

POLICE PENSION SCHEME SCOTLAND

REPORT ON THE CONSULTATION ON DRAFT STATUTORY INSTRUMENT THE POLICE PENSIONS (REMEDIABLE SERVICE) (SCOTLAND) REGULATIONS 2023

1. Introduction

1.1 The Scottish Government issued an open consultation on the draft Statutory Instrument, the Police Pensions (Remediable Service) (Scotland) Regulations 2023, that ran from 4 May 2023 to 13 July 2023. The purpose of this document is to provide a summary of the responses from that consultation and to indicate the Scottish Government's position following that consultation.

2. Data Protection Statement

2.1 The Scottish Public Pensions Agency (SPPA) is an executive Agency of the Scottish Government and forms part of the legal entity of the Scottish Ministers and is set out in the Scottish Public Pensions Agency Framework Document¹.

2.2 This framework of statutory powers and responsibilities, as agreed with the Scottish Ministers, enables SPPA to undertake the role of data controller for the processing of personal data including consultation responses. Responses are seen in full by SPPA staff dealing with the issues which this consultation is about or planning future consultations.

2.3 The process allows informed decisions to be made about how SPPA exercises its public function.

2.4 In order to show that the consultation was carried out properly, the SPPA is publishing this summary of the responses. Although we have not published any responses in full, we reserve the right to do so at a later date if necessary. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the full response except where respondents have expressly stated that they do

¹ <https://pensions.gov.scot/corporate-publications/framework-document>

not want their personal details published. In these cases, we will redact them before publishing.

2.5 You should also be aware of our responsibilities under Freedom of Information legislation.

2.6 If your details are published as part of a consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by SPPA will be kept for no more than three years.

2.7 Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is the independent regulator for data protection

2.8 For further details about the information the SPPA holds and its use, or if you want to exercise your rights under the GDPR, please refer to our Privacy Policy in the first instance or contact:

Agency Data Protection Officer
Scottish Public Pensions Agency
7 Tweedside Park
Tweedbank
GALASHIELS
TD1 3TE

Tel: 01896 892 469

Website: <https://pensions.gov.scot/>

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or

0303 123 1113

Website: <https://ico.org.uk/>

3. Background

3.1 The Public Service Pensions Act 2013 (the 2013 Act) introduced reforms to public service pension schemes. The aim of the reforms was to implement the recommendations of the Independent Public Service Pensions Commission: Final Report², to make public service pensions, which due to increased workforce longevity had increasingly been paid for by taxpayers, more affordable and sustainable. New pension schemes were introduced, designed to make public service pensions sustainable through a higher normal pension age (NPA) for all scheme members, calculating benefits on a career average revalued earnings (CARE) basis rather than through final salary, and the introduction of a cost control mechanism.

3.2 The 2013 Act required responsible authorities, including devolved governments, to make regulations establishing the new schemes with effect from 1 April 2015. The Police Pension Scheme (Scotland) 2015 (“the 2015 scheme”) was created by the Police Pension Scheme (Scotland) Regulations 2015³ with effect from that date. The two existing final salary police pension schemes – the 1987 scheme and the 2006 scheme (referred to as “legacy schemes”) - were closed on 31 March 2015 and scheme members could no longer accrue any pension in them unless they fell into the category of what is known as ‘transitional protection’.

3.3 Transitional protection provided for scheme members who were closest to retirement; those aged within 10 years of their NPA⁴ on 31 March 2012 were “fully protected” and allowed to remain in their legacy scheme(s). “Taper protected” members who, on 31 March 2012, were aged between 10 and 14 years of their NPA were allowed to remain in their

² <https://www.gov.uk/government/publications/independent-public-service-pensions-commission-final-report-by-lord-hutton>. This is also known as ‘The Hutton Report’

³ <https://www.legislation.gov.uk/ssi/2015/142/contents/made>. The 1987 scheme is set out in <https://www.legislation.gov.uk/ukSI/1987/257/contents/made> and the 2006 scheme under <https://www.legislation.gov.uk/ssi/2007/201/contents/made>.

⁴ There is no formal NPA in the Police 1987 pension scheme and so protection status was established using longevity of service and age

legacy scheme for a period before transitioning to the reformed CARE 2015 scheme before 31 March 2022.

3.4 Following reform, members of the judicial and firefighters' pension schemes challenged the transitional protection element of the reforms. In this case, known as McCloud/ Sargeant, the Court of Appeal⁵ found in December 2018 that the transitional protections unlawfully discriminated against younger members, as transitional protection was only offered to older scheme members. The Courts required that this unlawful discrimination be remedied by the government. In a written ministerial statement⁶ the UK government accepted the ruling had implications for all public service schemes that contained similar transitional protection arrangements, including the Police Pension Scheme (Scotland), and have since consulted⁷ on the mechanism for the remedy.

3.5 The UK Government introduced primary legislation, The Public Service Pensions and Judicial Offices Bill (PSPJO Bill), to Parliament in July 2021. The Bill received Royal Assent on 10 March 2022⁸ and became an Act of Parliament ("the Act"). The provisions in the Act mean that all scheme members, regardless of transitional protections, who continued in service from 1 April 2022 will do so as members of the 2015 Scheme. The Legacy Schemes are now closed to all members for future service from 31 March 2022. The period between 1 April 2015 and 31 March 2022 where eligible scheme members may have built up pension benefits in any one of the above schemes⁹ is known as 'the remedy period'. Eligible scheme members will have a choice of pension benefits for the remedy period¹⁰.

