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The Pensions Remedy Project Team
HM Treasury

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9 October 2020

On behalf of the Police Pension Scheme Advisory Board for England and Wales I attach responses to the questions set out in the consultation paper 'Public service pension schemes; changes to the transitional arrangements to the 2015 schemes.' These are based on written comments, three technical working group meetings held on 30 July, 10 August and 1 September, a meeting with HM Treasury on 18 September, and the SAB's comments on the paper: 'Public Service Pensions- Addressing unjustified age discrimination in transitional arrangements to the 2015 pension schemes – working proposals', submitted to the Home Office in April 2020 and appended to this letter. As for that earlier response, colleagues from Scotland and Northern Ireland were involved as observers to our meetings and endorse the points of consensus we set out; their SAB's are co-signatories.

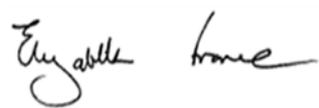
Where there is no consensus, we have made that clear and have drawn attention to the separate responses which each of our constituent bodies has made to the consultation.

The SAB welcomes the recognition that high-level primary legislation will provide an appropriate framework to ensure that there can be no future discrimination within public service pension schemes. However, it is important that the drafting allows room for manoeuvre in the development of scheme specific regulations so that key differences can be accommodated. We look forward to detailed consultation on the regulations for the police scheme.

Structure and administration are also important in considering the practicalities of implementing the Remedy, requiring co-ordination across Government, particularly between HMT, HMRC and Scheme owners. Further, as one of the two locally administered schemes, the police scheme will find the complexities of implementing the Remedy over the period proposed more challenging than schemes with a single administrative body. Indeed, we consider the timescale, as explained, to be unrealistic and would welcome recognition of the risk through provision of an alternative plan.

Finally, by way of introduction, we observe that the more consideration we have given to the proposals the more complexities have come to light. The Police SAB response therefore represents the outcome of our deliberations and the level of our understanding at this stage.

Yours sincerely,



Elizabeth France CBE
Independent Chair
Police Pension SAB

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On behalf of the SABs of Police Scotland and Northern Ireland, we support the observations in this response.



Iain Coltman
Acting Chair
SAB Scotland



Maura Campbell
Chair
SAB Northern Ireland

Question 1: Do you have any views about the implications of the proposals set out in this consultation for people with protected characteristics as defined in section 149 of the Equality Act 2010? What evidence do you have on these matters? Is there anything that could be done to mitigate any impacts identified?

- 1.1 The SAB recognise that age discrimination was a key factor in the Employment Tribunal (ET) judgment and that the proposals seek to remove this type of discrimination. Working together members have reviewed the wide-ranging proposals and identified the following potential equality issues in relation to the police schemes:
- I. The impact on those aged 44 - 48 in 2022 – these are transition members who do not have access to split legacy / CARE benefits.
 - II. Treatment of those who do not respond to immediate choice through illness or disability (especially retired and deferred members).
 - III. Pensions tax: by going back only four years, a member subject to Remedy may pay a lower level of taxation in relation to Annual Allowance than a fully protected member in the same position paid during the whole Remedy Period. Fully protected members were generally older. At Appendix B paragraph 38 proposes that the government will ensure taxation on reformed benefits taken under DCU are met. It is not clear why this is restricted to reformed benefits under DCU.
 - IV. Paragraph 2.39 of the Equality Impact Assessment (EIA) says: “The government does not currently envisage a differential impact on members based on protected characteristics arising from the DCU. Those scheme members who are eligible to pay annual allowance or lifetime allowance tax charges may find they need to take action to review their position in relation to pensions tax under the DCU. This group of high earners are more likely to be male and white. However, as set out in the consultation document, there will be mitigations in place to ensure this group are treated fairly compared to their comparators”. The SAB is concerned that the police scheme will be particularly impacted by this and seek assurance that fully considered and adequate mitigations will be in place.
 - V. Impact of Immediate Choice (IC) - arguably, it is easier for older members, closer to pension age, to frame a choice of Remedy Period benefits and how they link to overall pension benefits than it is for younger members many years from normal pension age.
 - VI. For those transferred to legacy schemes in 2022 without having achieved 30 years’ service. These will be mainly female workers whose part time service has impacted on their “reckonable/pensionable” service. The gender/ age profile of this cohort may give rise to claims for discrimination and therefore consideration should be given to identify an alternative outcome for these individuals.
 - VII. While paragraph 2.66 of the EIA says from April 2022 all those continuing in service would be members of the reformed scheme and older members who have been offered transitional protection would have had more than 20 months’ notice of the government’s plan and would be able to participate in reformed scheme in relation to any eligible employment from the 1st April 2022, beyond their legacy Normal Pension Age. By April 2022, all members

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who were offered transitional protection in the 2012 would have reached their pension age; the visibility of the notice period seems overstated.

- VIII. Exclusion from Remedy of members who joined between 1 April 12 and 31 March 2015 since they will tend to have a different age & diversity profile from the workforce able to access the Remedy.
- IX. Officers who have achieved maximum pensionable service in the legacy 1987 scheme during the Remedy period. Can they re-join the 2015 scheme to cover Remedy period accrual?
- X. The consultation states that those moving back to the legacy scheme will be able to agree a repayment plan in respect of contributions owed if required. This may disadvantage older individuals from the option of DCU, as this would leave less time to make payments if the DC is to be made closer to retirement age.
- XI. Members making voluntary contributions / added pension are likely to have a diversity profile (part time, maternity leave). There is a need to ensure that there is no discriminatory impact of any solution on voluntary contributions/ added years/ added pension. It will need to be made explicit that AVC operates entirely outside the Added Years/ Added Pension system.
- XII. It is understood that tax relief on contributions can be applied only to active members and not to retired or deferred members,

1.2 These issues should be reviewed as part of a police scheme specific EIA of any proposed Remedy solution.

1.3 In addition to these shared concerns, police Staff Associations draw attention to the group of people who joined the police service between 2012-2015. They identify a new indirect discrimination to those members. Paragraph 2.9 of the EIA says "Those who were in service on or before 31 March 2012, but who left and subsequently re-joined within 5 years will, however, be in scope for any service after 1 April 2015, provided their break in service meets the criteria set out in their scheme's regulations. This is in line with the existing principle that those with a qualifying break in service of less than 5 years should be deemed to have had continuous service. Excluding this group from the scope of the remedy would be counter to this concept and would be likely to particularly exclude women and others, whom the continuous service principle is designed to protect". This excludes those who did not take a career break without but not for those who did not take a career break without setting out a justification for the difference of treatment.

