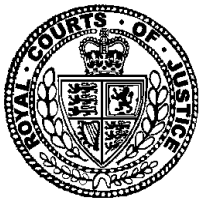

Neutral Citation Number: [2019] EWHC 2552 (Admin)

Case No: CO/3174/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/10/2019

Before:

LORD JUSTICE IRWIN
MRS JUSTICE WHIPPLE

- -

Between:

THE QUEEN on the application of	
(1) JULIE DELVE	**Claimants**
(2) KAREN GLYNN	
- and -	
THE SECRETARY OF STATE FOR WORK AND PENSIONS	**Defendant**

- -
- -

Michael Mansfield QC, Catherine Rayner, Adam Straw and Keina Yoshida (instructed by **Birnberg Peirce Solicitors**) for the **Claimants**
Sir James Eadie QC, Julian Milford and Edward Capewell (instructed by **The Government Legal Department**) for the **Defendant**

Hearing dates: 5th and 6th June 2019

- -

Approved Judgment

Lord Justice Irwin and Mrs Justice Whipple:

Introduction

1. This is the judgment of the Court to which we have both contributed. In successive statutes between 1995 and 2014 Parliament has legislated to equalise the State Pension Age ["SPA"] between men and women. Legislation has contained a timetable for the adjustment of SPA, structured for successive cohorts of women defined by age, initially to age 65 and subsequently to age 66, rising to age 68. The Claimants are women born in the 1950s affected by these changes. The Claimants "seek judicial review of the mechanisms chosen to implement the Government's policy" of raising and equalising the SPA. They also seek judicial review of "the failure to inform women of the changes".

2. The claim firstly suggests that the transitional provisions constitute unjustified direct discrimination on grounds of age, in that they represent less favourable treatment on grounds of age of those born on or after 6 April 1950. Next it is said the legislation constitutes indirect sex discrimination against women, incompatible with Article 4 of EU Council Directive 79/7 and Article 14 ECHR. Further, it is argued that the "notice provisions" are unlawful. In the Claimants' Perfected Skeleton Argument, it is said that the "transitional provisions, together with the notice that was given, constitute direct discrimination on the ground of sex, or age and sex combined, contrary to Article 14". In oral submissions it was submitted that the arrangements for notice were unlawful as constituting a breach of the Claimants' legitimate expectations and/or as conflicting with minimum requirements of fairness pursuant to common law.

3. The Defendant rejects all these submissions, arguing that the claim represents a challenge to primary legislation, the principal provisions of which are more than twenty years old, that the claim that the legislation is unlawful by reference to age discrimination, founded on EU law, is misconceived, that age discrimination in the provision of State benefits does not fall within the material scope of EU law since social protection schemes are not "pay" for the purposes of Article 157 TFEU, and that indirect sex discrimination is excluded from EU law by Article 7(1) of Directive 79/7/EC (the Social Security Directive). In any event, the Defendant submits that the primary purpose of the provisions in the 1995 and 2011 Acts is to equalise SPA between the sexes, abolishing direct discrimination contained in the foregoing legislation. As to the question of notice, there is no valid basis in law for a duty to notify those affected of changes contained in primary legislation. No legitimate expectation can arise on these facts, nor can justiciable obligations of fairness alter or expand obligations defined by primary statute. The claim advanced is not an attack on procedure but an attack on substantive provisions in statute.

4. The Defendant further submits that all these claims have been the subject of very great delay and should be excluded on grounds of time, even were they to have any merit.

Historical Background

5. The background to the relevant changes is set out in the exhaustive and impressive first statement of Duncan Gilchrist, Deputy Director within the Department for Work

and Pensions ["DWP"] for Fuller Working Lives and State Pension Policy, dated 21 March 2019. State old age pensions were introduced in 1909 and provided means-tested pensions for men and women over the age of 70. Contributory pensions were first introduced in 1925, provision being made for the payment of a flat rate pension to all pensioners over the age of 65, funded by contributions from the employer, the employee and the State.

6. As a consequence of the Old Age and Widows' Pensions Act 1940, the pension age for women was lowered from 65 to 60. In the Green Paper preceding passage of the Pensions Act 1995, it was stated that this –

> "new inequality was a response to a campaign by unmarried women in the 1930s, many of whom cared for dependent relatives for much of their lives. It also recognised the fact that, on average, married women were several years younger than their husbands."

7. It is therefore clear that the reduction of the pension age for women was an act of direct discrimination in their favour (although unlikely to be described in that language at the time) which reflected the circumstances of the day, and created a relative disadvantage for men, thought to be justified by the social conditions then applying.

8. The modern form of the pension scheme derives from the National Insurance Act 1946. The basic structure was and is that employees and employers pay National Insurance contributions into the National Insurance fund, and benefits are paid out in due course on a "pay-as-you-go" basis: that is to say this year's contributions fund this year's benefits. That basic structure has carried over to the present day. Although no doubt the general exchequer from time to time may smooth fluctuations in the National Insurance contributions and pension benefits, as Mr Gilchrist puts it:

> "The state pension is therefore correctly described as a contributory social security benefit. A claimant can only be entitled to the state pension if sufficient contributions have been made through the NI system…"

9. Understanding this principle is fundamental to understanding decisions about the system of pensions and the level of benefits. At any one time, the working population provides the essential funding for the population in receipt of old age pensions. For this reason the relative numbers in each of these groups is of prime importance.

The Background to the Pensions Act 1995 ["the 1995 Act"]

10. Occupational pension schemes, as opposed to State pension schemes, constitute "pay" for the purposes of European law. In *Barber v Guardian Royal Exchange Insurance Group* (C-262/88) [1991] 1 QB 344, the European Court of Justice ruled that it was contrary to the equal pay provisions in Article 157 TFEU for an occupational pension scheme to provide for unequal benefits for men and women. Following that decision, the government of the day indicated a commitment to "achieving equal treatment for men and women in the State scheme as well as in occupational schemes, and in

particular to tackling the issue of unequal pension ages" (HC Deb 26 June 1991Vol 193).

