, 2021 consultation on the discount rate methodology) were far more complex in content but were clear and consistent in their use of terminology. It is unfortunate that this consultation has not benefitted from the same attention to detail, and PFEW trusts that this feedback will be taken into account when drafting the consultation on retrospective Remedy.

1.2.3. PFEW’s understanding is that the proposed changes to regulations in the current consultation are intended to provide fully protected members with a “closing date” of 31 March 2022 (unless they exit earlier), but maintain the existing “closing dates” for unprotected members (31 March 2015) and tapered protection members (between 1 April 2015 – 31 March 2022). Consequently, the current position will continue to prevail so that anyone putting their benefits into payment prior to the full and final implementation of the Remedy (October 2023) will have their benefits calculated and paid on the existing (unremedied) basis, despite the fact that ultimately the Remedy will be effective from 1 April 2022.

1.2.4. When the retrospective Remedy is affected in regulations (by October 2023), in addition to providing for the Deferred Choice Underpin, further retrospective changes will be made to amend the definition of “closing date”. This will ensure that all members (fully protected, tapered protected and unprotected) will potentially have the same closing date of 31 March 2022. This will then be subject to the choice made by the member at retirement, and if they opt for Reformed Scheme benefits for the Remedy Period their “closing date” will default to 31 March 2015.

1.2.5. Please confirm that PFEW’s above understanding is correct. If it is not, please provide a detailed explanation of how it is envisaged that the prospective and retrospective elements of the Remedy will be implemented in terms of the intended interaction between changes to regulations now and in the future.

2. Response to consultation questions

2.1. Question 1 - As required by the PSPJO, the draft regulations seek to ensure that the legacy schemes are closed to future accrual from 31 March 2022 and that all members are in the 2015 Scheme in respect of any pensionable service from 1 April 2022. Are the draft regulations sufficient to meet this aim? Do you think there are any changes or additions required to the draft regulations to achieve the stated policy aims?

2.1.1. PFEW consider that the Regulations are sufficient to ensure that the Legacy Schemes close to future accrual from 31 March 2022, and provide for all members to accrue benefits in the 2015 Scheme in respect of pensionable service on and from 1 April 2022.

2.1.2. For the full and proper implementation of phase one of the Remedy, amendments should also be made to the Police Pensions Regulations 1987 (PPR 1987) and the Police Pensions Regulations 2006 (PPR 2006) to incorporate a clear definition of what constitutes “service which is reckonable” (PPR 1987) and “pensionable service” (PPR 2006).

2.1.3. Matters regarding equality implications are covered in more detail in our response to question four of this consultation. However, PFEW also reiterate the comments made in its response (dated 11 October 2020) to the consultation *Public service pension schemes: changes to the transitional arrangements to the 2015 schemes*¹. Of particular relevance are §2.9.1 - §2.9.3 (inclusive) and §3.2.8.

2.1.4. The aforementioned paragraphs of PFEW’s previous consultation response relate mainly to the treatment of late joiners to the Police Pension Scheme 1987 (PPS 87). PFEW have raised the issue of late joiners on more than one occasion, through both the Scheme Advisory Board and direct to Home Office officials. It has always been PFEW’s position that as currently drafted, the

¹ [PFEW response to 2020 Remedy consultation](#)

Police Pensions Regulations 2015 (PPR 2015) provide full protection for this cohort of late joiners to PPS 87, which would continue beyond April 2022. However, there has never been any government response to PFEW's comments on this issue and no further explanation or acknowledgement of the issue was forthcoming. It is therefore interesting to note that §2(3) of The Police Pensions (Amendment) Regulations 2022 brings this issue to a close by ceasing a member's full protection status on the earliest of their ceasing pensionable service in the Legacy Scheme and 31 March 2022.

2.1.5. PFEW's position remains that the drafting of the PPR 2015 and subsequent benefit statements sent to members (as highlighted above) effectively created representations to this cohort of members that they would be able to remain in the PPS 87 for the remainder of their pensionable service.

2.1.6. In light of this, and the failure to previously address this issue despite repeated requests, PFEW considers that an explanation should be provided by government to affected members regarding the issues previously raised which clearly states why the information previously provided to them has changed.