1.4 There are further equality issues which are identified in our response to Question 9 in relation to the impact of post 2022 arrangements.

Question 2: Is there anything else you would like to add regarding the equalities impacts of the proposals set out in this consultation?

2.1 There is considerable history in police schemes of legal challenge on a wide range of pensions issues (e.g. Milne v GAD; Ashcroft & Evans) and historic correction / remedies being applied retrospectively over many years.

2.2 A full, scheme-specific EIA should therefore be undertaken of the eventual proposed solution for Remedy to minimise the risk of future challenges. Such an EIA should look

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beyond the Remedy itself covering the application of taxation and other connected matters such as recovery and payment of contributions. While there will be bespoke EIAs for the LGPS and Judges, an assurance that there will be one for the police scheme is sought. The Scottish Government has commissioned a scheme specific Equalities Impact Assessment on behalf of the Scottish Police Pension Scheme Advisory Board.

Question 3: Please set out any comments on our proposed treatment of members who originally received tapered protection. In particular, please comment on any potential adverse impacts. Is there anything that could be done to mitigate any such impacts identified?

- 3.1 This is a question on which the SAB does not have a consensus view.
- 3.2 The employers consider that the proposal that members with tapered protection must choose either legacy or reform scheme for all of the Remedy Period has merit. However, they recognise the potential, no matter how slight, for there to be a negative impact on some members if mixed scheme membership is not an available option. It needs to be clear whether this constitute accrued rights if it is more favourable than either legacy or reformed membership for the whole Remedy Period.
- 3.3 The Staff Associations note that under Police Pensions Act 1976 and the Public Service Pensions Act 2013 there are bespoke transitional arrangements which seem to be being ignored. Paragraph 2.22 of the consultation suggests that any tapered protection members who are worse off through the implementation of the Remedy are victims of chance. They question whether this is sufficient justification for the detriment these members could suffer. The issue identified relates to legitimate expectation and basic fairness to the individuals concerned.
- 3.4 **The different responses to this question are set out in detail in the separate responses to the consultation**

Question 4: Please set out any comments on our proposed treatment of anyone who did not respond to an immediate choice exercise, including those who originally had tapered protection.

- 4.1 Based on GAD analysis of reform and legacy remedy benefits it is considered likely that the great majority of police members will choose to be placed back onto the legacy scheme for the duration of the Remedy Period. In this context placing those who fail to respond after four attempts at contacting them back into the legacy scheme has merit.
- 4.2 However, the consultation response should set out clearly the legal basis under which it is proposed to change pension arrangements without consent including the legality of obtaining additional contributions from such members.
- 4.3 The general view is that, in the event of no response by deferred members, their choice should be deferred along with their deferred benefit. This will allow pension administrators to prioritise active remedy cases.
- 4.4 The operation of the choice exercise imposes a huge additional workload of connecting with active, deferred and pensioner members across a wide range of media. More detailed points on the practicality and resourcing of this work is set out in response to Question 5.

- 4.5 The proposal to apply a 'default' option to members who do not respond to the IC option seems to present more challenges (and potential discrimination) than it solves. Effectively a choice is being made for the member and this might be construed as giving financial advice.
- 4.6 Paragraph 2.38 of the 2020 Consultation notes that members will be required to make their choice, under the immediate choice framework, within a year or two of the end of the Remedy Period. In the absence of a choice, the member will be deemed to have made an election. The election they are deemed to have made will depend on whether they were initially entitled to transitional protection under the initial proposals. Paragraph 2.39 suggests that members with tapered protection would be placed in the 2015 CARE scheme by default during the Remedy Period. That would be inconsistent with the approach for members who did not have tapering who would be placed back into their legacy schemes.
- 4.7 It is appreciated that some deeming provision will be necessary in the event of a failure to make a choice, this must be subject to a provision which permits the decision to be revisited (despite the deeming have occurred) in the event that the failure is the result of some reasonable excuse. This is demanded by fairness in that it would be unjust to refuse members to revisit what is potentially a financially significant decision where their failure to make a decision is not the result of any fault on their part. From a legislative perspective this is not an alien concept. See, for example, Regulation 12 of the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 (SI 2006/131) in the context of the late notification of a member's intention to rely on para 12 Schedule 36 FA 2004. There is no reason why a similar provision could not be used in this context. We would however in this context advocate a lower standard and in particular there should be no presumption that ignorance of the law cannot be a reasonable excuse given these changes have been retrospectively imposed on members.

Question 5: Please set out any comments on the proposals set out above for an immediate choice exercise.

- 5.1 IC will not be immediate and this needs to be explained to scheme members by HMT. It is proposed that it should be undertaken sometime after April 2022, but it is clear that this cannot be undertaken in advance of system development and implementation, population and validation of member data going back over a 7-year period and systems / processes to deal also with issues of contributions and tax calculations.
- 5.2 The difficulty of communicating detailed, highly personalised individual pension information across a wide range of members is a huge communication challenge, unprecedented and not fully acknowledged in the consultation proposals. This is particularly relevant to the adjustment of pension taxation where government needs to come forward with proposals for supporting individual members. In addition, there is a huge additional administrative workload of managing the communication, recording choices, following up on communications and dealing with a wide range of callers and correspondence from many members. The cost and resource implications are not addressed. **The preparation for this activity will have to take place around the same time as administrators are managing the transition of the workforce into the reformed scheme from April 2022. Time constraints are a particular concern. These are significant feasibility considerations for a locally-administered, unfunded scheme.**