11. In December 1991 the government published the Green Paper "*Options for Equality in State Pension Age*" (Cm 1723) in which public views were sought on options for achieving SPA equalisation. The Green Paper noted a significant trend over the previous years, consisting of a real increase in pensioners' net average income. In addition, the figures showed a very considerable increase in the projected number of pensioners in the fourth and fifth decades of the 21st century, alongside a decreasing working age population. In 1990 there were 3.4 people of working age to every old age pensioner. This was projected to fall to 2.6 workers for every pensioner by 2050. A major factor in that calculation was the continuing considerable rise in life expectancy.

12. Paragraph 8.9 of the Green Paper summarised the main policy drivers behind the proposal to equalise SPA:

> "Whatever solutions are adopted, the Government is clear that it would not be right to continue with unequal pension ages for men and women. There have been immense social and economic changes since these ages were set at their present levels over half a century ago. These changes include the greater willingness of women of all ages and marital status to work, and the spread of part time working. At the same time pensioners generally have been living longer, and have gradually become better off through the development of occupational pensions. To have differing pension ages now is increasingly out of line with developments in the equal treatment of men and women in the employment field, including in occupational pension schemes."

The Green Paper went on to consider various options, including a common SPA at 60, 63 or 65, or an alternative of flexible retirement. It is not necessary to explore the range of technical options. The 1991 Green Paper received a very large number of responses following a wide process of consultation.

13. In late 1993, the government of the day indicated that the State Pension Age –

> "should eventually be equalised at the age of 65. The change will be phased-in over 10 years, starting in the year 2010, so it will not affect anyone currently aged 44 or older. By the year 2020, the State pension age in Britain will be broadly in line with most of our industrial competitors … All developed countries are making similar changes for similar reasons. Women nowadays tend to spend more of their lives in paid employment. They also live longer than men. Pension schemes need to recognise this and end the current discrimination between the sexes.
>
> In the next century, the ratio of working people to retired people will fall sharply, and the burden on taxpayers will rise.

> The government's decision will moderate those burdens …" (HCDEB 30 November 1993 Vol 233)

14. In December 1993, the government published the White Paper "*Equality in State Pension Age*" (Cm 2420). The foreword to the White Paper reads:

> "The difference in state pension ages — 60 for women and 65 for men — is the last glaring inequality in our treatment of men and women. It is outdated and unfair. The government is committed to act during this Parliament to remove this inequality. It is essential to do so to provide a clear framework within which occupational pension schemes can comply with the European Court ruling requiring them to equalise their benefits to men and women.
>
> The new state pension age will be 65 for both men and women. To give women and employers ample time to prepare for this, it will not even start until 2010. Women's pension age will then be raised gradually to reach 65 by 2020. So no women currently aged 44 or over will be affected by the change. Those currently between 38 and 43 will receive their pension at ages between 60 and 65. Only those currently 38 or under will have to wait until 65.
>
> It is right to equalise at the current men's pension age of 65 for four reasons. First, women are increasingly playing an equal role to men in the economy. They make up nearly half of all those in employment and rightly expect to be entitled to retain their jobs for as long as men. The measures we spell out in this White Paper will enhance the future pension entitlement of many women who take a number of years out of work to care for children, and of low earners.
>
> Second, people are living longer and healthier lives. The number of pensioners is set to grow by almost a half, to over 15 million towards the middle of the next century. At present there are 3.3 people of working age to support each person over pension age. If pension ages were unchanged that ratio would have fallen to 2.2 to one by 2030. A common pension age of 65 will mean that there will be a more sustainable ratio of 2.7 people of working age for every pensioner. Expenditure on state pensions is set to double in real terms to some £60 billion by 2025. A common state pension age of 65 will save some £5 billion from that total and would strike a fair balance between generations.
>
> Third, the trend throughout the industrial world is towards higher pension ages. The large majority of our trading partners in the European Community, North America, Scandinavia and Australasia, have — or are moving towards — pension ages of 65 or higher. An equal state pension age of 65 is therefore

> important to help Britain maintain its international competitiveness. Fourth, the trend in occupational pension schemes is towards equalising normal pension age at 65. A state pension age of 65 offers a sensible match with this increasingly important form of provision.
>
> These proposals represent a fair balance between the needs of future generations of pensioners and workers, whilst protecting the position of millions of women who are still a very long way from pension age. They provide a fair and sustainable basis for the state pension in the next century."

The Pensions Act 1995

15. The Bill which became the Pensions Act 1995 was introduced in January 1995 and received Royal Assent on 19 July 1995. The Act introduced key provisions affecting state pensions. The changes to SPA set out in the 1995 Act affected all women born on or after 6 April 1950. Women born between 6 April 1950 and 5 April 1953 were unaffected by legislation subsequent to the 1995 Act. The methodology adopted, to be followed in similar fashion in the subsequent legislation, was to stagger the advancement of pension age by reference to age cohorts. This methodology is well represented by a table from Mr Gilchrist's statement, showing examples of the staggered alterations stipulated:

Date of Birth	Pension Age	Date Pension Age Attained
06.04.1950 – 05.05.1950	60 years 1 month	06.05.2010
06.10.1950 – 05.11.1950	60 years 7 months	06.05.2011
06.04.1951 – 05.05.1951	61 years 1 month	06.05.2012
06.10.1951 – 05.11.1951	61 years 7 months	06.05.2013
06.04.1952 – 05.05.1952	62 years 1 month	06.05.2014
06.10.1952 – 05.11.1952	62 years 7 months	06.05.2015
06.04.1953 – 05.05.1953	63 years 1 month	06.05.2016
06.10.1953 – 05.11.1953	63 years 7 months	06.05.2017
06.04.1954 – 05.05.1954	64 years 1 month	06.05.2018
06.10.1954 – 05.11.1954	64 years 7 months	06.05.2019
06.04.1955	65 years 0 month	06.04.2020

16. The relevant provisions from the 1995 Act are contained in s.126 and Part 1 of Schedule 4 to the Act. The Act was amended after its enactment. The relevant Schedules from the enacted and amended versions are, for convenience, appended to this judgment as Annexes 1 and 2.