2.2. Question 2 - The government will consider whether any amendment to the existing 2015 Scheme regulations is required in order to ensure that a protected member who applies for ill health retirement before 31 March 2022, and which is determined in their favour after that date, is treated no less favourably than if the application had been determined on 31 March 2022. Do you have any views on the proposals regarding ill-health retirement? In particular, do you think that any amendment to the 2015 Scheme is required to achieve this intent?

- 2.2.1. In principle, PFEW supports the intention to ensure that members are treated no less favourably where their ill-health retirement (IHR) application straddles across 1 April 2022. However, this section of the consultation is particularly poorly worded; rather than aid understanding of the policy intent, it raises serious questions as to whether the issues at hand have been fully and properly considered before forming the policy intent.
- 2.2.2. PFEW understand that the policy intention is for members who move to the Reformed Scheme to be assessed, and to receive ill-health retirement benefits, in accordance with the IHR provisions under the PPR 2015.
- 2.2.3. PFEW is content that the draft regulations, once enacted, will result in full protection members becoming transition members on 1 April 2022 and should therefore benefit from any transitional provisions relating to IHR pensions.
- 2.2.4. The key criterion for IHR benefits under each of the three police pension schemes is that an officer has become permanently unable to perform the ordinary duties of a police officer. In view of this fundamental similarity, PFEW agrees that a member should not be treated any less favourably in the PPR 2015 when determining eligibility for an IHR pension than under either of the Legacy Schemes.
- 2.2.5. With regard to *receipt* (i.e. calculation) of IHR benefits, the stated policy intent is for members to receive an IHR pension from the Reformed Scheme which is no less generous than if it had been determined on 31 March 2022

under either of the Legacy Schemes. If a Legacy Scheme IHR pension calculated as at 31 March 2022 would be higher than the IHR pension determined under the Reformed Scheme, the Reformed Scheme pension would be increased.

- 2.2.6. In §3.5.iv of the consultation, it is stated that *“We consider this policy intent may already be achieved under existing scheme regulations”*. PFEW is surprised at this statement. It is the task of government to identify whether the intention of a policy formulated by the government is clearly and effectively achieved by the legislation that the government is proposing, not that of the respondents to this consultation. PFEW considers that the Home Office should already have sufficient information about existing scheme regulations that it does not need to speculate in this way and should be able to categorically state whether or not it considers that the policy intent is actually achieved under existing regulations. If that is not possible, then the draft regulations being consulted on will evidently not be fit for purpose.
- 2.2.7. It is worthy of note that the requirement for continuity of service means that any member with a gap in service of more than five years (which begins on or before the member’s transition date and ends when the member becomes an active member of the Reformed Scheme) will not be caught under Part 6 of PPR 2015. PFEW are therefore led to believe, though the consultation does not clarify, that this cohort of members would receive separate pensions from both any relevant Legacy Scheme(s) and from the Reformed Scheme.
- 2.2.8. Whilst Part 6 of Schedule 4 to the PPR 2015 takes account of members’ Legacy Scheme benefits, §23(5) does not appear to achieve the stated policy intent. For a transition member of the Police Pension Scheme 2006 (PPS 2006), the IHR pension that would have been payable under the PPR 2006 forms part of the total pension payable from the Police Pension Scheme 2015 (PPS 2015). It is not, however, a PPS 2006 IHR pension calculated as at 31 March 2022 in all cases. For a transition member of the Police Pension Scheme 1987 (PPS 1987), a “better of” test applies but, again, this does not necessarily result in a PPS 1987 IHR pension calculated as at 31 March 2022 in all cases.
- 2.2.9. Further, the PPR 2015 do not properly provide for a “better of” test as between a Reformed Scheme IHR pension calculated at the date a member actually retires, and a Legacy Scheme IHR pension calculated as at 31 March 2022. Nor do the PPR 2015 set out a mechanism for increasing the PPS 2015 pension to account for any difference which arises from conducting that “better

of” test. Both of these points need to be addressed in any regulations which are proposed.

2.2.10. Further, reference is made throughout §3.5 to protected members and transition members, but there is no reference to members with no protection who are in scope of the Remedy. It might be that the reference to transition members in §3.5.vi is intended to refer to such members, but this is unclear and ambiguous. The consultation also lacks reference to members who commence the IHR process whilst members of one of the Legacy Schemes, but who are subject to tapered protection and whose protection ends before the IHR application has been determined in their favour.