⁵ <https://www.judiciary.uk/wp-content/uploads/2018/12/lord-chancellor-v-mcloud-and-ors-judgment.pdf>

⁶ <https://questions-statements.parliament.uk/written-statements/detail/2019-07-15/HCWS1725>

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900766/Public_Service_Pensions_Consultation.pdf

⁸ [Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk/public-service-pensions-judicial-offices-act-2022)

⁹ This is dependent on a scheme member's personal transitional protection status. Between 1 April 2015 and 31 March 2022 protected members will have built up pension in their legacy scheme while unprotected scheme members will have built up pension in the reformed scheme. Taper protected members may have built up a mixture of both legacy and reformed scheme pension during the remedy period.

¹⁰ The remedy will allow all eligible members to choose whether they wish to receive legacy or reformed scheme benefits in relation to the remedy period. Members can choose either legacy scheme benefits for the full period or reformed scheme benefits, they cannot opt for a mixture of the two.

3.6 The primary legislation, supported by secondary legislation, removed the transitional protection that the Courts found to be discriminatory as all eligible members, irrespective of age and proximity to NPA will be treated as having accrued rights in their legacy schemes for the remedy period. All eligible active and deferred members will be given a choice of preferred pension benefits for the remedy period under the provision known as deferred choice (DC). Pensioner members and representatives of deceased members will be given what is referred to as an immediate choice (IC).

3.7 Secondary legislation in support of the Act will be made in two phases. The first phase of secondary legislation delivered “prospective remedy” That is, all active scheme members moved to the reformed scheme from 1 April 2022 and the legacy schemes were closed to future accrual from 31 March 2024. This ensures that from 1 April 2022 all serving officers who are in pensionable service will be accruing future benefits in the same scheme. Regulations delivering the first phase were consulted on between November 2021 and February 2022 and came into force on 1 April 2022.

3.8 The second phase of secondary legislation was the subject of this consultation and addressed the retrospective changes needed to deliver the remedy in full. These regulations will deliver changes such as:

- implement the DCU and IC
- facilitate the return of remediable service to the legacy scheme
- establish how remedy information must be provided to recipients
- facilitate the correction of pensions already in payment, including the underpayment and overpayment of pensions and pension contributions for pension scheme members, pensioners and dependants

4. Consultation process

4.1 The Scottish Government consultation document was issued by email to stakeholders on 4 May 2023 and ran from 4 May 2023 to 13 July 2023. The documents were also published on the Scottish Public Pensions Agency website. Other formats of the consultation documents were available on request.

5. Analysis of responses

5.1 The consultation invited comments on 16 questions relating to the draft regulations. The main themes from the comments are summarised in part 6. There were 13 responses to the consultation. Eight responses were from individual pension scheme members and five were from organisations representing police officers, the employer, and other groups.

Respondents can be broken down as follows:

Respondents
Staff side representatives (2)
The Scottish Police Federation
Association of Scottish Police Superintendents
Employer side (1)
Scottish Police Authority
Other (2)
Pension Challenge Administration Team (UK Four Nations)
Heywood Pension Technologies
Scheme members (8)
Individual responses

6. Summary of Responses to question 1

6.1 Question 1 of the consultation asked:

Immediate choice and Deferred choice – Do the proposals in this consultation achieve the policy intention of giving all eligible members a choice of retirement benefits for the remedy period?

6.2 Six respondents answered this question. Two respondents agreed, three respondents partially agreed and one respondent disagreed. Seven respondents did not answer this question.

6.3 The respondents who disagreed stated that they withdrew from the scheme at the time changes were coming into effect and therefore were not kept up to date with the effect any changes may have on them. They were of the opinion that the timescales given for the process were unclear and did not leave enough time for members to have their correct benefits paid timeously. They also said that they were concerned about how this would impact the police workforce or the resource ability of SPPA to meet SLA and legislative compliance timescales.

6.4 One respondent asked if there would be an option for IC members to review their initial commutation election on the basis of remedy choice as this was unclear in the consultation documents.

6.5 One respondent highlighted the exclusion of members who joined service between April 2012 and March 2015 and felt that if these members are able to apply under Q10 - 'contingent decisions' then the McCloud judgement should be extended to this cohort.

6.6 One respondent commented that the aim had been partially achieved and there was uncertainty over timescales for providing deferred choice to members with RSS, particularly for those members whose retirement was imminent before the implementation date or soon afterwards, and there was lack of clarity for areas such as contribution adjustments and taxation.

Scottish Government Response to question 1

6.7 The Scottish Government is grateful for the responses received to this question. This consultation asked respondents to consider whether the proposals will give all eligible members a choice of retirement benefits for the remedy period. Overall responsibility for public service pensions is reserved to the UK government. The Scottish Parliament has limited powers in this regard and can only make secondary legislation as required by, and using powers under, the UK government Act.

6.8 On the general point raised about members who joined the police scheme after 31 March 2012, the discrimination identified by the courts was in the transitional protections given to some scheme members. Those who first joined any public service pension scheme for the first time after 31 March 2012 were ineligible for transitional protection regardless of their age, and therefore were not subject to the discrimination identified by the court and are not within scope of the remedy. The eligibility criteria is set out in the PSPJOA 2022.

6.9 Eligible IC members will be able to revisit their commutation decision if they make a choice to change their pension design when they make their election. Depending on the choice made, member's may need to repay overpaid lump sum to the scheme, or the scheme may need to pay additional lump sum amounts to the member. In both scenarios interest will be applied to the arrears or overpayment.

6.10 Eligible police officers who on or after 1 October 2023, will receive a RSS, which will give them information to make a choice between legacy and new scheme benefits.

6.11 The Scottish Government acknowledges the complexities of McCloud Remedy and have addressed this by introducing a team to ensure that member communications are clear and that the SPPA website is updated accordingly. SPPA is working in partnership with Police Scotland, the Police Federation and The Association of Police Superintendents and have set up a joint working group focussing on the implementation of the remedy.