17. It follows from the provisions we have outlined that the first alteration to women's state pension age contained in the 1995 Act would take effect 15 years later, in April 2010.

18. It is the Secretary of State's case that successive governments made extensive efforts to communicate these changes, not just when the consultation processes attendant upon the Green Paper and the White Paper were ongoing, and when the legislation was being debated in Parliament, but also after the 1995 Act was given Royal Assent

and subsequently over the years as later legislation followed. We address this aspect of the case below.

The Background to the Pensions Act 2007

19. In 1998, the government of the day published a Command Paper "*A New Contract for Welfare: Partnership in Pensions*" Cm 4179. Amongst the proposals as to the nature of contributions and benefits were, according to Mr Gilchrist:

> "reforms … aimed at women and providing an earnings boost for low earners and a free entry to the system for carers with young children and for carers for people with disabilities. The aspiration was to make S2P [the new State Second Pension] flat rate (and more redistributive) in due course".

Those proposals were subsequently carried into effect in the Child Support, Pensions and Social Security Act 2000.

20. In 2002, the government published a Command Paper called *Simplicity, Security and Choice: Working and Saving for Retirement* (Cm 5677). The Command Paper contained proposals to simplify occupational and private pension schemes. The paper also proposed the institution of a Pensions Commission to improve and coordinate data affecting pensions. That Commission was duly established in December 2002. The Commission's first report entitled *Pensions: Challenges and Choices* was published in October 2004 and highlighted the severe position which would arise from the numbers of retirees in prospect, their increased life expectancy and the prospective reduction in the number of people of working age able to support the "Pay As You Go" system. The conclusion to the report's first chapter reads in part as follows:

> "Life expectancy is increasing rapidly and will continue to do so. This is good news. But combined with a forecast low birth rate this will produce a near doubling in the percentage of the population aged 65 years and over between now and 2050, with further increases thereafter. The baby boom has delayed the effect of underlying long-term trends, but will now produce 30 years of very rapid increases in the dependency ratio. We must now make adjustments to public policy and/or individual behaviour which ideally should have been started in the last 20-30 years.
>
> Faced with the increasing proportion of the population aged over 65, society and individuals must choose between four options. Either:
>
> (i) pensioners will become poorer relative to the rest of society; or
>
> (ii) taxes/National Insurance contributions devoted to pensions must rise; or

> (iii) savings must rise; or
>
> (iv) average retirement ages must rise.
>
> But the first option (poorer pensioners) appears unattractive; and there are significant barriers to solving the problem through any one of the other three options alone. Some mix of higher taxes/National Insurance contributions, higher savings and later average retirement is required."

21. In its second report "*A New Pension Settlement for the 21st Century*" of November 2005, the Pension Commission recommended that:

> "in the long-term [SPA will] need to rise broadly with increases in life expectancy so that each generation spends a roughly similar proportion of adult life contributing to and receiving a state pension."

22. Following this report there ensued a period of consultation including consultation with such national organisations as Age Concern, the Association of British Insurers, the Confederation of British Industry, Help the Aged, the Investment Management Association, the National Association of Pension Funds, and the Trades Union Congress.

23. Also in November 2005, the Secretary of State published "*Women and Pensions: the Evidence*", which it is said was designed to ensure fair outcomes for women as change in the state pension system was instituted. This paper specifically highlighted some of the inequalities and difficulties faced by women, noting for example that in 2005, 30% of women would meet SPA entitled to a full basic state pension compared with 85% of men.

24. In May 2006 the Secretary of State published a White Paper entitled "*Security in Retirement: Towards a New Pension System*" (Cm 6841). The White Paper focussed on the demographic and social changes leading to an increase in life expectancy, exemplified by the change in life expectancy for men. In 1950, the average life expectancy for men aged 65 was 11 years. In 2006, the average life expectancy for men aged 65 was 20 years. The White Paper focussed on considerable changes in the pattern of work. The White Paper also noted that there would be a significant increase in the "dependency ratio" as the "baby-boomer" generation started to enter retirement. The White Paper also noted that unless the system was changed "women and carers retiring in the next two decades will continue to suffer the effects of the system of contributions which applied during their working lives".

25. In November 2006 the Secretary of State published a paper entitled "*The Gender Impact of Pension Reform*". The thrust of the policy articulated was to reduce the "gender pension gap in state pension outcomes", that is to say the marked differential in the proportion of the state pension received between women and men.

The Pensions Act 2007 ("the 2007 Act")

26. The Bill which became the Pensions Act 2007 was introduced into the House of Commons in November 2006 and received royal assent on 26 July 2007. The critical provisions for the purposes of this case were contained in s.13 and Schedule 3 to that Act. Again, for convenience, these provisions are reproduced in Annex 3. Section 13 amended Schedule 4 to the Pensions Act 1995, postponing the SPA for those born on 6 April 1959 or later. Table 4 carried the extensions of SPA for those people born between 6 April 1977 and 5 April 1978, and concluded by providing that the SPA for all those born after 5 April 1978 would be 68.