2.2.11. In describing the intended policy regarding those members for whom the IHR process straddles 1 April 2022, reference is made to the existing relevant parts of PPR 2015. It is therefore a point of concern that reference is made to the calculation of ill-health benefits for transition members as a “one-pot” approach (§3.5.v). PFEW is of the understanding that in practice there is actually a two-pot approach whereby members’ Legacy and Reformed Scheme membership is taken into account in the overall calculation of ill-health benefits.

2.2.12. It is not clear to PFEW why it is necessary to incorporate an additional test in respect of the cohort of members impacted by this policy intent. Consequently, PFEW requests explanations:

- Why government believe an additional test is required for those members whose IHR process has begun prior to 31 March 2022 but is not determined until after 1 April 2022?
- Why and on what basis government believe that existing regulations may already provide for the ill-health policy intent?
- Please would government confirm that the policy intent should have the effect of ensuring that any member in scope of the Remedy who is successfully granted IHR will be paid benefits calculated in accordance with their accrual in both the Legacy and Reformed Schemes?

2.2.13. PFEW’s comments on equality impacts are mainly contained within the views outlined in answer to question four of this consultation. However, there is an issue of particular concern around the IHR policy intent which is detailed below.

2.2.14. The consultation asserts (at §3.5.iii) that “members will receive an award paid from the reformed 2015 Scheme”, however there is no further information as to how the costs of these IHR benefits will be allocated for valuation purposes, where the award comprises benefits arising from membership of one of the Legacy Schemes.

2.2.15. PFEW’s concerns about the allocation of costs are not a new development. Since the introduction of the Reformed Scheme and the Cost Control Mechanism (CCM), there has been a lack of transparency about exactly which costs are considered employer costs, and which are member costs. Most recently, concerns about this issue were reiterated in our response (dated 19 August 2021) to the *Public Service Pensions: cost control mechanism* consultation. The pertinent paragraphs are reiterated below, and remain valid:

“1.2.5 Secondly, since the introduction of the mechanism the associations have repeatedly sought a clear and comprehensive explanation of which costs are attributed to members, and which to employers in the context of the cost control mechanism calculation.

1.2.6 If the designation of employer and member costs were outlined in the directions made by HM Treasury, our concerns could be allayed, and this would enable us to communicate more effectively with members about the impact of the proposed changes. This is another opportunity where Government can take proactive steps to restore some of the trust that has been lost following the introduction of the 2015 CARE Scheme, subsequent need for Remedy, and an improvement in the 2015 CARE Scheme accrual rate which was expected but never implemented.”

2.2.16. It is disappointing that this consultation provided no clarity nor reference to where the costs of IHR benefits paid from the Reformed Scheme would be attributed to (where part of the benefits paid out arise from membership of a Legacy Scheme), particularly in light of the reform of the CCM, which is moving to a Reformed Scheme only design.

2.2.17. PFEW understands that costs relating to Legacy Scheme benefits (such as weighted accrual and the Final Salary Link) will not be included as member costs in the reformed CCM. On that basis, PFEW expect that any costs arising from IHR benefits paid from the PPS 2015 but arising as a result of membership

of either of the Legacy Schemes will not be included as member costs in the reformed CCM.

- Please would government confirm that costs arising from IHR benefits paid from PPS 2015 but arising as a result of membership in either of the Legacy Schemes will not be included as member costs in the reformed CCM? Further, will the same approach be taken to any increased payment required as a result of the proposed “better of” calculation?
- Additionally, can stakeholders expect government to clarify exactly what constitute employer costs and member costs for the purposes of the CCM calculation? If so, will this be achieved through HM Treasury directions or (for example), by amending PPR 2015? If not, why not?

2.2.18. In the event that costs arising from IHR benefits in respect of membership of a Legacy Scheme which are paid under PPR 2015 are to be included as member costs in the CCM, PFEW has serious concerns about potential discriminatory impacts. If member costs in the PPS 2015 were to exceed the 3% corridor (increased from 2% as part of the reformed CCM) and still did so after the economic check, members of the PPS 2015 would see either a reduction in their accrual rate or an increase in their contribution rate. Younger members of the PPS 2015 are more likely (than their older counterparts) to be female and/or of an ethnic minority and PFEW takes the view that as such, if the aforementioned costs are included in the CCM, this is likely to constitute indirect sex and race discrimination. This view is taken on the basis that predominantly younger scheme members would be bearing the cost of benefits which are payable in respect of (inevitably predominantly older) former members of the Legacy Schemes.