7. Summary of Responses to Question 2

7.1 Question 2 of the consultation asked

Remediable Service Statements (RSS) – Do the policy proposals in relation to scheme members’ receiving an RSS achieve what is required in the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA 2022) and The Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022 (PSP Directions 2022)?

7.2 Seven of the respondents did not answer this question. Two respondents agreed that the proposals would achieve the policy intent, and three respondents partially agreed. One respondent that they did not have any idea whether the policy proposals for this question would achieve the aim.

7.3 Four respondents suggested ways of improving communications for receiving an RSS, and that SPPA should consider giving deferred members an RSS automatically rather than on demand, making sure member details are kept up to date to enable an elective choice can be made on retirement. This was seen as an opportunity to improve ‘customer experience’ by provision.

7.4 One respondent welcomed the policy intention of tailoring the RSS to member specific circumstances and noted that the RSS must include a description of any corrections to pension benefits and lump sums, particularly for members who exceeded the tax free lump sum values set by His Majesty’s Treasury (HMT). There was a concern that whilst the RSS could not be tailored to a member’s tax circumstances, there should be clarity on the effect of choice on the taxable elements of any combined commutation.

7.5 Some respondents mentioned the interaction of retirement ages between the CARE and legacy schemes. Although this does not form part of the Remedy, it was noted that an RSS for deferred members would need to make clear the impact of their choice on this matter.

Scottish Government Response to question 2

7.6 The Scottish Government are grateful for the responses to this question, noting that in general respondents agreed that the policy intention was met.

7.7 The SPPA will issue a RSS to all deferred members where address information is held. Thereafter, as deferred members are not active, they are entitled to request a RSS once each year. Deferred members should notify the SPPA of address changes, to ensure that up to date address details are held.

7.8 On the comments around specifying tax information in the RSS. The contents and information provided in the RSS are defined in the PSP Directions 2022 so there is no scope to include this information directly in the RSS. In saying this, we acknowledge the importance of this information in relation to the choice an eligible member may make so we are considering how this information can be communicated to eligible members who have an interaction with pensions tax in supporting documents rather than in the core RSS.

7.9 Whilst the specific issues arising from the interaction between the pension age in the legacy scheme and the new scheme is out of scope of this consultation, it's important to clarify that the impact of the interaction of retirement ages will be set out in individual retirement RSS in order to ensure that eligible members fully understand the impact of their choice.

8. Summary of Responses to Question 3

8.1 Question 3 of the consultation asked:

Deferred Choice - Does the proposed deferred choice (DC) election period of 12 weeks from when the RSS is issued seem reasonable, in that it gives eligible members a suitable window to make a decision

with consideration for the proximity to retirement and administrative considerations?

8.2 Seven respondents did not answer this question. Two respondents agreed and four respondents were unsure and made suggested alternative timescales of 16 and 18 weeks. One respondent commented that there was a dependency on the accuracy and availability of necessary data, and resources within both the Police Scotland and the SPPA, to cope with the increased demands that the remedy brings.

8.3 Two respondents supported the 12 week election period but raised concerns over how this would interact with the statutory notice period of for officers. One respondent suggested an alternative timescale of three to four months for deferred choice members to make a choice and further suggested that a revocation deadline is introduced to prevent decisions being revoked after the administrator has made arrangements for payment. This was echoed by another respondent who asked if it was feasible for an election to be revoked at any time up to the point of retirement or whether a time limit should be imposed..

8.4 Another respondent raised concerns that the timescale of 12 weeks might be unsuitable deferred members (those not in active police service but with preserved pension benefits) due to a perception that it is difficult maintaining accurate address records for this group of members.

Scottish Government Response to Question 3

8.5 The Scottish Government confirms the intention to implement the 12 week election period for deferred choice. It was felt that this length of time is the most suitable given that the statutory retirement notice period for most police officers is much shorter than this. This policy aligns with the arrangements in other police pensions schemes in the UK.

8.6 After consideration of the responses to this question we are satisfied that there is sufficient flexibility already in the rules for the scheme manager to allow individuals to make an election in a period longer than the set election window in these circumstances so have not proposed or amended the draft regulations any further for these purposes.

8.7 Following representation by respondents on the revocation of elections, provision has been made to allow for a deferred choice decision

to be revoked by a member up to 10 working days before benefits become payable.

9. Summary of Responses to Question 4

9.1 For question 4, respondents were asked to comment on the following question:

Deferred Choice - Does the proposed deferred choice (DC) election period of 12 weeks from when the RSS is issued seem reasonable, in that it gives eligible decision-makers enough time to make a DC decision taking into account the administrative requirements and the emotional impact of bereavement?

9.2 Seven respondents did not comment on this question, one agreed with this proposal and five partially agreed stating the timescale should be a guide allowing for flexibility to be applied depending on individual circumstances.

9.3 One respondent asked if it was possible for the minimum benefit to be paid out initially to any survivor to allow time to make an informed decision whilst receiving a survivor benefit.

9.4 It was also pointed out by several respondents that this timescale may not allow enough time for bereaved survivors to process the impact of their choice and get financial advice whilst dealing with the other administrative affairs, and this timescale could be increased accordingly.

9.5 One respondent explained that guidance was required on the steps that would be required to move to a 'deemed election', and that the contingent decisions process should allow for those in receipt of survivor benefits to claim costs incurred for seeking advice regarding any deferred choice.

Scottish Government Response to Question 4

9.6 The Scottish Government thanks respondents for the comments received to this question and note that respondents have indicated a preference for discretion to be applied to the application of this deadline.