Background to the 2011 Act

27. Even after the 2007 Act, there were calls to increase the SPA and/or to accelerate the timetable for increase. In 2010, the Government announced that they would hold a review to set a date for SPA to increase to 66 (see "*The Coalition: Our Programme for Government"*). In June 2010 the Government issued a call for evidence on the timing of the increase, called "*When should the state pension age increase to 66?".* A summary of responses was published in November 2010 (Cm 7956) which reflected a broad consensus that SPA should rise and that this should happen earlier than planned. The 2010 Green Paper noted the demographic and economic situation had changed since the timetable for the SPA to increase to 66 was set. It was followed by the 2010 White Paper which indicated the Government's intention to bring forward the increase in SPA to reflect the increases in life expectancy, to ensure the sustainability of the state pension and that the costs of increasing longevity were shared fairly between the generations.

The Pensions Act 2011 (the "2011 Act")

28. The Pensions Bill 2011 was introduced in January 2011 and received royal assent on 3 November 2011. It was extensively debated during its passage through both Houses. It had the effect of accelerating the timetable for change in the SPA. The timetable brought forward equalisation to November 2018, and then phased in the increase in SPA more quickly than was originally envisaged by the 2007 Act. The effect was to bring forward the increase in SPA so that it would rise from 65 to 66 between December 2018 and April 2020 for both men and women. The critical provisions in this Act are set out in Annex 4 to this judgment.

The Pensions Act 2014 (the "2014 Act")

29. This Act further amended the 1995 Act and introduced three key reforms. The first was the introduction of the New State Pension (NSP). The second step was to bring forward the increase in SPA to 67 for those born after 6 March 1961, with transitional provisions for those born between 6 April 1960 and 5 March 1961. The third step was to introduce a requirement on government to review the SPA regularly in the future, intending to maintain a "given proportion of adult life in receipt of state pension": (Gilchrist Statement 1, paragraph 119). The 2014 Act does not directly affect the Claimants or their age cohort.

Discrimination

30. The essence of the Claimants' case on discrimination is that the legislation was intended to equalise the position of women and men, but it has not in effect achieved that aim. That is because the playing field is not equal and the effect of the legislation is to exacerbate pre-existing inequalities suffered by women, by comparison with men. Those inequalities – which derive from more limited work expectations and the assumption by women of a traditional home caring role - afflict this generation of women in particular. Mr Mansfield QC for the Claimants described women born in the 1950s as a "bridgehead" between the old and the new, and argued that they should not have to bear the brunt of the legislative changes. This, he said, amounted to discrimination against the Claimants, on grounds of age and sex. The Claimants rely on both EU law and the European Convention on Human Rights in order to make their arguments.

31. At the hearing, the Claimants chose to present their case on indirect discrimination (on grounds of sex) first, followed by their arguments on direct discrimination (on grounds of age, or age combined with sex). That sequence did not reflect the Claimants' grounds set out in their skeleton argument and answered by the Secretary of State in her skeleton. We consider it appropriate to revert to the order of the discrimination grounds in the Claimants' skeleton. We will deal with the notice provisions last.

Age Discrimination

32. Miss Rayner took the lead for the Claimants in arguing that the legislation unlawfully discriminates against them on grounds of age, advancing arguments under EU law and under the Convention. This is the Claimants' Ground 2.

EU Law

33. The EU law argument was raised by the Claimants for the first time in their skeleton argument. At the hearing, Miss Rayner pointed to two authorities in particular to support her proposition that there is a general principle of non-discrimination in EU law: Case C-144/04 *Mangold v Helm* [2006] CMLR 43, 1132 in which the European Court confirmed that *"the principle of non-discrimination on grounds of age must thus be regarded as a general principle of Community law"* (see [75]); and Case C-441/14 *Dansk Industri (DI) v Rasmussen* [2016] CMLR 27, 731 where the Court referred to the *"general principle prohibiting discrimination on grounds of age"* (at [24]). She also referred to *Lord Chancellor v McCloud* [2018] EWCA Civ 2844 as an illustration of where a "taper" had been held to discriminate unlawfully on grounds of age, applying the Equality Act 2010 which is itself the domestic implementation of Directive 2000/78, the "Equality Directive".

34. Sir James Eadie QC for the Defendant took a procedural objection to this new point, which had not been pleaded. But he also addressed us on the substance of the point and submitted that the general principle of non-discrimination applies only where EU law is implemented into domestic law; the principle does not apply to domestic law which is not implementing EU law or is not within the scope of EU law. State pension is not "pay" for the purposes of Art 157 of the Treaty on the Functioning of the European Union ("TFEU"), and the Equality Directive expressly excludes social security and social protection schemes; thus, the legislation is not within the scope of EU law and the Claimants' challenge on grounds of age under EU law must fail. If it

is, contrary to his primary submission, a viable claim to bring under EU law then it fails on the facts because the measures are reasonable and proportionate.

35. It is regrettable that the EU argument was not pleaded. But we are prepared to overlook the procedural error because we can resolve the argument without difficulty. We accept that there is a general EU principle of non-discrimination, but Sir James is right to say that the principle is limited in its application. Specifically, the principle applies only where the relevant national rule falls within the scope of EU law. So, in *Mangold*, the issue turned on the interpretation of para 14(3) of the TzBfG, a provision of German domestic law which was itself an implementation of EU Council Directive 1999/70. The Court characterised the principle of non-discrimination on grounds of age as a general principle of EU law at [75] and went on in the same paragraph to say this:

> "Where national rules fall within the scope of Community Law, which is the case with para.14(3) of the TzBfG, as amended by the Law of 2002, as being a measure implementing Directive 1999/70 … and reference is made to the Court for a preliminary ruling, the Court must provide all the criteria of interpretation needed by the national court to determine whether those rules are compatible with such a principle (Rodriguez Caballero (C-442/00): [2002] E.C.R. I-11915 at [30] – [32])."