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- 5.3** IC also presents significant issues regarding the ability to make informed decision, it is clearly more difficult for younger members to assess future benefits and to consider these against their future life and career plans. The value of benefits will depend on a wide range of future factors, for final salary pay growth, pay structure and career progression many years in the future.
- 5.4** While CARE benefits can be quantified in financial terms for the Remedy Period, the subsequent growth will depend on revaluation factors and future accrual in the CARE scheme is uncertain, dependant on valuation outcomes over 4-year cycles. Even the value of benefits already accrued in the scheme since 2019 is currently unknown. Pension contribution differences in the police scheme require that members are presented with differing contribution information and associated tax relief information on those contributions, together with options on how any additional contributions would be paid by the member. **This is an additionality not found in other schemes** (except firefighters) and requires co-ordination between payroll and pension administrators in order to obtain data, perform calculations and present accurate information to the member.
- 5.5** Given the benefit structure in police schemes, a potential solution for further detailed consideration may be for members to be reverted to final salary membership for the Remedy Period and 'opt out' into CARE for that period, rather than actively being presented with a choice between two options. A simple benefit accrual statement could be issued covering the Remedy Period accrual and members invited to opt into those benefits over a defined period, or at crystallisation (a variation on DCU). Uprating of defined CARE benefits over a 7-year period is already standard practice for administrators.
- 5.6** Views of the pensions administrators and software designers are key on feasibility and should be sought going forward.
- 5.7** There will be a very great reliance under this option for members to have access to calculators and modellers for them to assess the likely future benefits under both options for Remedy Period accrual. Providing consistent tools using consistent assumptions is more challenging in a locally-administered scheme with different software packages and administrator interfaces. These comparison tools do not yet exist at the time of writing and will need testing and development.
- 5.8** As set out above in the response to Question 2, there is considerable history in police schemes of legal challenge and historic correction / remedies being applied retrospectively over many years. It is therefore vital that, should IC be identified as a way forward, a full, scheme-specific EIA is undertaken to minimise the risks of future challenges either on equality or on misrepresentation grounds. There is a need to ensure across all public service schemes that members, should this option be pursued, have access to the same information, presented in the same way on a common basis in order to facilitate the choice and minimise risk of subsequent challenge. This will be hard to achieve in a restricted timescale across a range of software platforms and a range of benefit structures and scheme provisions.

Question 6: Please set out any comments on the proposals set out above for a deferred choice underpin.

- 6.1** But for the lack of assurance about safeguards from HMT, which were sought by the SAB, and excepting the lack of clarity associated with the practicalities of implementation, the unanimous view would have been to support the DCU option. It is

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the majority opinion of the SAB members that DCU would be the preferred option for Remedy implementation primarily as it allows members to make their decisions based on fact rather than projections. The consultation is extremely restrictive and controlled, if an individual EIA is done for the police scheme it may present a different option for the Remedy.

- I. 6.2 It is likely that most police officers will be better off with legacy scheme benefits during the Remedy Period because of scheme design: earlier access in both 1987 and 2006 schemes to unreduced pension
- II. higher automatic lump sum in 2006 scheme than CARE
- III. final salary link and weighted accrual remaining in place

6.2 For older (post age 40) joiners or those who wish to work to compulsory retirement age (60 for most) CARE may offer a better benefit. The main part of the proposal – to revert members for membership in the Remedy Period- accords with this view.

6.3 DCU spreads administrative workload over a much longer timescale than immediate choice. For most, it will involve administratively only the uprating of defined CARE benefits over a 7-year period. Such uprating is already standard practice for administrators.

6.4 Aside from the administrative and process issues, it must be easier and safer for individual members to understand the value of alternate benefits for the Remedy Period and make their choice at the point of retirement / crystallisation, rather than immediate choice, where 'retirement' may be 30 years away. This is not to ignore the very heavy workload for administrators with all Remedy Period members to be reverted to legacy scheme membership, dealing with issues such as tax and contribution rate changes across a huge number of members and implementing the change for most of the workforce to the 2015 scheme from April 2022 alongside business as usual.

6.5 The communications challenges with DCU remain as for IC, but are spread over a greater number of years, which will allow provision of better information to members over time through repetition and engagement.

6.6 Notwithstanding the positive aspects of DCU, there are several issues which require further exploration and clarification to make it a feasible way forward:

- I. Lack of potential awareness of LTA aspects if DCU is long-term –benefits will need to be measured and communicated to members affected by LTA.
- II. Potential unfairness of tax treatment of DCU where reformed benefit is chosen, such that it is not clear why tax charges should be met under this option, but not in other cases.
- III. .Handling issues of taxation of pension accrual due against the Annual Allowance and reconciliation of contribution differences. At present the proposal is that these are handled 'in the usual way' – but the volume of work, practicability, impact on members and pressure on HMRC from activity across the public sector do not appear to have been taken into account and form a major consideration for implementation
- IV. Consideration needs to be given to the temporary extension or relaxation of pension tax timelines so as to manage the peak workload associated with the recalculation of pension tax.

Question 7: Please set out any comments on the administrative impacts of both options