9.7 Following consideration of the responses to this question, Scottish Ministers are satisfied that there is sufficient flexibility already in the rules for the scheme manager to allow individuals to make an election in a period longer than the set election window so have not amended the draft regulations any further for these purposes.

10. Summary of Responses to Question 5

10.1 In question five, the consultation asked for responses on the following question:

Deemed Election – Do you agree with the proposal for when and how a deemed election may be made? If not, please say why.

10.2 Six respondents answered this question and seven made no comment. Respondents agreed with the policy intention with additional comments made in support of ensuring that the eligible member or eligible decision maker has every opportunity to make a choice before the scheme manager invokes the deemed election provision, and that a deemed election should only be considered in exceptional circumstances. Some respondents felt that the scheme manager may not be in a position to determine the best option for the survivors' individual circumstances, and any decision could be subject to a future challenge.

Scottish Government Response to Question 5

10.3 The Scottish Government is grateful for the considered responses to this question and note that those who responded were in agreement. It is anticipated that a deemed election would only be made in exceptional circumstances as required. The scheme manager will be expected to take into account all the relevant circumstances of the case, and elect in the survivor's best interests. This might routinely, but not always, be in circumstances where it was clear that entitlement to an amount from one scheme exceeded the other. In making this decision the scheme manager must consult the scheme actuary before a deemed election is made.

11. Summary of Responses to Question 6

11.1 For question six, respondents were asked to comment on the following question:

Added pension – Do the policy proposals for members with added pension ensure that all eligible members are put in the same position?

11.2 Six respondents commented on this question with five agreeing with this policy whilst making further suggestions. Seven respondents made no comment to question six.

11.3 One respondent suggested that the proposed treatment of added pension might contradict UK Government policy that encourages pension savings as the policy proposal prevents members who had already elected to increase their savings from continuing these payments.

11.4 It was also pointed out that a ‘fairer way’ might be to ensure that added pension (AP) purchases are automatically converted to additional service (subject to maximum service limitations), with any residual balance being paid back to the member with compensation if appropriate. One respondent explained that if we didn’t follow the proposed approach, it would be inconsistent with the policy intention of ensuring that members are put back in the position they would have been if the discrimination had not occurred.

11.5 One respondent had significant reservations about the lack of consideration of tax position of those members who have purchased additional pension, and any cash compensation would need to be considered against an individual’s income tax liability.

11.6 Another respondent questioned whether members should be able to retain the remediable added pension payments until such point as an election for legacy benefits is made, which would reduce the administrative burden considerably. It was also noted that administrators may have to perform manual calculations where an adjustment was required due to lack of software functionality, and this functionality should be routed through a calculator to determine the compensatable amount.

Scottish Government Response to Question 6

11.7 The Scottish Government thanks respondents for the comments received to this question and notes the specific concerns raised in the responses.

11.8 Service accrued in the remedy period must be moved to the relevant legacy scheme and as such any voluntary contributions arrangements must be addressed to ensure they are consistent with the prevailing scheme arrangements. Whilst AP is the only available regular voluntary contributions arrangement available in the 2015 CARE scheme, this arrangement was never a feature of the legacy 1987 or 2006 schemes, so cannot be applied to the rolled back service. Consideration was given to converting the contributions to a similar arrangement available in the legacy schemes however these options were not viable due to restrictions on changes to the legacy arrangements, or because it may lead to a difference in treatment between members. This meant that the only viable option was to deal with these contributions under compensation arrangements.

12. Summary of Responses to Question 7

12.1 Question 7 of the consultation asked:

Contributions correction – Do you agree with the proposal that eligible members who owe the scheme an amount for contributions can choose to pay the amount either as a lump sum, or in instalments over a set period, or to defer payment until benefit crystallisation?

12.2 Ten respondents commented on this question of whom three mentioned potential issues relating to the establishment of effective administration for contributions corrections. three respondents made no comment to this question.

12.3 One respondent was concerned that a member may be worse off if they delayed payment of their underpaid contributions, and any interest applied as a result had the potential to cause financial disadvantage.

12.4 It was also pointed out by one respondent that clarity was required in respect of the roles and responsibilities between the Scheme Manager and the employer, and that the necessary data was already available without further input from the employer. Early engagement with SPPA was recognised as essential to ensure that sufficient lead time for any system and process developments could be put into place in line with legislative timescales.

12.5 One respondent asked for clarity on how the contribution adjustments would be reflected in the RSS, and as there is potential for a further contribution adjustment when the member takes their deferred choice, it might be prudent to defer the adjustment until that point in time.

12.6 Clarity was sought from all responders as to how interest and taxation would apply, and one respondent asked how the option of repaying in instalments would be managed.

12.7 Clear communication was deemed to be of profound importance by one respondent, who also stated that affected members had no choice but to accrue this debt and as the scheme manager has discretion to waive a liability, especially if it had been incurred in good faith, this approach would be an option¹¹.

12.8 One respondent raised a concern over inconsistency of approach for members transferring cross-border which could complicate record keeping and reporting. It would therefore be necessary for detailed information about the contribution adjustment calculation and any payments to be easily available, for both audit purposes and for evidence in the case of future claims or appeals. A framework should be put into place to ensure the correct information is stored and used. Timely delivery of a contributions calculator will be critical to successful implementation of this area of the remedy.

Scottish Government Response to Question 7

12.9 The Scottish Government thanks respondents for the comments received to this question.

12.10 The interest to be applied to the correction of contributions is set out in the HM Treasury Directions¹² so is outside the scope of this consultation. The Scottish Government agrees that interest should be applied to underpaid contributions in order to put members, as far as possible, in an equitable position with those who made the payments during the remedy period.