36. A similar point was made in *Dansk Industri* where the Court considered a provision of Danish domestic law which precluded the payment of severance allowance in circumstances where an employee was already entitled to old age pension payments. The Court concluded that the Danish law was discriminatory on grounds of age; the principle of non-discrimination was applicable in the circumstances because the provision in question came within the scope of the Equality Directive:

> "24. Lastly, it should be added that, in order for it to be possible for the general principle prohibiting discrimination on the grounds of age to be applicable to a situation such as that before the referring court, that situation must also fall within the scope of the prohibition of discrimination laid down by Directive 2000/78."

37. It is therefore necessary to establish whether the payment of state pension comes within the ambit of EU law. Like Sir James, we turn first to the TFEU. The definition of "pay" contained in Article 157(2) is as follows:

> "2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.
>
> …"

Thus, the receipt of state pension is not "pay" as defined by the TFEU, because it is not a wage or salary, and is not paid in respect of employment. The "equal pay" obligation contained in Article 157(1) has no application.

38. We then turn to the Equality Directive which prohibits discrimination based on age (see Article 1) and which is the "concrete expression" of the general EU law principle of non-discrimination (see *Dansk Industri* at [23]). Recital 13 is relevant to the ambit of the Directive. It excludes social security and social protection schemes:

> "(13) This Directive does not apply to social security and social protection schemes whose benefits are not treated as income within the meaning given to that term for the purpose of applying Article 141 of the EC Treaty, nor to any kind of payment by the State aimed at providing access to employment or maintaining employment".

39. Article 3(1) includes within the scope of the Directive a variety of work-related matters, but Article 3(3) expressly excludes state schemes or similar:

> "This Directive does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes".

40. The limitation in the scope of the Directive was confirmed by the CJEU in Case C-476/11 *HK Danmark v Experian A/S* [2014] 1 CMLR 42, at [25].

41. A regime for the payment of state pensions to those above a certain age is a paradigm example of a social protection scheme. The Equality Directive does not apply. The Claimants' EU law arguments must fail, because this legislation is not within the scope of EU law.

42. Finally, we deal with *McCloud,* which played an important part in the Claimants' written case and was referred to at the hearing. We understood the Claimants to argue that *McCloud* was relevant by analogy because in that case too there was a pensions taper, which the Court held discriminated unlawfully on grounds of age. But any suggested analogy is in our judgment false. In *McCloud,* the challenge was to transitional provisions contained in secondary legislation relating to two public sector pension schemes (for judges and firefighters, respectively) and the challenge was brought under the Equality Act 2010, which is the domestic implementation of the Equality Directive. By contrast, this challenge is to primary legislation to which the Equality Act 2010 does not apply (see Schedule 3, paragraph 2 of that Act), and nor does the Equality Directive (see above). So, *McCloud* was a case to which EU law and principles did apply, albeit via the Equality Act 2010. The instant case has a wholly different legal context. *McCloud* is not relevant.

Convention

43. Miss Rayner sought to maintain her challenge alternatively under the European Convention on Human Rights. She submitted that benefits such as state pension are possessions for the purposes of Article 1, Protocol 1 ("A1P1"), which provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the

> conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

44. She submitted that discrimination in the way the state pension is paid out infringes Article 14, which provides as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

45. She relied on *R (DA) v Secretary of State for Work and Pensions* [2019] UKSC 21 at [137] and *R (Carson) v Secretary of State for Work and Pensions* [2003] EWCA Civ 797 (that case was subsequently appealed to the House of Lords, see [2005] UKHL 37) to support her proposition that the state pension is a possession for A1P1 purposes. She argued that the UK has discriminated unlawfully, contrary to Article 14, in the way it disadvantaged women on the basis of their age combined with gender. She said that it was open to the Government to have protected the women in this cohort from a change in the pension age or to have provided mitigating measures to protect those who were most adversely affected. She argued that the Government cannot show the "*very weighty reasons*" which would be required to justify the difference in treatment (citing *Ackermann v Germany* (2006) 42 EHRR SE1 at 6), and that reasonable and objective justification cannot here be shown, citing Application No 1046/12 *Zammit v Malta* (2017) 65 EHRR 17 and *Minter v United Kingdom* (2017) 65 EHRR SE6.

46. Sir James did not dispute the basic proposition that entitlement to state pension is a possession for the purposes of A1P1. He accepted that if the State decided to create a state pension scheme (which it is not obliged to do), the scheme must operate in a manner which is compatible with Article 14. However, he said that the ECtHR has repeatedly confirmed that cases like this one, about the "timing" of a change of law which disadvantaged those on the wrong side of an age line drawn by the legislation, are not discriminatory: see *Ackermann* and *Minter*, see also *R (Sambahadur Gurung and others) v Secretary of State for Defence* [2008] EWHC 1496 (Admin) at [74]. Further, he said that in the area of state benefits the decision-maker is to be afforded a substantial margin of discretionary judgment in devising and operating the scheme. The approach the Court must take to assessing the lawfulness of such decisions was now settled and the test is whether the particular measure is "manifestly without reasonable foundation", or "MWRF": see *DA* at [59] and [110].

47. We conclude as follows. The taper provisions contained in the legislation are a series of dividing lines, each one based on age. The mechanics of the taper are simple enough. An affected person needs only to focus on the specific lines which apply to

them: namely the line or lines which define that person's cohort, according to birth date.

48. In *Ackermann,* a case which concerned state pension payments, where the applicant complained that he was discriminated against when compared to the older generation who currently profited from higher pensions than those which he would receive on reaching pension age, the Court said at page 7:

> "In so far as the applicants further complained about discrimination on grounds of age alleging that earlier generations of pensioners received considerably higher pensions than they themselves would on reaching pension age, the Court notes that the applicants have not established that their own situation is comparable to that of earlier pensioners. In this respect, it has to be taken into account that the State must be in a position to adapt the pension system to the change of socio-economic circumstances. Accordingly, the applicant cannot claim equal treatment 'in time'."

