



Scottish Police Federation

PO Box 27163, GLASGOW, G3 9EZ

JCC Circular 1 of 2022

Ref: CS/KB

20 January 2022

Attachment: The Police Pensions (Amendment) (Scotland)
Regulations 2022 – Scottish Government consultation 2021

Dear Colleague

Please find attached self-explanatory documentation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Calum Steele'.

CALUM STEELE
General Secretary



SCOTTISH POLICE FEDERATION

Established by Act of Parliament

Police Pensions Consultation (2022 Amendments)
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Ref: CS/LS

14th January 2022

Dear Sir / Madam

The Police Pensions (Amendment) (Scotland) Regulations 2022 - Scottish Government consultation 2021

I refer to the above and thank you for the opportunity to contribute to this consultation. The Scottish Police Federation (SPF) appreciates this consultation is largely technical in its content and is strictly limited to the police pension legislative needs in order to implement a remedy.

That being said we cannot allow the considerable interdependencies between the consequences of this legislative fix, and the wider tax regime, and indeed the potential for further claims of discrimination to arise to pass without comment. In that regard, our response needs to be considered alongside our submission to HM Government's consultation - Public service pension schemes: changes to the transitional arrangements to the 2015 schemes (dated 9th October 2020), and our joint letter, with all of the other UK Police Staff Associations to the Home Secretary - Consultations on The Implementation of The Remedy to The Discriminatory Transitional Protections in the 2015 Care Police Pension Scheme (Dated 16th July 2021).

The SPF is aware the Scheme Advisory Board in England and Wales (SAB EW) has no legislative locus on police pensions matters in Scotland. The SAB EW however also acts as the single meeting forum at which all UK police pension policy matters are discussed and substantially developed. In that regard the letter to the Home Secretary is relevant.

Copies of these documents are attached for your convenience.

Question 1 - Do you think the draft Regulations adequately ensure that the legacy pension schemes are closed to future accrual from 31 March 2022 and that all active pension scheme members are moved to the 2015 pension scheme from 1 April 2022? Do you think there are any errors or omissions in the draft in achieving this aim?

The SPF notes that this consultation question is very narrowly constructed. Insofar as is asked, the draft regulations appear to adequately ensure the legacy schemes close to future accrual from the 31st March, and that active members move to the 2015 pension scheme from the 1st April 2022.

It is not immediately obvious if ALL active members transferring to the 2015 scheme will be able to accrue full benefits in that scheme, or whether the accrual of further pension benefits will be restricted to those who have not accrued full pension benefits in their legacy scheme. We would welcome clarification on this point.

Whilst the policy intention is clear, the closure of the legacy schemes on the 31st March leaves two significant cohorts of members at a disadvantage. Members who had worked part-time prior to the introduction of the 2015 scheme and expected to work for additional time in order to make up any shortfall to full pension benefits, and members who joined late. Both were provided with assurances that they could continue in their legacy schemes for a relevant equivalent period at the end of their service.

This is not an unknown issue. In addition to the assurances provided at the time the 2015 scheme was being designed, the SPF also highlighted the unfairness in our response to the HM Government consultation – Public service pension schemes: changes to the transitional arrangements to the 2015 schemes, on the 9th October 2020

The SPF considers that whilst either immediate choice or DCU may well deal with the discrimination identified by the courts, it does not automatically follow that either option removes all discrimination, or removes the potential for further legal challenge. We consider that the issue of legitimate expectation arises in some cases (officers who had full protection by virtue of being aged 45 or over for example) and discrimination for part-time officers may arise as a consequence of the proposed approaches. The Government cannot replace one form of discrimination with another.

The policy change of position has not been adequately addressed by Government (and indeed this consultation takes a very hard-nosed approach to simply closing the door without any additional explanation). We simply cannot reconcile the statements at paragraphs 4.26 and 4.31 of the Equality Impact Assessment

Women are shown to make up the vast majority of the part-time Protected members, however, we have not identified any disproportionate impacts of the policy on this group.

With the realities as we know them.