- 7.1 On this Question our Staff Association members were clear in their view that administrative impact should not be a determinant of the appropriate Remedy. Scheme administrators are functionaries in the process. They consider that as administrators did not design the schemes they are managing and should not be responsible for the inevitable costs and labour involved in the fix to the discrimination. Their views on practicalities should be considered in costing the Remedy but not deciding on the option.
- 7.2 There was a shared view that whatever the Remedy there will be considerable costs which will need to be supported from central Government. The interdependencies between payroll departments and pension administrators are self-evident and also need to be recognised in providing additional central support.
- 7.3 The SAB considers both options require significant, upfront development of systems and processes and extensive data collection and validation. Both incur cost because of systems development, testing and implementation across 43 forces, 4 software platforms and multiple administration models. There is a need to co-ordinate activity across these players to ensure consistency and quality of information and co-ordinated programme delivery. There are additional concerns in relation to the timing and outcome of the government's 'unpausing' of the 'cost cap', as the detail is currently unknown and implementing the outcome is likely to increase the complexities involved in the implementation of the Remedy solution and government's future proposals for pensions.
- 7.4 IC presents an early peak workload in managing a very significant communication exercise across a diverse group of members, deferred members and pensioners with a requirement for them to respond. Experience suggests that, typically, 40% of members do not respond, but the issues remain of the administrative burden of multiple contact attempts, maintaining effective communications, obtaining a choice decision and ensuring that the member has understood the impact of the choice.
- 7.5 DCU presents an early peak workload in respect of reverting members to their legacy schemes across seven years of membership soon after April 2022 where data and records to provide for this have not always been fully maintained. The issue of outstanding contributions (**relevant only to police and firefighter schemes**) for the Remedy Period needs also to be addressed with appropriate measures to collect from members with their authority but without causing undue financial hardship. Indications are that a typical police constable might owe around £2,000 in contributions on reversion to the 1987 scheme for the entire Remedy Period.
- 7.6 For higher earners, this also potentially involves 7 years of annual allowance calculation and production of multiple years pension savings statements with the expectation of payments of tax owed being facilitated at a time when this is being replicated across all public service schemes. Additionally, a large proportion of the workforce is likely to require adjustment to PAYE arising from contribution adjustments. There is a need for a comprehensive programme management response from HMRC to streamline their employer and individual processes to facilitate widespread adjustments spanning a 7-year period.
- 7.7 **There is a need in both options for a clear national communication strategy** – with standardised communication, for the police scheme, from the Home Office to

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ensure all 43 forces provide consistent information, reducing the risk of future challenges.

- 7.8** Under DCU there is a risk over time of the loss of staff with legacy scheme expertise, potentially leading to misapplication of scheme rules and provisions in future years in respect of Remedy and pre-Remedy membership.
- 7.9** Some aspects of peak workload may be best addressed through the creation of a specific team to manage complex or problematic aspects of delivery of the Remedy. The IC option would entail more work over a short period of time. This could be resourced by creating a dedicated team to oversee implementation of the Remedy. For example, contacting and dealing initially with relatives or agents of deceased members.
- 7.10** The DCU option would provide an additional administrative requirement over a long period of time, which would form part of business as usual transactions. The front-loading of work under IC combined with the probable lack of suitable software until late 2022 would be likely to lead police administrators to struggle to meet the demands of members under IC; member service and experience may suffer as a result.
- 7.11** Poor communication or implementation of flawed proposals may influence workforce behaviour, given that a substantial number of serving officers have participated actively in the discrimination claim over transition to the 2015 scheme and are now required to join it under Remedy in 2022. **Poor communication and implementation are key risks to successful delivery of the Government's Police Uplift Programme in 2022-23.**
- 7.12** There is a need to ensure across all public service schemes that, if the IC option is pursued, members have access to the same information, presented in the same way on a common basis in order to facilitate the choice and minimise risk of subsequent challenge. This will be hard to achieve in a restricted timescale across a range of software platforms and a range of benefit structures and scheme provisions.
- 7.13** To alleviate our concerns on the operation of DCU, there would be a need to be clarity on tax rules; tax rules applicable during the Remedy Period should apply at the point of choice.
- 7.14** The references to administration issues in this response relate specifically to the administration of the police scheme in England and Wales. A separate response on issues relevant to the centralised administration in Scotland will be submitted separately by the Scottish Public Pensions Agency.

Question 8: Which option, immediate choice or DCU, is preferable for removing the discrimination identified by the Courts, and why?

- 8.1** The claims which led to this outcome were that members were better off in legacy schemes than in reformed schemes. Because of earlier access to benefits, weighted accrual, commutation, and final salary link, in police schemes that is frequently the case. Therefore, DCU best suits the configuration of police schemes, but the approach of the policing sector to this option may need to be adapted to take account of the configuration of forces and administrators and the workforce issues of communication.
- 8.2** The consultation presents solutions in an overly-simplistic way without consideration of issues such as software development, testing and release, training and resourcing

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of additional administration resource, data collection, validation and input, development of communication materials and channels and the complexities of tax and contribution rate changes backdated over 7 years.

- 8.3 Choices are presented as simple, binary options, where the reality is that there are many dependencies and workstreams all of which are interdependent and where many issues are as yet unresolved – in some cases, not even addressed.
- 8.4 Notwithstanding the administrative and systems challenges, the SAB takes the view that DCU is a better fit for police scheme members (because of scheme design) and will provide a better opportunity to understand benefits and make an informed choice. But, without clear proposals on many issues, a clear timeline and fuller definition and context on a number of key issues and dependencies, it is not possible at this stage to express a view which takes full account of the feasibility of implementation and workforce impact of the two options.
- 8.5 The option which can be most successfully implemented is likely to be preferable. Any decision must be based on greater definition and context. The views of the pensions administrators and software designers are key in shaping any plan for delivery.
- 8.6 There is a need for the risks of any option to be mitigated (e.g. through provision of time and support for individuals in making their decisions, simplification of tax calculation and payment systems and flexibility for members in making any additional payments due).
- 8.7 As neither option is overwhelmingly fairer than the other, the priority should be ensuring that the Remedy is successfully implemented with minimal uncertainty for members.

Question 9: Does the proposal to close legacy schemes and move all active members who are not already in the reformed schemes into their respective reformed scheme from 1 April 2022 ensure equal treatment from that date onwards?

- 9.1 While there are points of difference in employers' and staff associations' views which are reflected in individual responses there is a significant shared concern. The rationale for the treatment of those who were protected by reason of age (45 or over in 2012) needs to be set out clearly alongside the impact on these members since, as a result of the 2022 changes, they will not now be able to accrue a 'full' 1987 pension. The profile of this cohort age 55 but with less than under 30 years' service. gives rise to potential claims for discrimination on the grounds of age and/or gender and that therefore consideration should be given to identify an alternative outcome for these individuals.
- 9.2 In line with the 2020 Consultation, all members will be automatically moved into the reformed scheme as of 1 April 2022 (see paragraph 2.13), thus denying these members the full transitional protection promised under the original legislation. The assertion in the consultation document and Equality Impact Assessment that all protected members would have reached their normal pension age is not correct (see 3.12 of the consultation document and 2.65 of the Equality Impact Assessment). The groups effected will include those:
 - I. who are fully protected members aged 45 or over on 31 March 2012 who will not have reached 30 years of full pensionable service under the 1987

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scheme by the end of the Remedy Period on 1 April 2022 (There is no normal pension age in the 1987 scheme).