2.3. Question 3 - The regulations will need to ensure that provisions which allow arrangements for purchasing service in the legacy schemes by periodical contributions, entered into before 1 April 2022, can continue on and after that date and that additional benefit purchasing in the legacy schemes ceases on 31 March 2022. In your view, would existing provisions in the relevant reformed scheme regulations achieve these aims? Alternatively, would additional provisions be needed to achieve this outcome?

2.3.1. PFEW considers that the existing provisions of the PPR 2015 would allow arrangements for purchasing service in the Legacy Scheme by periodical contributions, entered into before 1 April 2022, to continue on and after that date. As the consultation does not raise any questions in relation to purchasing service by way of lump sum, PFEW have not commented on this particular aspect, and have assumed from the lack of any such questions that existing arrangements regarding purchase by lump sum will also continue to apply.

2.3.2. In PFEW's view, as members will cease to be able to accrue benefits in the Legacy Schemes from, at the latest, 31 March 2022, they should also be unable to enter into new arrangements to purchase additional service in the Legacy Schemes on or after 1 April 2022 (on the basis that the relevant protection periods will end then). Any purchase of additional service would then be dealt with under the provisions of the 2015 Scheme. However, §35(2) of Schedule 4 to the 2015 Scheme appears to contradict that policy intention. We would suggest that §35 is revised to put the position beyond doubt.

2.3.3. PFEW also understands that the arrangements for purchasing additional service in the Legacy Schemes will be unaffected by the Public Service Pensions and Judicial Offices Bill (PSPJO Bill) and the draft regulations accompanying this consultation. However, PFEW suggest that an amendment is made to the regulations of all three police pension schemes to confirm that any election to purchase additional service in the Legacy Scheme(s) remains valid and can be completed.

2.3.4. Whilst full protection members would be able to elect an arrangement for purchasing additional service under the Legacy Scheme(s) up until 31 March 2022, the same does not necessarily apply to transition members who are tapered protection members and transition members who received no protection but are in scope of the Remedy. These members have potentially been deprived of an opportunity to elect an arrangement for purchasing service at some point between 1 April 2015 and 31 March 2022 under the relevant Legacy Scheme.

2.3.5. The consultation paper, in outlining the process for purchasing additional service, explains that *“They do this by agreement with the scheme manager”* (§3.4.i). PFEW is not aware of any relevant regulations which require the consent of the scheme manager to elect an arrangement for purchasing additional service. Provided that the member meets the relevant criteria and makes the election as required, then the provision of this facility is automatic.

2.3.6. The Home Office must consider how it intends to deal with those members who rightly believed that they did not have an opportunity to elect an arrangement for purchasing service in their Legacy Scheme once they had been transitioned into the PPS 2015. A failure to address this issue will, in PFEW’s view, mean that ultimately these members are not being comprehensively treated as if they were full protection members for the Remedy Period.

2.3.7. In particular, if affected members are not given an opportunity to elect an arrangement for purchasing additional service in their Legacy Scheme (as would have been the case had they been full protection members), this could negatively affect two particular cohorts of members:

- i. Part-time officers in the Legacy Schemes who would lose this method of increasing their pensionable service.
- ii. Officers who have had periods of unpaid parental leave during their service which they have not “bought back” using the (time limited) options to do so, and might be able to use the opportunity to purchase service as an alternative means of compensating for the period of unpaid leave.

Both groups outlined above are likely to be predominantly female, and therefore there is a risk that failure to address this issue may create indirect sex discrimination. It is also contrary to the overarching principle of returning

members to the position they would have been in had the discrimination not occurred.

2.3.8. Although this issue was identified and raised during Parliamentary proceeding in October 2021 regarding the PSPJO Bill, PFEW is very disappointed that it has not been included or discussed in this consultation paper.

2.4. Question 4 - We are interested in understanding whether the scheme regulation amendments will have an impact on people with protected characteristics, beyond those equality considerations undertaken and set out in the EQIA undertaken alongside the consultation and PSPJO. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. Do you think that the draft regulations and policy intent as set out above will have any positive or negative impacts on people with protected characteristics, beyond those already considered? If so, which and why/why not?