49. A similar point was made in *Zammit* at [70], a case about land reforms:

> "70. Furthermore, no discrimination is disclosed as a result of a particular date being chosen for the commencement of a new legislative regime and differential treatment arising out of a legislative change is not discriminatory where it has a reasonable and objective justification in the interests of the good administration of justice. …"

50. In *Minter,* the Court said at [67]:

> "In this regard, it has noted that the use of a cut-off date creating a difference in treatment is an inevitable consequence of introducing new systems which replace previous and outdated schemes. However, the choice of such a cut-off date when introducing new regimes falls within the wide margin of appreciation afforded to a State when reforming its policies (see *Amato Gauci v Malta* (2011) 52 E.H.R.R. 25 at [71])."

51. We find little in these cases to support the Claimants' arguments. These cases show that a State can introduce a new legislative scheme from a given date (*Zammit* and *Minter*) and specifically in the context of state pension, can effect changes from a given date based on age (*Ackermann*). On the basis, as shown by these cases, that it is permissible to change the law at a single point in time, then by logical extension it must be permissible to effect the change by a series of changes at different points in time, in a graduated way, as the taper mechanism does. We reject as illogical Miss Rayner's argument that there was a fundamental difference between this case, involving a taper or series of lines, and cases where the change occurs at a single point in time.

52. The analysis suggested in *Ackermann*, a case close to this one on its facts, is that Article 14 is not even engaged, because the situation of the complainant younger pensioners is "not comparable" to that of the older pensioners. We infer from the judgment in that case that the two cohorts were not comparable precisely because they comprised people of different ages who were legitimately subject to different legislative regimes. On that analysis, no question of justification arises: States are at liberty to alter the age at which the state pension becomes payable, and a person cannot claim equal treatment "in time".

53. However, if justification is in issue, then we turn to consider whether the legislation is manifestly without reasonable foundation or "MWRF". We note that this legislation operates in a field of macro-economic policy where the decision-making power of the elected arm of government is very great (see Laws LJ in *Carson* in the Court of Appeal at [73]). The evidence of Mr Gilchrist is relevant in determining what was the reason, or "foundation", for the legislation. Certain themes emerge from his witness statements. The aim of the legislation is self-evidently to equalise the state pension age of men and women and, once equalised, to postpone the state pension age for both genders. The underlying objective of the changes is to ensure that the state pension regime remains affordable while striking an appropriate balance between state pension age and the size of the state pension. An important consideration was and is the need to secure inter-generational fairness between pensioners and younger taxpayers. The fact that people live longer is also an important element, alongside other demographic and social changes. In our judgment, these are all legitimate reasons for implementing these changes in an important area of social policy.

54. Once established that the motivations for change are macro-economic and political, the Claimants' arguments that the Government could and should have effected its changes in a different and less intrusive way become unsustainable. It was suggested, for example, that some sort of compensatory benefit based on means could and should have been paid to the 1950s women – some or all - to mitigate the harsher effects of the legislative changes. But that amounts to saying that the Government should not have adopted the policy that it did and that it was required to adopt a different policy, one which better protected the interests of the 1950s women to the ultimate disadvantage of another group or groups: in other words, to tilt the balance in a different way. We reject that submission. The legislation reflects policy choices made by a series of Governments of different hues from 1995 to date. Those choices were properly open to those Governments and lawfully pursued by them and remain so, at the point of implementation now and in the future. The choices clearly have a reasonable foundation. We can see no basis for suggesting that some alternative measure was mandated. The legislation is not MWRF.

55. We dismiss Ground 2. The legislation does not discriminate unlawfully on grounds of age, whether the matter is considered in EU law or under the Convention.

Sex discrimination

56. Mr Straw took the lead for the Claimants in arguing that the legislation discriminated on grounds of sex or sex combined with age. He too raised arguments under EU and Convention law. This was the Claimants' Ground 3.

EU law

57. So far as EU law is concerned, the Claimants' challenge on grounds of sex discrimination, direct or indirect, relies on Article 4 of the Social Security Directive (79/7/EEC) which provides:

> "The principle of equal treatment means that there shall be no discrimination whatsoever on ground of sex either directly, or indirectly by reference in particular to marital or family status, in particular as concerns:
>
> …
>
> the calculation of benefits, including increases due in respect of a spouse and for dependants and the conditions governing the duration and retention of entitlement to benefits."

58. The Claimants argue that state pension is a "benefit", a submission which is not opposed, and thus it is said that Article 4 applies and the EU principle of non-discrimination (this time, on sex grounds) is engaged.

59. However, Article 7 of the Social Security Directive contains a derogation in the following terms:

> "1. This Directive shall be without prejudice to the right of Member States to exclude from its scope:
>
> (a) the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefits;"

60. Mr Straw argued that Article 7 is applicable only to discrimination caused by a Member State maintaining unequal state pension ages as between men and women. He argued, bearing in mind the established rule that a derogation should be interpreted strictly, that the derogation did not extend to discrimination caused by equalising the state pension age, as was the case here. To support his arguments, he cites two authorities: Case C-423/04 *Richards v Secretary of State for Work and Pensions* [2006] 2 CMLR 49, 1242 at [37] and C-9/91 *R v Secretary of State for Social Security, ex p Equal Opportunities Commission ("EOC")* [1992] 3 All ER 577 at [13] and [20].