¹¹ [Overpayments - section 8 to 13 of the Scottish Public finance Manual](#)

¹² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1124480/The_Public_Service_Pensions__Exercise_of_Powers_Compensation_and_Information__Directions_2022.pdf

12.11 On sums owed to members, the HMT Directions sets out that an interest rate typically applied by the courts (8% simple interest) should apply to overpaid contributions (paid as compensation) up until the date 28 days after a RSS is first issued. If payment is made later than that, a National Savings and Interest (NS&I) Equivalent Savings Rate is the applicable rate of interest.

12.12 The Scottish Ministers have agreed additional provision to facilitate the administration of contributions corrections, in particular linking the window of opportunity to pay by lump sum to the receipt of an RSS and putting in a dedicated pathway to allow members to make the necessary payments periodically up to a period of five years. This is over and above what has been provided for by other UK responsible authorities. It should be noted that the PSPJOA 2022 already sets out that scheme managers must hold information about contribution adjustments and the public sector transfer club memorandum will be revised to stipulate that contribution adjustment values must be included in cross-border transfers documentation.

12.13 The SPPA has committed to working collaboratively with Police Scotland and Government Actuary's Department (GAD) who are the Police Scheme actuary, to devise and agree a process for correcting eligible member contributions through police payroll where it is appropriate to do so.

13. Summary of Responses to Question 8

13.1 Question 8 of the consultation asked:

Contributions - Do you agree with the proposal for scheme members who are entitled to a refund of remedy period contributions to be able to defer the repayment, to avoid having to repay it on retirement if they choose reformed scheme benefits?

13.2 Six respondents commented on this question with three stating they wish to make no further comments. Seven respondents made no comment at all to this question.

13.3 One respondent suggested that there was a clear preference to defer the contribution adjustment until the deferred choice. However, for those who are owed a refund, it would be beneficial to have this paid

immediately and for both scenarios on making their choice at retirement to have this set off against their retirement benefits.

13.4 It was also pointed out that this may disproportionately affect women as they are more likely to have reduced accrual in the legacy scheme from taking career breaks following maternity in order to raise a family and/or work part time for a proportion of their career.

Scottish Government Response to Question 8

13.5 The Scottish Government thanks respondents for the comments received to this question.

13.6 Having considered the comments made by respondents to question 8 we are content that there is sufficient flexibility in the Regulations to allow those who have overpaid contributions to choose whether to receive immediate compensation or defer the payment until the point they make their deferred choice.

14. Summary of Responses to Question 9

14.1 Question 9 asked:

Ill-health retirement – Does the proposal for ill health retired members meet the requirements in the PSPJOA 2022?

14.2 Six respondents commented on this question with two agreeing with the proposal, three partially agreeing and one stating that they didn't know. Seven respondents did not answer this question.

14.3 Several respondents required clarification on how re-assessments would be managed, and whether additional funding would be made available to cover the Selected Medical Practitioner (SMP) costs required to carry out this process. Additionally it was felt that comprehensive administration guidance would be required to ensure the process was carried out effectively.

14.4 It was also pointed out that the position on draft regulations needed to be confirmed before any ill health reviews can be progressed to ensure they are carried out correctly. Reviews would have to be sensitively managed to avoid causing upset to affected members.

14.5 One respondent commented that the legislation does not appear to apply to members who had not qualified for ill-health retirement and had instead been dismissed on capability grounds.

Scottish Government Response to Question 9

14.6 The Scottish Government thanks respondents for the comments received to this question.

14.7 After considering the responses to this consultation question the Scottish Government is content that the proposed changes will achieve the policy intention. Comments in relation to the requirement to provide clear and sympathetic operational and administrative guidance are understood and the SPPA will ensure that guidance is developed collaboratively and shared with responsible parties.

14.8 The ill-health retirement process is managed by the Scottish Police Authority. It is anticipated that the reassessments will broadly mirror existing principles, although there is scope for the SMP to manage a reassessment without medical examination.

14.9 On the costs associated with the re-assessment process, the requirement to carry out re-assessment of ill-health retirement conditions is set by PSPJOA 2022 so is a mandatory requirement. Where additional costs are expected to be incurred the Scottish Police Authority should build this into their forecast. It should be noted that the need for reassessment will only arise for those who have retired on the grounds of ill-health or disablement from the 1987 scheme during the remedy period.

15. Summary of Responses to Question 10

15.1 The Q10 responses are shown below:

Contingent decisions – Do the proposals for contingent decisions adequately provide members with an opportunity to revisit pension-related decisions taken during the remedy period?

15.2 Six respondents commented on this question with four stating that the proposals would not achieve the policy intent. One respondent

agreed but stated there was a lack of clarity and one partially agreed. Seven respondents made no comment to question 10.

15.3 One respondent stated that they felt the information provided so far was confusing and conflicting. An explanation in an easy to understand format was considered to be a useful way forward.

15.4 One respondent highlighted that the consultation document defined a break in service as one of more than five years between membership of a public pension scheme, but the PSPJOA 2022 decision was this break referred to a person's service/ employment status. It was suggested that this point needs clarification. The same respondent stated, in relation to buying back opted-out service, that when initial communications were made in relation to pension changes, on some members opted out right away rather than when they transitioned on or after 1 April 2015 and have remained out of the scheme. It was suggested that it would be fairer if the remediable period matched this timeframe to enable officers the opportunity to make an informed decision about all of their opted-out service in relation to the 2015 Remedy.

15.5 All respondents felt there was a lack of information regarding the design, application and time limits of the contingent decision process and that guidance was required, with one respondent suggesting that supporting policy documentation should be published alongside the legislation.