- 2.4.1. PFEW first make clear that, in their view, government must give serious consideration to improving its alignment with the Public Sector Equality Duty (PSED). In more than one instance in Annex A (Draft Equality Impact Assessment) of this consultation it is stated that there is little or no statistical data available; this includes sex, ethnicity, marital status and disability. The data that is available is stated to be from 2016, as more recent data is not available. This is extremely disappointing, not least because the 2020 valuation of the police pension schemes is currently being undertaken, which requires the collation of member data.
- 2.4.2. Further, there is recent evidence of government's inattentive approach to Equality Impact Assessments (EIA). The recent consultation on amendments to Annex F was launched without an EIA at all, which shows a disregard for the requirement to consider the equality impacts of proposed changes. Whilst this was subsequently provided, there was no proactive consideration given to amending the consultation deadline to ensure all relevant documents included in the consultation could be reviewed to the same timescale.
- 2.4.3. Additionally, it is relevant to make reference to the recent High Court judgment arising from the Police Superintendents' Association Judicial Review of the closure of the Legacy Schemes (*R (Police Superintendents Association) v HM Treasury* [2021] EWHC 3389 (Admin)). Not only was it found that the

consultation to close the Legacy Schemes was unlawful, but also that there was a breach of the PSED. This is of great concern and PFEW urges government to show a concerted effort to address their approach to fulfilling their obligations under PSED going forwards.

2.4.4. As previously detailed in the response to question two of this consultation, PFEW is concerned about the allocation of costs arising from the payment of IHR benefits from the Reformed Scheme which are (at least in part) as a result of membership in one of the Legacy Schemes. If government intend to include all of these costs within the CCM, PFEW reiterates that this may constitute indirect sex and age discrimination.

2.4.5. Similarly, if those members who are in scope of Remedy but have already been moved into the Reformed Scheme (i.e. tapered protection members whose period of tapered protection has already ended, and members with no protection) are not given an opportunity to purchase additional service then again there is a real concern over equity of treatment and potential discrimination.

2.4.6. The EIA accompanying this consultation asserts that consideration has been given to the protected characteristic of marriage and civil partnership in their analysis of equality impacts on sex. If this is the case, PFEW request that an explanation is provided as to why there is no reference to marriage and civil partnership in the analysis of sex in the EIA. In particular, there are some fundamental differences in the payment of spouse/dependent's pensions which should at least be acknowledged to evidence that they have been taken into account.

2.4.7. The EIA which accompanied the PSPJO Bill outlines the issue of the interaction between different retirement ages in the police pension schemes and asserts that *"further analysis will be conducted by individual pension schemes as to the potential impact of this in such cases"* (§3.39). If this analysis has been conducted in respect of the police schemes, then PFEW questions why it has not been included in the EIA of this consultation. If it has not been conducted, then the aforementioned statement is at best, disingenuous, and at worst another example of government neglecting their responsibilities under the PSED.

2.4.8. Further comment on the disparate impacts of the interaction between different retirement ages in the police schemes can be found in response to question five of this consultation. PFEW are pleased that this issue has been recognised by government (as per §3.6 of the consultation), and that it is being addressed as part of remedying discrimination to younger members of PPS 2015. PFEW asserts that any mitigating actions taken to ensure officers retiring before age 55 are not unfairly penalised by the requirement for Remedy does not discriminate against those with service solely in PPS 2015. Officers with membership in the Reformed Scheme only can have no expectation of retiring after completion of “full service”, as this does not exist in PPS 2015, nor has it ever been the case for the Reformed Scheme.

2.4.9. PFEW again reiterates the equality impacts on late joiners to the PPS 87, concerns which were raised in the response to the 2020 Remedy consultation² (referenced in §2.1.3 of this response). As there has been an apparent lack of consideration, and a definite lack of explanation as to how these concerns have been addressed, the relevant sections from the earlier response are repeated below:

“2.9.1. On the face of it, the proposal to cease accrual in legacy schemes and move all active membership to the 2015 CARE scheme appears to provide equal treatment in line with the recommendations of the Hutton report (which we note specifically warned against the use of transitional provisions). However, there are some concerns:

2.9.2 There are a cohort of late joiners who were originally eligible for full protection, and if they continued to work until their Compulsory Retirement Age (CRA) of 60 would be eligible to accrue pension in their legacy scheme until retirement, which could be as late as the end of March 2027. The position of these members has not been dealt with despite numerous enquiries from PFEW directly and through its engagement with the Scheme Advisory Board. [...] We believe these members were led to expect to remain in the legacy schemes, and that there is a moral argument that Government must now honour that in a manner that meets its legal responsibilities. Given the Uplift programme, and the need to retain experienced officers to help tutor and supervise the new intake, there is a legitimate aim for the employer to do all it can reasonably do to retain their expertise.”