- II. who were part-time members aged 45 or over on 31 March 2012 and part-time members aged 38 or over with at least 20 years of service who will not have reached full pensionable service by 1 April 2022.
- III. who took career breaks while covered by the transitional protections who will not have reached full pensionable service in their legacy scheme by 1 April 2022.

9.3 One of the additional points made by the Staff Associations is that of legitimate expectations. It is possible that compulsory transfer will deny some members benefiting from tapered protection rights which had been guaranteed under the initial proposals.

9.4 **The different responses to this question are set out in detail in the separate responses to the consultation**

Question 10: Please set out any comments on our proposed method of revisiting past cases.

10.1 The tax treatment of any additional commutation lump sums is glossed over as: 'subject to any limits required by schemes' Rules and pensions tax law regarding the maximum allowance, and time allowed for payment, for pension commencement lump sum'. This ignores the current position on pension commencement lump sums, where second lump sums may be heavily taxed. Along with the approach to other issues of taxation, members should not suffer detriment as a result of the Remedy, whether directly in terms of benefits or indirectly as a result of taxation.

- I. Commutation and the impact it would have on retired members is a concern if they were being given a choice over Remedy benefits which ultimately exposes them to the risk of incurring tax charges by breaching HMRC rules. Paragraph A.3 of the consultation document shows that the commutation lump sum would have a significant impact on how the Remedy affects those who have already retired. The proposal to reduce future pension payments as a preference to seeking repayment of lump sums (which have been overpaid due to the Remedy choice) is a realistic and sensible solution for members who have already retired and then select the reformed scheme for their benefits during the Remedy Period.
- II. Individuals whose position was changed because of government action to address discrimination should not be worse off in relation to taxation. Tax that would have fallen due, had there not been any discrimination, should be paid but individuals should not be paying more tax or suffering a detriment because of the discrimination and as a consequence of the Remedy (the Milne payments are a precedent here in relation to this issue).
- III. Paragraph A.5 indicates that interest will be applied to both scenarios where a member is owed monies and a member owes monies. In our view interest should only apply to any monies owed to the member as the discrimination and the Remedy are not the fault of the individual concerned, and to effectively punish them again by applying interest to monies owed appears very unfair.

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- IV. Tax contributions made in later years should at the election of the member be capable of being carried back to the year in which the contribution would have been made had the member been in the correct scheme. In other words, relief would be given at the rate applicable in that tax year if elected for. This reflects the fact that relief in an earlier year may prove less valuable than relief in a later year, for instance because lower marginal rates apply in a later year. (See B.18 of the consultation document on this point.)
- V. If the DCU option is selected and after April 2022 the process starts to revisit cases where individuals with tapered protection have retired how will the government deal with individuals who are already in receipt of their pensions and do not respond?

Question 11: Please provide any comments on the proposals set out above to ensure that correct member contributions are paid, in schemes where they differ between legacy and reformed schemes.

- 11.1 As the consultation document acknowledges, this aspect directly impacts on firefighters and police officers (with only limited impact in other schemes). It is disappointing therefore that police Scheme Managers were not specifically consulted on these aspects prior to publication of the consultation document.
- 11.2 Based on GAD analysis it is considered most members will opt for legacy scheme benefits for the whole of the Remedy Period. Those reverting to 1987 Scheme membership will typically owe from between £2,000 (constable paid at the maximum for the whole of the Remedy Period) up to £8,000 - £10,000 (Chief Superintendent - more for Chief Officers). It is therefore not realistic to expect that members will be able to pay such amounts as a lump sum. Conversely, contribution rates for the reformed scheme are higher than those for the 2006 scheme, so in these cases members opting for legacy benefits will receive refunds of between 1.03 - 1.39% of pensionable pay for each year of the Remedy Period.
- 11.3 The government proposes that members who move to the legacy scheme for the Remedy Period under IC or DCU may need to make additional contributions to the scheme. This may adversely impact lower paid members who are more likely to be women, ethnic minority groups or those with disabilities. Paragraph 2.41 and 2.43 EIA recognises that this is potentially race, sex and disability discrimination.
- 11.4 Neither repayment nor taxation should lead to individual detriment. It is therefore important that the government allows pension schemes to agree individual repayment plans so that members can choose their preferred pension benefits regardless of financial circumstances.

Question 12: Please provide any comments on the proposed treatment of voluntary member contributions that individuals have already made.

- 12.1 It is not clear under what provisions the limit on additional contributions (A 16) could be 'ignored'.

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- 12.2** In addition, the scenarios detailed in the consultation suggest that the choice applies only to active members. There may be members who have left or retired with added years / added pension arrangements in place and who, as a result of the Remedy, want to change the arrangement to better reflect changed benefits.
- 12.3** It would seem sensible to provide for members either to retain any added pension in the reformed scheme (since they will have membership of that scheme post 2022) or to apply reformed scheme added pension to legacy scheme added years or added pension arrangements. This is a complex area with many bespoke outcomes. It needs to be clarified in regulations which set out the extent of choice and take account of the diversity profile of those with additional pension / years options – career breaks, maternity.
- 12.4** This could create complicated situations in which members find themselves taken out of the legacy scheme in 2022 and put into the reformed scheme for a very short period. That could have inordinately complicated consequences and so should not be permitted. It would also remove a benefit promised to a member as part of the 2012 reforms which could be argued to be a breach of a legitimate expectation. More significantly it seems probable that this retrospective amendment to the terms of service would be *ultra vires* the Regulation-making power.
- 12.5** It is also important to note that most part-time police officers and those who took career breaks are likely to be women and therefore the proposals are likely to be discriminatory on the grounds of sex.
- 12.6** Sections A14 to A20 of the consultation document entitled 'Voluntary member contributions' contains no detail on how scheme members who are concerned about the changes described above could mitigate them by 'buying additional years or pension'. The document states '*Some legacy scheme's regulations and administrative processes may need to be updated in order to provide for an AP facility*'.
- 12.7** As explained above, situations of this sort are envisaged by paragraph 1.28 of the 2020 Consultation. The Police SAB seek assurance that the way past cases are revisited will form part of the later scheme specific consultation.