15.6 One respondent noted that as the Scheme Manager was responsible for accepting or declining a claim under the contingent decisions process. This could be a potential conflict of interest if the claim were rejected, and the member then decided to make a claim under the internal dispute resolution process (IDRP) for which SPPA Head of Policy (on behalf of Scottish Ministers) had ultimate responsibility. It was suggested that SPPA seek assurance around the management of this and may wish to consider referring any appeal instead to another UK Police Scheme manager for consideration under the IDRP process. It was also suggested that an independent body, possibly a subsidiary of the Scheme Advisory board should be created to discharge this function.

15.7 It was noted by respondents that clarity should be sought on contribution adjustment as the consultation only describes this in member terms. There is no mention of the contribution adjustment that is required by the employer, with roles and responsibilities set out and whether this will be reflected in the scheme valuations. Also highlighted

was the difference between the Scottish and the E & W proposals, where in E & W those officers who opted out within six months of 1 April 2015 will automatically be given a choice to have their opted out service reinstated as opposed to having to apply for this, and the in-scope period applies from 1 January 2012 as opposed to 10 March 2012 (in Scotland). This was considered a possible risk of further discrimination if a different approach was applied across the UK and required assurance that this was not discriminatory to officers.

15.8 Finally, it was suggested that in addition to those in receipt of survivor benefits, members subject to added pension considerations should also be able to apply for financial support as a consequence.

Scottish Government Response to Question 10

15.9 The Scottish Government thanks respondents for the comments received to this question and have considered the comments made by respondents.

15.10 The Scottish Government acknowledges the complexity of these provisions and a robust communication strategy has been developed to support stakeholders throughout the development of the administrative solutions. The options and actions that members may need to take at each phase of the remedy will be clearly set out in the RSS and other supporting documents.

15.11 Eligible members who think they may have made a different decision must make a contingent decisions application, accompanied by appropriate evidence within the specified timescales.

15.12 Noting comments on the perceived limitations of contingent decisions policy for the resolution of financial losses relating to the discrimination, it should be noted that the principle of the 2015 Remedy, as set out in PSPJOA 2022, is to place scheme members back in the position they would have been in if the discrimination had not occurred. This includes provision which enables schemes to provide compensation for financial losses in cases where members can demonstrate they would have taken a different course of action were it not for the discrimination. If members feel they have suffered financial losses then there will be a channel available to make an application for compensation. Information on how eligible members can apply for compensation will be published by the SPPA in due course.

15.13 The date of 10 March 2012 cited for eligibility for opt-out buyback is significant as this is the date that the UK Government set out the final position on the reformed Police pension scheme design and announced the transitional protection measures which may have prompted some members to opt-out of the scheme. Those who opted out of the scheme before that date would not have known the nature of the pension reform and so cannot have opted out for reasons related to the discrimination.

15.14 In response to the point made about a potential conflict of interests resulting from the management by SPPA of both the contingent decisions application process and any subsequent appeals from rejected applicants, the Scottish Government is confident that the IDRPs remain objective as they are carried out independently from the SPPA administration team. Where an IDRPs is not upheld a further route of appeal is available through the Pensions Ombudsman.

16. Summary of Responses to Question 11

16.1 In question 11, respondents were asked to comment on the following question:

Divorce and dissolution – Do the proposals for the treatment of pension sharing align with the requirements of the PSPJOA 2022?

16.2 Six respondents commented on this question with five agreeing that the policy aligned with the requirements of the PSPJOA 2022 Act, and one respondent stating that they did not know the answer to the question. Seven respondents made no comment to this question.

16.3 One respondent sought assurances that the proposals accurately reflect Scots law and required confirmation that GAD will develop actuarial guidance to ensure consistency of application. A final point stated that clear and unambiguous communications should be given to both credit and debit members to reduce the stress surrounding the divorce process.

Scottish Government Response to Question 11

16.4 The Scottish Government thanks respondents for the comments received for this question.

16.5 The Scottish Government can confirm that the regulations meet Scots Law requirements and that GAD will develop guidance to support the administration of the remedy.

16.6 The Scottish Government acknowledges the complexity of the 2015 Remedy for members. A robust communication strategy has been developed to support members and other stakeholders. The options and actions that members may need to take at each phase of the remedy will be clearly set out in the RSS and other supporting documents.

17. Summary of Responses to Question 12

17.1 For question 12, respondents were asked the following question:

Survivor benefits and child pensions – Does the proposed “child pensions guarantee” ensure that children are fairly treated in line with the requirements of the PSPJOA 2022?

17.2 Six respondents commented, of which five agreed and one respondent stated they did not know the answer to the question. Seven respondents made no comment to question 12.

17.3 All respondents who agreed were confident that the proposal would ensure there was no detriment to any child’s pension already in payment and also recognised that a beneficiary should not be disadvantaged by a choice made by a third party.

Scottish Government Response to Question 12

17.4 The Scottish Government thanks respondents for the comments received to this question and are content that the draft provision meet the policy intention to protect the in-payment pension of children who are domiciled in another address from the eligible decision-maker.

18. Summary of Responses to Question 13

18.1 Respondents were asked to comment on the following question:

Do you agree with the overall policy approach set out in the consultation to address the discrimination with the transitional protection arrangements?

18.2 Of the ten respondents who commented on this question, four brought up issues relating to the impact that Remedy would have on the interaction of retirement ages between the legacy and reformed schemes. Two agreed with the overall policy approach and two partially agreed and made further comments. One was undecided in part due to perceived unclear explanations and guidance. Three respondents made no comment to question 13.

18.3 One respondent did not believe the policy approach would address the discrimination for those with transitional protection arrangements and suggested some worked examples would be beneficial for understanding the impact of their choice on their pension.