61. The Claimants complain that they have suffered both direct and indirect sex discrimination, the latter being defined by reference to Article 2.1(b) of Directive 2006/54/EC (the "Recast Directive") as follows:

> "(b) 'indirect discrimination': where an apparently neutral provision, criterion or practice where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex unless that provision, criterion or practice is objectively justified is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;"

62. Mr Straw relied on Case C-123/10 *Brachner v Pensionsversicherungsanstalt* where the Court ruled that a provision of domestic law which excluded a "significantly higher percentage" of female pensioners than male pensioners from an exceptional increase in state pension was contrary to Article 4 (see [63] and [68]). He submitted that the legislative changes in issue resulted in a much more significant loss to women than to men of similar age. Further, he argued that the measure could not be justified and it was in any event not applied in a consistent or systematic manner (citing *Brachner* at [103]). His submissions drew on the witness statement of Marcia Willis Stewart QC (Hon), his instructing solicitor, which made a number of points drawn from official statistics, to support the proposition that the Claimants (and their cohort of women born in the 1950s) are disadvantaged by comparison with men of the same age: they have lower average incomes, they are much less likely to be in work, if they are in work they are likely to be paid significantly less than men and more likely than men to be in part-time rather than full-time employment; accordingly, the loss of state pension represented a much larger proportion of average income for those women than it did for men of the same age.

63. Sir James relies on Article 7 of the Social Security Directive to submit that this legislation, which relates to the determination of pensionable age for old-age and retirement pensions, is not within the scope of EU law at all. He submits that Article 7 should not be interpreted too strictly, citing *EOC* where the ECJ held at [20] that:

> "art 7(I)(a) of Council Directive (EEC) 79/7 … is to be interpreted as authorising the determination of a statutory pensionable age which differs according to sex for the purposes of granting old-age and retirement pensions and also forms of discrimination such as those described by the national court which are necessarily linked to that difference."

64. Article 7 does not contain any limitation nor does it refer to "different" or "unequal" pensionable age. Thus the language of Article 7 does not support the Claimants' argument that it is limited in its application to unequal pension ages. Nor are the Claimants assisted by consideration of the purpose of Article 7 which is obvious enough: it is intended to exclude decisions relating to pensionable age from the scope of EU law. That is to recognise the reality, as it was when this Directive was implemented in 1979 and as it remains, that some European countries have unequal pensionable ages for men and women. This recognition is set in the context of a Directive which otherwise aims to achieve progressive implementation of the principle of equal treatment for men and women in the area of social security law (Article 1). To conclude that the maintenance of unequal pensionable ages is excluded from the Directive, but that any move by a Member State towards equal pensionable ages falls within the scope of the Directive, so that indirect discrimination caused by that adjustment would be prohibited, makes no sense. It would operate as a disincentive – possibly even a bar - to Member States seeking to equalise pension ages, even though equalisation is in line with the overarching objective of the Directive and with wider EU law principles. It would lead to the bizarre outcome that direct discrimination in pensionable age would remain permissible, but any indirect discrimination which might arise in the process of achieving equalisation would be prohibited. We see no sense or utility in such a construction of Article 7.

65. Further, the cases on which the Claimants rely do not provide any support for their narrow construction of Article 7. *EOC* confirms that the derogation extends not just to the determination of pensionable age but to other forms of discrimination "necessarily linked" to a difference in treatment (see at [20] of the Judgment, cited above). We accept that the Court in *EOC* referred to a statutory pensionable age which "differs according to sex". As we read the Judgment, the Court was by those words simply describing the facts of that case, which involved earlier domestic legislation which did, indeed, maintain different pensionable ages for men and women, and we are not persuaded that those words were intended in any way to define the scope of Article 7. In *Richards* the issue was whether the claimant, who had transitioned from male to female, was entitled to state pension at the earlier age of 60 (which she argued) or was required to wait until 64, the age applicable to men (as the Government argued). The Court held that the discrimination in question was nothing to do with the existence of different state pension ages for men and women, but rather with the claimant's inability to have her new gender recognised for the purposes of state pension (see [28]). The UK Government's reliance on Article 7 was rejected. Again, the reference to "different pensionable ages" at [37] is not definitive of the scope of Article 7; we understand it to be a description of the background facts.

66. We conclude that the Claimants' claim to have been directly or indirectly discriminated against on grounds of sex contrary to EU law cannot progress in the face of Article 7. The derogation contained in that provision extends to all aspects of the determination of pensionable age, whether equal or unequal. The Claimants' EU law case must fail.

Convention

67. Here too the Claimants rely on A1P1 read with Article 14. Further, the Claimants invoke the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") as an aid to interpretation of Article 14, relying on *Opuz v Turkey* (2010) 50 EHRR 28, at [185]-[187]:

> "185. In this connection, when considering the definition and scope of discrimination against women, in addition to the more general meaning of discrimination as determined in its case law, the Court has to have regard to the provisions of more specialised legal instruments and the decisions of international legal bodies on the question of violence against women.
>
> 186. In that context, CEDAW defines discrimination against women under art.1 as:
>
> > "[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

> 187. The CEDAW Committee has reiterated that violence against women, including domestic violence is a form of discrimination against women."

68. The Secretary of State argues that there can be no direct discrimination on grounds of gender – or age combined with gender - in circumstances where the legislation simply removes the advantage which had previously existed in favour of women, so as to equalise the position for men and women.

69. He says that the suggestion that the legislation indirectly discriminates against women by exacerbating disadvantages to which women born in the 1950s were already subject fails because the disadvantages in question have not been caused by the measures in question, they existed anyway. Further and alternatively, if there is indirect discrimination, she says that it is justified for the purposes of Article 14.

70. We agree with Sir James that there is no direct discrimination on grounds of sex, or age and sex combined. Necessarily, the legislation affects women only, because it was women only who previously enjoyed the advantage which is now being removed. But that is not to treat women less favourably than men in law; it is to equalise a historic asymmetry between men and women; it is to correct historic direct discrimination against men.