Question 13: Please set out any comments on our proposed treatment of annual benefit statements

- 13.1** Immediate choice would not necessarily impact on the content of ABS, whilst DCU would introduce significant additional complexity. However, the benefit of DCU to the member is likely to outweigh considerations relating to complexity. With regard to DCU in addition to showing benefits from the alternate scheme the benefit statement should show the alternate contribution due at retirement date so that the member is sighted on any costs that may be due.
- 13.2** Given the additional requirements for ABS under DCU the Government should take this opportunity to review the ABS in order to make it easier to understand. Consideration should be given to combining ABS and pension savings statements into a single document which would be easier for members to understand.
- 13.3** Where past cases are revisited (see Question 12) it is not clear what information will be available to members. Consideration needs to be given to retrospective and prospective production of ABS as part of the Remedy.

Question 14: Please set out any comments on our proposed treatment of cases involving ill-health retirement.

- 14.1 Given the interaction between ill-health retirement and the management of pensions within the police service, there is insufficient detail in the consultation document to allow a considered conclusion. The consultation does identify a number of specific challenges related to ill-health provisions, but no proposed answer or solution on which to base comment. This lack of detailed information adds weight to the concern of the SAB that the March 2022 date for closure of the legacy schemes is unrealistic.
- 14.2 This lack of detail should lead to a decision that those currently under a review for ill-health retirement, should have their review 'paused' until after the Remedy Period.
- 14.3 Individuals whose position was changed as a result of Government action to address discrimination should not be worse off as a result of taxation being applied retrospectively. Tax that would have fallen due, had there not been any discrimination, should be paid, but individuals should not be paying more tax or suffering a detriment as a consequence of the Remedy - for example, a backdated award treated as paid in a single year, rather than over a period of time. The Remedy should not lead to unintended discrimination through the tax system. Significant changes in pension tax arrangements will make this more likely and will need particularly careful consideration.
- 14.4 The complexities relating to ill health retirement include benefit as well as tax calculations, the potential to need to re-run medical assessments, and the likely vulnerability of these claimants. If the judgement means that those who took ill-health retirement prior to the judgement have to be given a choice, simplification of the tax and benefit calculations would be helpful.
- 14.5 Staff Associations emphasised the need to deal with these cases at the earliest opportunity. Those who have already been Ill Health Retired (IHR) on a reformed Police scheme should be informed as soon as practicable that any review of their IHR will be put on hold until the Remedy Period is completed. Paragraph A.25 states that cases may need to be reconsidered under the terms of their legacy scheme rules. Those who have been IHR in the reformed Police scheme have still met the criteria for IHR in their legacy scheme as the appropriate SMP has already made the medical decision that the member is permanently medically unfit for performing the ordinary duties of a member of the police force. The SAB can see no basis for medical reassessment. What would be required is a recalculation of the ill health pension under the terms of their legacy scheme, and information about the differences between the Regulations and conditions of their IHR under both schemes to allow an informed choice. This will avoid any unnecessary distress to those who have already gone through what can be a difficult and traumatic process.
- 14.6 If these members cannot be contacted and the default choice is made for them it might be argued that they have been treated unfairly on the grounds of disability and or age.

Question 15: Please set out any comments on our proposed treatment of cases where members have died since 1 April 2015.

- 15.1 The SAB does not consider there is enough detail on the operation of the proposal and its impact. Without this level of detail there is likely to be legal challenge.
- 15.2 The SAB considers that the further questions to answer include:

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- I. Whether tax costs fall to the pension fund or individual force revenue accounts.
- II. How additional or refunded member contributions would be dealt with; would any survivor pensioners be expected to pick up this cost or receive any refund?
- III. If the usual rules are to apply for dependent children (part of the same household), would there be any recovery where there is a reduction to child benefits? This would be unwelcome and distressing.
- IV. Administrators may consider work on these cases to be outside the scope of their normal activity, has consideration been given to whether it would fall to employers or be undertaken under a specific contractual arrangement outside pension administration? Further consideration needs to be given to a bespoke and centralised system response.

Question 16: Please set out any comments on our proposed treatment of individuals who would have acted differently had it not been for the discrimination identified by the Court.

- 16.1** It is noted that where members wished to argue that they would have taken a different course of action had they known that continued membership of their legacy scheme during the Remedy Period was an option, then schemes would consider representations on a case-by-case basis. The consultation document states that these will be dealt with on a 'case by case' basis by the Scheme. The Chief Constable of each force is the Pension Administrator and therefore not independent.
- 16.2** A framework definition of 'contingent decisions' (Paragraphs A.46 and 47) is needed. If these decisions are also to be dealt with on a case by a case basis, without clear guidance, who would be responsible for them and for the costs involved? For example, an individual might argue that had the provision now offered by the Remedy been available at the time they would not have:
- I. 'Downsized' property
 - II. Removed children from private schooling
 - III. Decided to take an honorarium
 - IV. Left the police service
 - V. Opted out
- 16.3** As a potential alternative to the stringent requirements proposed in the consultation, those who opted out could be given a limited time frame in which to opt back in, make up contributions and so be in a position to make a choice.

Question 17: If the DCU is taken forward, should the deferred choice be brought forward to the date of transfer for Club transfers?

- 17.1** There is no consensus SAB view based on the information provided. If there were some worked examples provided, it would help a common understanding of the circumstances which might arise.
- 17.2** The different responses to this question are set out in detail in the separate responses to the consultation

Question 18: Where the receiving Club scheme is one of those schemes in scope, should members then receive a choice in each scheme or a single choice that covers both schemes?