18.4 One respondent sought clarity on the application of interest, overdue payments and the tax position of eligible members. They also sought assurance that the provisions would avoid creating another form of discrimination and expressed concern that a delay in provision of the 2015 Remedy would elicit confusion and could impact workforce planning arrangements.

18.5 Another respondent suggested that the rules prevented eligible members and pensioners being able to choose mixed-service, that is service accrued in both the legacy scheme and the reformed scheme during the remedy period, and instead would effectively remove accrued rights for members and therefore give rise to discrimination.

18.6 One respondent noted there may be the risk of further discrimination for the protected characteristic of sex. Women in particular may not have achieved full protection due to a shortfall in reckonable service as a result of working part time, taking unpaid leave and/or other career breaks to care for their families.

Scottish Government Response to Question 13

18.7 The Scottish Government thanks respondents for the comments on this question noting the comments made about the demographic differences and retirement ages.

18.8 The majority of the responses to this question concerned the operation of the primary legislation in the PSPJOA 2022. Primary legislation is reserved to the UK Government so the Scottish Government may only make secondary legislation in support of the Act that enables the remedy. The basis of the Court of Appeal ruling was that the transitional protections offered to some members of the judges' and firefighters' schemes in the 2015 public sector pension reforms gave rise to unlawful age discrimination.

18.9 This was found to have occurred when transitional protection was given to public service pension scheme members who were closer to retirement age to allow them to remain in their legacy scheme, whilst younger public service pension scheme members were moved to the new reformed schemes on or after 1 April 2015. The UK Government's subsequent consultation on the remedy proposed the mechanism to remove the discrimination, since enacted by the PSPJOA 2022, and by the Scottish Government in the regulations this consultation response is addressing. The Court of Appeal judgment did not find against the pension reforms other than in the transitional protections. There is no provision in the PSPJOA 2022 that allows responsible authorities to change the normal pension age or introduce service-based retirement in the reformed scheme to mirror those in the legacy scheme.

19. Summary of Responses to Question 14

19.1 Respondents were asked to comment on the following question:

Do you agree that overall, the draft regulations deliver the policy objectives and requirements set by the PSPJOA 2022?

19.2 Six respondents answered this question with three agreeing with the policy intent, one disagreeing and one who could not answer the question. Seven respondents made no comment for this question.

19.3 One respondent did not feel that the draft regulations fully address the discrimination and in particular does not address clarity on the issue of the disqualifying break of five years being scheme-related or employment-related.

19.4 It was pointed out by one respondent that that the consultation does not go into detail about the mechanism for assessing and paying compensation claims, the process for making elections, or payment of benefits following a choice. Clarity was also sought on the role of the scheme administrator and the employer. Two respondents suggested that consideration should be made to include the compensation framework in the supporting policy documentation published alongside the legislation to ensure consistency and effective application across the UK.

Scottish Government Response to Question 14

19.5 The Scottish Government thanks respondents for the comments received on this question.

19.6 The Scottish Ministers are required under PSPJOA 2022 to set out in scheme regulations the specific provisions relating to the application of the 2015 Remedy for the Police Pension Scheme and are limited to the powers set out by the PSPJOA 2022. The eligibility criteria, which is set out in Section 1 of the PSPJOA 2022 is outside the powers of Scottish Ministers and so cannot be amended by these regulations.

19.7 Whilst the Scottish Government acknowledges the complexity of the Remedy it is not appropriate for scheme regulations to set administrative process. Instead, it is expected that a communications strategy will continue to be developed in partnership with stakeholders to help support eligible members and other parties.

20. Summary of Responses to Question 15

20.1 Respondents were asked to comment on the following question:

Do the equalities considerations set out in the equalities analysis address the impact of the remedy on members with protected characteristics?

20.2 Six respondents commented on this question. One respondent agreed that the Equality Impact Assessment (EQIA) addressed the impact of the remedy on members with protected characteristics as long as framework arrangements were established. One respondent stated that they did not know the answer and four stated that the policy intent would

not address the discrimination. Seven respondents made no comment to this question.

20.3 Most of the respondents who disagreed, stated that the age discrimination would not be removed until all members are able to retire based on their service accrual rather than combined age and service accrual.

20.4 One respondent was concerned that discretionary or “deemed” decision making by the Scheme manager could lead to inconsistent member outcomes and thus some members being treated inequitably.

20.5 It was suggested that the EQIA does not address the potential for unequal treatment in respect of the accrual of interest on underpaid pension contributions for different time periods and wanted to seek assurance that this has been considered in full.

20.6 One respondent noted that women who had unpaid maternity leave have been treated unfairly since they cannot make up any shortfall in pensionable service as this has not been included in the 2015 Remedy. The same respondent also drew attention to the exclusion from the remedy of officers who joined the service after 31 March 2012 noting that “no satisfactory answer has been provided as the EQIA does not even acknowledge this”. They suggested that since eligible members can apply to be considered further for the retrospective remedy via the contingent decisions process, then the same principles should be extended to those who joined after 31 March 2012.

20.7 Finally, it was noted by one respondent that different policy approaches between the UK Police schemes could lead to different outcomes for members in different jurisdictions and may lead to issues completing cross-border interforce transfers.

Scottish Government Response to Question 15

20.8 The Scottish Government thanks respondents for the comments received for this question. General commentary about the pension reforms and the impact on retirement criteria between schemes is out of scope of this consultation. Likewise, the question relating to the fair treatment of women who may not have been able to achieve the same level of pensionable service due to unpaid leave (and/or career breaks) is similarly out of scope of this consultation. This is because it relates to members

being able to remain in the legacy scheme and so is a distinct feature of the pension reforms rather than the 2015 Remedy.