² [PFEW response to 2020 Remedy consultation](#)

[...]

3.2.8 On the face of it the proposal to close legacy schemes on 1st April 2022 seems to provide equal treatment. Crucially, however, some late joiners who work until their CRA would currently be eligible to accrue pension in their legacy scheme until 2027. These members were led to expect to remain in these schemes.”

If government intend to rely on retaining this cohort of highly experienced officers in order to meet the Uplift target, then due consideration must be given as to how this can be incentivised - particularly given the lack of pay increase this year and little recognition from government for the work they have had to (and continue to) undertake during the pandemic.

2.5. Question 5 - Are there any other areas which you think should be addressed in these regulations to ensure all members are moved to the relevant reformed scheme from 1 April 2022, and that the differential treatment, as identified by the Court of Appeal, is ended?

2.5.1. PFEW refer to its letter of 16 July 2021 to the Home Secretary³ in which one of the issues outlined concerned the interaction of different retirement ages in the police schemes, and specifically how this impacts officers who attain 30 years' (i.e. "full") pensionable service before age 55 (or accrue 25 years pensionable service and are aged at least 50), where they have a mix of Legacy and Reformed Scheme membership.

2.5.2. Excerpts of that letter are included below, though the full letter and illustration should be read in its entirety when considering how to resolve this problem as part of Remedy.

"The problem arises when an officer reaches 30 years' combined membership and retires before age 55, as their 2015 CARE pension is then deferred and payable from age 55 with a reduction from State Pension Age, as opposed to the reduction from Normal Pension Age which applies to officers retiring from active membership aged 55 or over.

[...]

The principle behind the application of actuarial reductions in the form of early retirement factors is generally understood and accepted by our membership. What we are at a loss to explain and in any way justify is the disparity in the application of such reductions in respect of two officers with identical membership profiles apart from the age at which they joined the force and commenced pensionable service.

2.5.3. PFEW considered a number of potential ways to resolve this problem, giving due regard to overarching pension and tax legislation, and the government's responsibility to protect the public purse, prior to sending the aforementioned letter on 16 July 2021. The suggested resolution was to allow a former PPS

³ [7 UK Staff Associations' letter to the Home Secretary, 16 July 2021](#)

member aged under 55 who reaches 30 years' combined membership (or a former PPS member who has over 25 years' combined membership and is aged at least 50) whilst a member of the PPS 2015 to retire with an entitlement to a normal/ordinary pension from both schemes. However, the pension payable from PPS 2015 would effectively be 'suspended' until at least age 55. The member would cease payment of contributions and further accrual of benefits under PPS 2015 at the point of retirement, and elect to either take their PPS 2015 benefits from age 55 and before age 60 (with an actuarial reduction from age 60), or to take their PPS 2015 benefits from age 60 (with no actuarial reduction).

2.5.4. In support of the suggested resolution, the aforementioned letter of 16 July 2021 explains that:

“There is also something of a precedent for our suggested approach which is currently in operation under the PPS. We refer to the circumstances where a PPS member leaves service having completed at least 25 years' pensionable service, but before reaching age 50. They cannot access their pension immediately but instead it is treated as an ordinary (not deferred) pension and so they are eligible to put their benefits into payment at age 50.”

2.5.5. Resolution of the problem identified and explained above would go some way not only in mitigating the impact on older officers who are longer in service, but also in restoring a level of trust between government and the membership which has been eroded ever since the 2015 pension reforms, and contributed to in no small part by the *McCloud/Sargeant* judgment and subsequent need for Remedy.

2.5.6. Finally, PFEW again raises the issue of defining pensionable pay. The governing regulations for all three of the police pension schemes do not contain a definition of pensionable pay. Outside of the public sector, it would be unthinkable for an occupational pension scheme to be able to operate, let alone be accurately administered, without a clear definition of pensionable pay. Is there a reason why government do not consider this to be a problem with the police pension schemes?