- 18.1 After discussion, it is evident that the SAB does not share a common understanding of the proposals. Without worked examples explaining the proposal in detail, we are unable to offer a consensus response.
- 18.2 **The different responses to this question are set out in detail in the separate responses to the consultation**

Question 19: Please set out any comments on our proposed treatment of divorce cases.

- 19.1 Public sector wide guidance on the treatment of Remedy in divorce cases is required. This should cover the range of outcomes including the impact of the Remedy decision on the ex-spouse with regard to refunds and additional contributions, maintaining payments to the ex-spouse in the event of the member choosing a lower value payment. The guidance needs to address whether resultant recalculations will be charged to the scheme or the member, and the exposure to further costs (e.g. legal costs) arising from amending the member's pension. Staff Associations make clear that no cost should fall to the member.
- 19.2 The Scottish Scheme Advisory Board is aware of potential implications for pension share on divorce orders under Scots Law. On receipt of relevant advice Scottish Government officials will seek to engage HM Treasury on legislative implications.

Question 20: Should interest be charged on amounts owed to schemes (such as member contributions by members? If so, what rate would be appropriate?

- 20.1 The SAB's answer to this is quite clearly 'no', because the delay in making any payment was not of the member's making and in most cases they had very limited or no choice.

Question 21: Should interest be paid on amounts owed to members by schemes? If so, what rate would be appropriate?

- 21.1 The Government should first clarify the application process, keeping in mind the need for there to be no detriment. Please see individual stakeholder responses for specific details.
- 21.2 **The different responses to this question are set out in detail in the separate responses to the consultation**

Question 22: If interest is applied, should existing scheme interest rates be used (where they exist) or would a single, consistent rate across schemes be more appropriate

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22.1 Since this is a pan-public service Remedy, interest should be calculated on a single, common basis using an externally verified rate (base +x%?). The Government has a policy of no detriment. The SAB considers there should be consistency across the public sector with the application of interest the same across all schemes.

22.2 **The different responses to this question are set out in detail in the separate responses to the consultation**

Question 23: Please set out any comments on our proposed treatment of abatement.

23.1 Abatement is not a significant factor in police schemes. However, schemes and employers will want to minimise administration and calculations wherever possible. The preferred approach is that abatement is revisited only where the member would benefit from such a review (generally in cases where a member opts for reformed benefits, rather than legacy scheme benefits). Consistency is also important, which suggests limiting the discretion of administrators.

Question 24: Please set out any comments on the interaction of the proposals in this consultation with the tax system

24.1 This is a very significant and complex area, which, although itself not part of a pensions Remedy, has implications:

- I. for individual members in terms of net benefits received or in any payments made by them,
- II. for employers and administrators through the calculation and administration of contributions and benefits, and
- III. for the administrative impact, cost and complexity of delivering Remedy, which in turn has an impact on the preference of solution, unless issues such as tax and payment of contributions are dealt with in a way which is specifically designed to make things simple to understand and operate.

24.2 The tax issues are particularly relevant for police schemes because:

- I. the two legacy schemes and the 2015 scheme all have different member contribution rates, and
- II. because of double accrual in the 1987 scheme and salary levels, there are a relatively high number of individuals in the police service (earning from around £70,000 p.a.) impacted by annual and lifetime allowance issues.

24.3 For these reasons the decisions made by serving officers are likely to be influenced more by this issue than in other schemes, and the complexities of calculating Remedy will be significantly higher.

24.4 The proposed tax treatment of the Remedy does not appear to align with the principle of placing members in no more or less favourable position than they would have been in had the transition not occurred. In this context potential future changes in the tax regime need to be addressed. The risk that future tax changes could diminish the protection recognised in the Remedy needs to be mitigated.

Tax relief on contributions

- 24.5** It is likely that most members will choose to receive legacy scheme membership for the Remedy Period. This will result in:
- I. backdated additional contributions being due on which tax relief can be obtained only by active members, for those members reverting to 1987 scheme membership,
 - II. a refund of contributions being due on which tax is due to be paid by active, deferred and retired members for those members reverting to 2006 scheme membership.
- 24.6** Under DCU, these positions may need subsequently to be reversed where the reformed scheme is chosen at crystallisation.
- 24.7** To provide tax treatment which is as fair to members as possible and not unduly burdensome (contribution rates range from 12.44 – 13.78% in the reformed scheme), it is therefore recommended that members who owe backdated contributions should have maximum flexibility of choice in how these are to be paid.
- 24.8 Deferred and pensioner members should have an option to pay contributions in a similar way to contributions made to money purchase schemes, where tax relief is applied by the government and added to the member contribution i.e. members would pay only 75% of the gross amount due.
- 24.8** Where a refund of contributions is due, tax should be applied at the rate applicable at the time of contribution. It is proposed that members and administrators maintain a record of the amounts paid and, in the event of the member opting for reformed scheme membership at crystallisation, the net amount received by the member be repaid to represent contributions due.

Annual Allowance

- 24.9** The approach to determining Annual Allowance pensions tax appears to provide different levels of taxation for the same level of benefit accrual during the Remedy Period; this seems inherently unfair. The response to Question 1 identifies the potential unfairness of Remedy levying pensions tax only on four years of membership and accrual, against 7 years of membership and accrual paid by a fully-protected, older member. In addition, under the immediate choice option, the consultation proposes that members will be liable for any Annual Allowance breach during four years from the date at which they confirm their choice of benefits.
- 24.10** Under the DCU option, members will be liable for tax on pension growth from 2017/18 (four years before April 2022). Under DCU members are likely to have a higher tax burden (since many will have benefited from double accrual in the 1987 scheme from 2017 – 2022 on which a tax charge may be due), whereas, under IC, the period being measured is likely to be 2020 – 2024, where some benefits were accrued under the CARE accrual - even though the value to the individual would be the same in both cases. This seems inequitable as the reason for the difference is the application of a historic HMRC approach and rules on tax calculation/ repayment periods, rather than any actual difference in benefit.
- 24.11** In the case of police officers, the annual allowance issue could be significant for individuals and may impact on service delivery. Senior eligible officers who have not had full protection may suddenly see sizeable AA tax bills and may result in officers leaving the service at an earlier stage than they would otherwise have done to avoid tax implications. **This may, in turn, impact on delivery of the Government's police uplift programme at a critical stage of delivery early in 2022.** Given policing's

already high level of attrition at senior officer level (due to historical recruitment patterns) the DCU option could have unintended implications.