We consider that the Equality impact assessment has in any event relied upon irrelevant data. The explanation for the date of the data is noted but it is largely inconsequential

to the cohort of officers that should have been identified. In any event we find the rationale for using 2016 data to be weak given the recent 2020 valuation has been undertaken using more up to date data. Whilst the 2020 valuation is recognised to be ongoing, the SPF has heard no prior suggestion that the data informing this process is incomplete or deficient. Clearly this matter will require to be addressed separately.

The unfair impact on part-time officers is not limited to those who were part-time at a particular date. Indeed, it extends to all those who would have been part-time at any time during their legacy service. That is the only correct measure as part-time officers are able to revert to full time status at any time (and habitually do so, and usually after the early years of their children's lives). One reading of the data relied upon is that the police service only has 91 mothers in active membership of the pension scheme (the overwhelming reasons for part-time work is based around motherhood), or that all but 91 mothers in the police service raised their children whilst working part-time. Frankly either proposition is preposterous.

We would contend that the Government has a moral duty to explain to these officers why they are to be disadvantaged as a consequence of its decisions, and at the very least undertake a proper assessment of the impact of these proposals on the correct cohort of members.

The SPF however is eager to repeat that the proposed approach is not the only way of removing the discrimination identified by the courts. Indeed, it is our contention that this approach is extremely complex and is itself fraught with difficulties. By contrast, we would reiterate that the approach proffered prior to the establishment of the 2015 scheme, namely simply to open the scheme to new members only and allow existing members to continue in their existing schemes would meet the same objective at considerably less risk and superior simplicity.

Question 2 - Do you have any views on the proposed treatment of pension scheme members who have applied for ill health retirement before 31 March 2022 but who don't retire until on or after 1 April 2022? In particular, does this proposal in your view, ensure that these members are treated no less favourably than if the application was determined before that date?

Ill health retirement and the processes surrounding it can be inherently complex and by extension lead to unintended consequences. The Police Service of Scotland process for managing a relatively straightforward ill-health retirement currently takes approximately 18 months. Any potential ambiguity or doubt over this process can only exacerbate what is an already needlessly lengthy process. It is not immediately clear that the brevity of this consultation shows that proper consideration has been given to these facts.

The SPF welcomes the broad policy intention (paragraph 5.1) of seeking to ensure no member is treated less favourably during ill health retirement if that processes extends beyond the 1st April, but we hope that it is appreciated that much of the detail required to derive complete comfort that this will indeed be the case, has not (yet) been provided.

It is not clear for example, as to what precisely is meant by the processes beginning. In the Police schemes, the decision as to whether a member retires on ill health is (subject to hitting the appropriate criteria) a policy one and not purely a medical one. It is therefore possible that a member may well have been assessed as permanently disabled but retained in service. It will be important to clarify the status of such members in the event they are initially retained in service only to be retired on the grounds of ill health in the months or years ahead.

It is equally possible a member could have had their ill health retiral consideration dismissed prior to the 1st April, only for additional information to come to light after that date (and indeed after any date for appeal) that would have been germane to the initial application. How are such members to be treated?

Similarly, the police pension schemes allow members to seek an ill health pension after they have resigned from the police service. Given that members in such circumstances could well only have service (and exclusively prior to 1st April 2022), or the bulk of their service in the legacy scheme, it is far from clear how such cases will be dealt with. This will require clarification.

Given the wider timeframe of ultimate financial remedy only being 'guaranteed' by October 2023, it is probable such members could legitimately be able to pursue claims for disability discrimination if this matter isn't clarified.

We also note the rationale described for the approach to members of legacy schemes being treated as members of the reformed schemes for ill health retirements commenced after 1st April. However, there is no clear statement of policy intention that such officers will be able to access ill health benefits based on the proportion of their service in both their legacy and their reformed scheme membership. Is this a deliberate omission?

Question 3 - Do you have any views on the proposed treatment of additional contributions arrangements? In particular, do you agree that existing provisions in the regulations allow for arrangements on added pension and added service entered into under the existing schemes are able to continue after 31st March 2022?

The SPF welcomes the policy statement of intent at paragraphs 6.1, 6.2, and 6.3. We welcome that the intention is to allow the purchase of additional pension service by unfettered continuation of the current arrangements for members who have such pre-existing benefits before 1st April 2022.