20.9 Comments made in relation to scheme manager's discretion to make decisions on behalf of individuals were welcome. Respondents should be assured that this discretion applies as a consequence of the complexity of the remedy and gives the scheme manager the appropriate flexibility to consider individual circumstances should they arise. These regulations have been developed and written with close regard to the relative scheme regulations developed and written across the other jurisdictions in the UK to ensure there is as much consistency between the Police schemes as possible. Primary legislation is reserved to the UK Government so the Scottish Government may only make secondary legislation in support of PSPJOA 2022. The basis of the Court of Appeal ruling is that the transitional protections offered to some members of the judges' and firefighters' schemes in the 2015 public sector pension reforms gave rise to unlawful age discrimination.

20.10 In relation to comments about the fairness of the application of interest, this policy is reserved to the UK Government and as such was not considered directly in this consultation. However, there are a range of repayment options available to those members who have underpaid contributions as a result of the rollback to their legacy scheme or following a contingent decisions election to buy-back opted out service which should allow all members to settle their contributions balance equitably.

21. Summary of Responses to Question 16

21.1 Respondents were asked to comment on the following question:

Do you have any other comments about this consultation?

21.2 Twelve respondents commented on this question and one respondent made no comment.

21.3 Eight respondents stated that they felt that the consultation was written "in jargon" and was not easily understandable to ordinary serving officers. It was suggested that it would be useful if there were some real life examples in the consultation documents to help officers understand

the implications of the remedy. It was again suggested that the remedy does not reinstate the original terms offered when officers joined the force, and they feel that those officers who opted out due to the pension changes have been disadvantaged.

21.4 A number of comments again focussed on member retirement scenarios relating to the interaction of the pension ages between the legacy 1987 scheme and the new 2015 scheme. It was acknowledged that although not part of this consultation, stakeholders were disappointed that it had not been addressed.

21.5 One respondent suggested that the UK Government does not understand the scheme specific complications as a result of service-based conditions of some legacy schemes and the interaction of retirement ages between schemes. They felt this issue was absolutely in scope because the UK Government has publicly commented on it and recognises it as an issue. They felt that the only way to eliminate all unfairness and discrimination is to return all officers to their legacy schemes and allow them to remain in that scheme until they retire from the Service.

21.6 Other responses suggested that existing members should be given the choice to remain in their original pension schemes until retirement so only new (post 31 March 2012) entrants to the pension scheme should join or remain in the 2015 scheme.

21.7 Respondents raised a lack of clarity on areas such as tax, contributions, transfers, compensation, commutation elections, communications, financial advice and employer/ scheme manager responsibilities. They had expected clear and comprehensive guidance to be written and published for these particular areas of concern alongside the regulations.

21.8 It was recognised that the tight legislative timescales will make it difficult for employers and scheme administrators to deliver these regulations and it is considered vital that software based systems are put in place alongside some manual processes.

21.9 It was again noted by one respondent that different policy approaches between the devolved schemes could lead to different outcomes for members and may cause challenges for cross-border transfers.

Scottish Government Response to Question 16

21.10 The Scottish Government thanks respondents for all of the comments received to this question and to the consultation. Respondents should be assured that the Scottish Ministers are considering what can be done within the limited, devolved powers afforded to the Scottish Parliament in order to mitigate some of those issues highlighted around the interaction between the pension ages in the legacy 1987 and new 2015 schemes. Engagement on this is continuing through the Scottish Police Pension Scheme Advisory Board, which provides advice to the Scottish Ministers on scheme matters. This issue is outside the scope of this consultation.

21.11 Officers who opted-out of the 2015 pension scheme because they disagreed with the pension reforms come under an area of the remedy termed “contingent decisions”, which is dealt with in section 15 of this response. Officers will be given an opportunity to apply for retrospective admission to the scheme, as set out in Section 5 of PSPJOA 2022¹³. The mechanism for this is through application which is assessed by SPPA administrators..

21.12 Finally, there were suggestions that more detailed process information should have been included with this consultation. At the time the consultation was launched, processes had not been fully designed and so the intention is to set out these process requirements with stakeholders in development, and following completion of the process designs. Further to this, whilst this consultation and the draft regulations were being prepared there were (and still are) a number of areas, such as pensions tax and compensation arrangements, not fully developed by UK Government departments, Information about the impact of the 2015 Remedy will be made available directly to eligible members and will be published on the SPPA website once available.

22. Conclusion

22.1 The Scottish Government have considered the responses to the consultation on the prospective legislation contained in the draft presented and are content to proceed. The following amendments have been made to the draft version presented at consultation:

- added definition of ‘employer’

¹³ [Public Service Pensions and Judicial Offices Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

- Added provision for scheme manager delegation
- Changed timescale for opted out service buyback applications to 12 months from provision of a RSS
- Added provision allowing a deferred choice member to receive benefits before a RSS has been provided in cases where it was not reasonably practicable for the scheme manager to provide the RSS
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22.2 The elements of the 2015 remedy that have been highlighted in the responses to this consultation but were out of scope of remedy will, where appropriate, be considered through engagement at the scheme advisory board. Areas of concern relating to reserved legislation that have been highlighted in the responses will be passed to the UK Government.

22.3 The Scottish government thanks all those who responded to this consultation. The Police Pensions (Remediable Service) (Scotland) Regulations 2023 were laid in the Scottish parliament on 30 August 2023 and came into force on 1 October 2023 completing the second phase of legislation required to implement the remedy to the discrimination in the 2015 pension reforms.

Scottish Public Pensions Agency
An Agency of the Scottish Government