- 24.12** Experience suggests that individual officers will need independent advice on this matter. It seems unlikely that there are currently sufficient people with the knowledge and skills to provide that advice on the scale needed and a government wide solution will therefore be required.

Lifetime Allowance

- 24.13** There is a concern that, under DCU, some members may reach or breach the lifetime allowance under one benefit option, but not fully realise it until the point at which they may be considering retirement, hence missing an opportunity to take steps personally to manage their pension position. This can be countered by thorough and consistent messaging to the affected group through Annual Benefit Statements, Pensions Savings Statements and other channels. The SAB note that the consultation is silent on fixed protection 2016. This should be considered as part of the scheme specific EIA.

Complexity of HMRC Processes

- 24.14** HMRC should address the question why the deadlines for voluntary and mandatory scheme pays are different and seek to harmonise them to streamline processes and assist compliance. Scheme pays should be opened to retired members to assist in revisiting cases.

Meeting HMRC Requirements and Tax Advice

- 24.15** There are few financial advisers with an in-depth understanding of the structure and Regulations governing the police pension schemes. If the proposal goes ahead as set out in the consultation, there will be many officers seeking financial advice in a limited market and with a potential deadline to meet. These officers will generate many questions and requests to administrators for records or details of previous benefit accrual or tax paid. Officers are not themselves pensions tax experts and will face a challenge going back over 4 – 10 years of pensions and tax history to assess the impact. HMRC is likely to be overwhelmed with requests for information from across the public services seeking information on compliance and seeking to meet tax charges.

Honorarium

- 24.16** A significant issue stems from arrangements permitting members under the 1987 and 2006 schemes who are promoted to ask for non-pensionable pay. This is beneficial in that it limits the contributions required to be paid as a result of earnings but does not alter the final entitlement under the 1987 scheme as the benefit is calculated only by reference to the final 3 years of service. See for instance Home Office Circular 002/2018, Annex I which has effect from 6 April 2016. See also Regulation G4 of the 1987 Scheme Rules and Regulation 9 under the 2006 Scheme Rules.
- 24.17** Younger unprotected or transitionally protected members taken back into these schemes will need to have the opportunity to revisit this treatment with retrospective effect. The significance of opting or not opting for an honorarium is clearly substantially altered by the return into the legacy scheme.
- 24.18** The government should review whether there are other mechanisms under the legacy schemes and the 2015 scheme which need to be capable of being retrospectively brought into operation where the individual is retrospectively taken back into a different scheme.

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24.20 illustrate this point, one can take the example of someone who was in year 23-24 of service, who was transferred to the reformed scheme, who took a temporary promotion to Chief Superintendent, paid the requisite pension contribution under the reformed scheme and received an annual allowance charge because taking into account their 1987 and 2015 scheme pension growth, they exceeded the £40,000 limit. When placed back into the legacy scheme such an individual may well want to opt for pay on the temporary promotion to be non-pensionable since it would not count towards pension benefits - as they could have opted had they remained in the legacy scheme. That would allow such an individual to receive back contributions paid. This should be permitted. Further there would need to be tax adjustments both in respect of contributions and in respect of the reduced annual allowance charge based on lower earnings. The new rules must cater for this.

- 24.19** Paragraph 2.51 of the 2020 Consultation with respect to DCU notes that the additional annual allowance charge will be waived where an individual draws benefits down and chooses to receive reformed scheme benefits rather than legacy scheme benefits in the Remedy Period. At para B.38 it sets out that the government is also proposing to develop a process that benefits those who chose reformed benefits under the DCU option. The consultation document states '*The government is developing a process whereby the public service pension scheme can declare and pay the relevant AA charge relating to the reformed scheme benefits in the Remedy Period on the members behalf – they would not need to do anything*'. There are numerous references in the consultation document to the reformed scheme benefits being more beneficial for a group of individuals and the government are also making for provisions for taxation benefits. It does not make sense that the proposal set out in paragraph 2.51 only works in one direction. The effect of this distinction is to discriminate based on whether the member is deemed, prior to an election upon retirement, to have been accruing benefits under the reformed scheme or not. As this is a distinction based on when membership commenced, it is indirectly based on age (and potentially sex and ethnicity) and is accordingly discriminatory as a result. Nor is there any obvious justification for such a mismatch.
- 24.20** The Equality Impact Assessment does not take into account tax, and specifically the huge complexity which younger members are being required to deal with as compared to those who remained in the legacy scheme throughout (with potentially very significant and punitive adverse consequences, if an error is made). In paragraph 2.11 of the consultation document the government accept the importance of providing members with appropriate information. Detailed help should be provided by the government, considering individual circumstances and the factors set out throughout this document. A dedicated service and/or a financial compensation system needs to be provided by the government at no cost to members, helping them to negotiate these complexities and providing them with appropriate information.
- 24.21** Any self-help tool needs to deal clearly with the points made in these representations, for example: the impact of honoraria, annual allowances, lifetime charges, and the impact of contributions. It needs to do justice to the complexity of what is proposed so that members are not adversely affected by the retrospective alteration of their position. It is vitally important that government provides members with all the information they require so that they are fully able to understand the information before they are required to make a choice under either option.

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Separate consultation responses have been provided by SAB constituents are as following:

National Police Chiefs Council

Chief Police Officers Staff Association

National Association of Retired Police Officers

Police Federation of England and Wales

Police Superintendents' Association

The Association of Scottish Police Superintendents

Scottish Police Federation

Scottish Police Pension Scheme Advisory Board

Scottish Police Authority

Department of Justice for Northern Ireland