Question 4 - Do the prospective Regulations in this consultation have an impact on people with protected characteristics, beyond those equality considerations undertaken and set out in the Equality Impact Assessment undertaken alongside this consultation and in support of the PSPJO Bill. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. Specifically, do you think that the draft regulation amendments and policy intent described

above will have any positive or negative impacts on people with protected characteristics, beyond those already considered? If so, which and why/why not?

We have made comments in respect of aspects of age and sex in our response to question 1. These clearly include aspects that cover pregnancy and maternity. It is our clear view that the approach adopted in respect of analysis on part time officers is deeply flawed and requires to be revisited.

As we stated in our response to question 2, we consider there are risks of creating, or compounding discrimination against disabled members, either through the lag between legal remedy and actual financial remedy, or through inadequate safeguards for members who consequently retire (after being initially retained in service despite being assessed as permanently disabled), or those who seek ill health pension after having left the service at an earlier point in time.

Intuitively we expect that the costs of this remedy will ultimately result in an increased financial burden (through increased costs, or reduced benefits, or a combination of both) on the younger members of the scheme. These members are less likely to receive any tangible benefits arising from the remedy. We would contend that a more detailed examination of this should be undertaken.

It is difficult to form a view on the impact on other protected characteristics given the dearth of data and analysis in the Equality Impact Assessment.

Question 5 - Are there any other areas that you think should be addressed in these regulations to ensure all members are moved to the 2015 scheme and the differential treatment as identified by the Court of Appeal is ended?

The SPF again highlights the relationship between retirement age, and service for members who will have accrued benefits in both schemes. This is widely referred to as the pensions trap. We recognise the consultation has referenced this problem (section 4) but nothing in this consultation gives any indication as to how it is to be resolved.

The consultation (paragraph 4.2) touches in part on this trap but does not fully explain the unfairness. Where, before the age of 55, a member accrues 30 years of combined membership in the legacy and reformed scheme, the member is faced with an invidious choice.

The member may retire on the anniversary of their 30 years' service in order to avail themselves of the opportunity of the most attractive commutation factors, but in doing so will face a deferred and actuarially reduced CARE pension payable from age 55, with the actuarial reduction being applied from state pension age.

Or, the member can choose to remain in service to age 55 (in order to avoid the actuarial reduction in their CARE pension by reference to state pension age; with reduction being applied from age 60), but in doing so the members legacy pension lump sum payment is determined by a lower factor that has been applied due to age. This is clearly inherently unfair and members are in the ultimate lose-lose situation.

The situation is compounded yet further for members whose 30 years of service are concluded a long time before the age of 55.

The SPF accepts the reasoning for actuarial reductions but cannot accept that it is fair our members face an actuarial reduction from state pension age when state pension age and normal retirement ages are coterminous across the majority of the public sector pension schemes. The nearest thing the reformed scheme has to a normal retirement age is aged 60. The 1987 legacy scheme does not have a normal retirement age.

The SPF appreciates the contention that resolution of this is complex given the relationships between tax and pensions laws. However, this is not a problem of our members making and needs an urgent solution. In any event we consider the solution is not as complicated as suggested as the position for members who retire before age 50, with less than 30 years' service (but with more than 25 years' service) provides an extant model that can be applied.

We would contend that such affected members should be able to retire with 30 years of combined service and be able to enjoy an ordinary pension in the legacy and reformed scheme with the reformed scheme pension only coming into payment from age 55 (actuarially reduced from age 60) or from age 60 (in full), at the members own choice.

The SPF also feels it is important to highlight that we already have members who are suffering an immediate detriment in not being able to receive the correct pension benefits. We consider the suggestion that members simply wait 'till October 2023 for this to be rectified to be wholly unacceptable and this may in itself amount to further discrimination. In addition to this, the "lag" between legal remedy and fiscal remedy may well impact on the retirement intentions of members. We simply cannot accept that the confining of members in service by means of financial handcuffs is desirable or lawful.

The SPF also considers the relationship between taxation, particularly in terms of annual allowance, and the proposed remedy, is not being given the attention it deserves. The retrospective "unpicking" of annual allowance calculations will place an exceptional burden on members. We referred to these issues in our opening remarks.

Yours sincerely



CALUM STEELE
General Secretary