2.5.7. The absence of a clear and accessible definition means that it is not possible for a member (or other interested party) to access documentation which allows them to clearly understand what elements of their remuneration they pay

contributions and accrue benefit on. The definition of pensionable pay should be a fundamental element of the appropriate governance of any pension scheme, and in our view, there is no justifiable reason why the police pension schemes are any different in this regard.

- 2.5.8. Inevitably, the ambiguity over the pensionable pay definition causes confusion, unnecessary angst for members, and a disproportionate amount of time and resources spent by members and their staff associations. The most recent example followed the outcome of the firefighter cases of *Booth v Mid and West Wales Fire Rescue Authority* [2019] EWHC 790 concerning the status of overtime payments.
- 2.5.9. The Home Office were asked to provide a definitive statement of what constitutes pensionable pay by the Scheme Advisory Board (SAB). Instead, the SAB was provided with a policy position, again declining to provide clarity on this important matter.
- 2.5.10. The Home Office sponsors the police pension schemes on behalf of government and should be willing and able to provide a definitive answer on the question of pensionable pay to its circa 140,000 members.
- 2.5.11. The regulatory amendments required to implement Remedy represents an opportunity to resolve this bizarre deficiency in the PPS 2015 with effect from 1 April 2022, and PFEW challenge government to do so or explain why not.

3. Conclusion

3.1. General Comments

- 3.1.1. In response to question one of the consultation, PFEW are of the view that the draft regulations are sufficient to meet the aim of ensuring that all members accrue pensionable service in the PPS 2015 from 1 April 2022.
- 3.1.2. However, PFEW considers that amendments to both Legacy Scheme regulations would also be necessary to comprehensively meet the stated aim. In the Legacy Schemes, PFEW considers this would be achievable by amendments to the definitions of “reckonable service” (PPR 1987) and “pensionable service” (PPR 2006).
- 3.1.3. Due to the poor and confusing wording in the consultation document hampering PFEW’s understanding of the issues underlying the second question, it is not possible to give a definitive answer to it. However, PFEW’s view pending clarity on these issues is that the amendment to regulations as drafted will not achieve the stated policy intent.
- 3.1.4. In particular, further amendments are required to allow for the “better of” calculation to be undertaken, in addition to consideration for members with tapered transitional protection, and those in scope of Remedy who received no transitional protection. Neither of these cohorts of members are referenced in the policy intent, nor is there detail about their situation provided in the consultation, and there is a genuine concern this has been overlooked.
- 3.1.5. Government’s response to this consultation should also clearly define where costs associated with IHR benefits paid from PPS 2015 but which arise (at least in part) from membership of a Legacy Scheme are to be allocated for the purposes of the CCM. PFEW are clear that any costs associated with Legacy Scheme benefits should not be included in the CCM and are concerned that the consultation document fails to make the position clear on this important point.
- 3.1.6. In considering question three, whilst PFEW considers that the draft amendment to regulations is sufficient to ensure members with existing additional service arrangements can continue these arrangements, best practice would dictate that amendments are also made to the two Legacy Scheme regulations to put this beyond doubt.

- 3.1.7. Furthermore, the consultation does not make clear how government intend to address the disparity of treatment between fully protected members who have retained the opportunity to elect to purchase additional service, and members with tapered or no transitional protection who have not enjoyed the same opportunity. PFEW considers that in order to comply with the *McCloud/Sargeant* ruling in its entirety, government must ensure affected members are treated as having full transitional protection for the entirety of the Remedy Period, which includes being given the same opportunities that were available to fully protected members – such as the option of purchasing additional service.
- 3.1.8. Question four of this consultation focuses on the important issue of equality. Without intending to repeat the full detail of the response in that section, PFEW consider that that the government has fallen short of its responsibilities under the PSED and are clear that there is room for improvement not only in the formation of new policy/ies, but in considering amendments to existing policy/ies and regulations.
- 3.1.9. It is disappointing that the EIA often evades any detailed consideration of equality impacts by hiding behind the excuse of having poor and/or limited data. The resolution to this problem is within the gift of government, and this being so PFEW do not consider it appropriate for government to continue to allow a lack of data to stymie discussion or consideration of important issues.
- 3.1.10. Potential impacts on those with protected characteristics have been highlighted in this response; namely late joiners to PPS 87 who will not achieve 30 years' pensionable service by 1 April 2022, and PPS 87 members who will retire from the PPS 2015 before reaching age 55. Whilst there is some acknowledgement by government of the existence of the problems for these two cohorts, there is still work to be done before PFEW can be convinced that there is an intention to address and/or mitigate the issues identified.
- 3.1.11. PFEW welcome the inclusion of question five inasmuch as it presents an opportunity to be consulted on areas not explicitly referenced in the consultation itself. PFEW has answered this question in good faith, and expects the issues raised to be considered as fully as the responses provided to the preceding four questions.

- 3.1.12. As previously detailed, the interaction of different retirement ages across the three police schemes provides for unfair treatment to PPS 87 members who are long in service and retire from the PPS 2015 before age 55. PFEW have suggested what we consider to be a very reasonable solution to this problem without intruding on fundamental aspects of the PPR 2015 such as Normal Minimum Pension Age and Deferred Pension Age.
- 3.1.13. Finally, PFEW has again sought to raise and seek resolution to the lack of pensionable pay definition within the police pension schemes. If government consider it acceptable or desirable that circa. 140,000 members of a public sector pension scheme do not have a clear and accessible definition of pensionable pay then we invite an explanation as to why.

3.2. Questions within this response

- 3.2.1. There are several questions to government within our consultation response, which are listed below for ease of reference. PFEW request responses either directly, or within government's response to this consultation.
- 3.2.2. Please confirm that PFEW's understanding of how prospective and retrospective Remedy will operate (set out below in §3.2.3-§3.2.4) is correct, or alternatively provide a detailed explanation of how it is envisaged that the prospective and retrospective elements of the Remedy will be implemented in terms of the interaction between changes to regulations now and in the future.
- 3.2.3. The proposed changes to regulations in the current prospective consultation provide fully protected members with a "closing date" of 31 March 2022 (unless they exit earlier), but maintain the existing "closing dates" for unprotected members (31 March 2015) and tapered protection members (between 1 April 2015 – 31 March 2022). Consequently, the current position will continue to prevail so that anyone putting their benefits into payment prior to the full and final implementation of the Remedy (October 2023) will have their benefits calculated and paid on the existing (unremedied) basis, despite the fact that ultimately the Remedy will be effective from 1 April 2022.
- 3.2.4. When the retrospective Remedy is affected in regulations (by October 2023), in addition to providing for the Deferred Choice Underpin, further retrospective changes will be made to amend the definition of "closing date". This will ensure that all members (fully protected, tapered protected and unprotected)

will potentially have the same closing date of 31 March 2022. This will then be subject to the choice made by the member at retirement, and if they opt for Reformed Scheme benefits for the Remedy Period their “closing date” will default to 31 March 2015.

- 3.2.5. PFEW request that the government provide an explanation to members (late joiners to the PPS 1987) who expected to remain in their Legacy Scheme until retirement, and received benefit statements to that effect – who will now be unable to accrue 30 years’ pensionable service in their Legacy Scheme. The explanation should clearly state why the information previously provided to them has changed.
- 3.2.6. Why does government believe an additional test is required for those members whose IHR process has begun prior to 31 March 2022 but is not determined until after 1 April 2022?
- 3.2.7. Why and on what basis government believe that existing regulations may already provide for the ill-health policy intent?
- 3.2.8. Please would government confirm that the policy intent should have the effect of ensuring that any member in scope of the Remedy who is successfully granted IHR will be paid benefits calculated in accordance with their accrual in both the Legacy and Reformed Schemes?
- 3.2.9. Can government confirm that the costs arising from IHR benefits paid from PPS 2015 but arising as a result of either of the Legacy Schemes will not be included as member costs in the reformed CCM? Further, will the same approach be taken to any increased payment required as a result of the proposed “better of” calculation?
- 3.2.10. Additionally, can stakeholders expect government to clarify exactly what constitutes employer and member costs for the purposes of the CCM calculation? If so, will this be achieved through HM Treasury directions or (for example), by amending PPR 2015? If not, why not?
- 3.2.11. Is there a reason why government do not consider the lack of a clear and accessible pensionable pay definition to be a problem with the police pension schemes?