71. The issue of greater substance is whether the legislation indirectly discriminates against women by removing that historic asymmetry. Sir James' submission is that indirect discrimination exists only where a particular measure which is neutral on its face causes a particular group to suffer a disadvantage.

72. Although a case concerning the Equality Act 2010 (not in issue here, see above), the Supreme Court's judgment in *Essop and Others v Home Office* [2017] UKSC 27 is instructive on the meaning of indirect discrimination:

> "25. Direct discrimination expressly requires a causal link between the less favourable treatment and the protected characteristic. Indirect discrimination does not. Instead it requires a causal link between the PCP and the particular disadvantage suffered by the group and the individual. The reason for this is that the prohibition of direct discrimination aims to achieve equality of treatment. Indirect discrimination assumes equality of treatment – the PCP [provision, criterion or practice] is applied indiscriminately to all – but aims to achieve a level playing field, where people sharing a particular protected characteristic are not subjected to requirements which many of them cannot meet but which cannot be shown to be justified. The prohibition of indirect discrimination thus aims to achieve equality of results in the absence of such justification. It is dealing with hidden barriers which are not easy to anticipate or to spot".

This passage suggests that indirect discrimination occurs (i) when there is a measure which applies indiscriminately to all, which (ii) causes particular disadvantage to a group or an individual, in circumstances where (iii) the measure and its discriminatory

effect is unjustified (in this case, in the sense of being MWRF). The Claimants' arguments face difficulties on each aspect. First, this legislation does not apply "indiscriminately to all", because it applies only to women, indeed, only to women born after 1 April 1950. It is not a "neutral measure", rather it is a measure targeted at those women who historically enjoyed an advantage based on their gender.

73. Secondly, we have considered the removal of the historic direct discrimination embodied in the different SPAs for men and women, where that discrimination was justified (and the Claimants argue is still justified) by disadvantages accruing to women, or to women of this generation. Can the removal of discriminatory mitigation of those disadvantages satisfy the need for a 'causal link' between the measure and the disadvantages affecting these women? We are not persuaded that can be so. Those disadvantages existed and, to the extent they persist, exist anyway. They are rooted in traditions and cultural norms which meant that women did not have the same work expectations or opportunities as men of the same age; whatever the pension age for women and whether or not equal with men, women would be subject to those disadvantages. The differential in the state pension age may have provided a form of mitigation for that pre-existing inequality but its removal does not amount to discrimination, because it does not cause the disadvantages or exacerbate them; they are there anyway.

74. Thirdly, and even if the Claimants could surmount these significant obstacles, the legislation would only breach the Convention if it was found to be MWRF. It is plainly not MWRF for all the reasons already set out above in relation to age discrimination. This is primary legislation, debated in and settled by Parliament, relating to an area of macro-economic social policy with very significant fiscal consequences – in other words, very much within the area of discretion for the policy-maker. As Lord Toulson JSC emphasised in *R (MA) v Secretary of State for Work and Pensions* [2016] UKSC 58 at [32]:

> "Choices about welfare systems involve policy decisions on economic and social matters which are pre-eminently matters for national authorities".

75. We have concluded that this legislation does not discriminate, directly or indirectly, on grounds of sex or on grounds of sex combined with age. In any event, were there to be discrimination, it would be justified because the legislation has a legitimate foundation and purpose. We have not been assisted by reference to CEDAW, it adds nothing to the Claimants' case. Ground 3 fails.

The "Notice Provisions"

76. It is perhaps not unfair to comment that the suggested lack of adequate notice of the changes to the SPA for the 1950s women has received as much or more emphasis in argument from the Claimants as the substantive changes themselves. This is the Claimants' Ground 1. The Claimants submit that the inadequate notice, as they suggest it was, rendered the policy (meaning the relevant statutes) unlawful, as being "contrary to the requirements of public law, legitimate expectation and/or procedural fairness". (Claimants' perfected skeleton, paragraph 2).

77. The Claimants rely on their own lack of knowledge as illustrative. The first Claimant's case is that she decided to leave her employment in April 2012 to care for her mother who was ill. She did so on the understanding that she would receive her state pension on her 60th birthday on 21 May 2018. Sadly, her mother died in July 2012, but the Claimant had agreed to "voluntary exit" from her employment, and so left in any event in August 2012. Since her date of birth was 21 May 1958, the effect of the 1995 Act and the 2011 Act together was that the First Claimant's SPA became 66, not 60. She is thus not entitled to a state pension until 11 May 2024. The first Claimant states that she "became aware of the changes to the state pension age in around 2010/2011. However, I was led to believe at the time that nothing would change until 2020 and I would, therefore, be unaffected…". The first Claimant's statement does not explain what led her into this belief. It was only in 2014 when, through conversations with a colleague, that she realised she would receive her state pension only at age 66.

78. With engaging honesty, the first Claimant has produced two letters she received from her occupational pension provider, dated 4 August 2006 and 28 April 2011. In each case the letters advise her:

> "The DWP has assumed that your State Retirement pension will be payable when you reach the age of **65 Years**. If you have any queries you should contact the DWP on **0845 3000 168**. A leaflet is available giving more information about your State Pension statement at www.thepensionservice.gov.uk/pdf/cpf/cpf5jun05.pdf."

79. The second Claimant was born on 23 September 1956. The effect of the legislation is that she will attain the SPA on her 66th birthday on 23 September 2022. The second Claimant has a number of chronic health problems. She was widowed in 2012. She is in straitened circumstances and despite significant responsibilities for her elderly and infirm parents, she will have to work part time until 66 to make ends meet. She is again frank about her lack of knowledge about her pension entitlement:

> "I have very little understanding of the pension system. Until recently I understood that my pension age was 60 and my husband's was 65. My husband took care of all financial matters during our marriage and he was the primary breadwinner.
>
> I first became aware of the change to the state pension age for women in 2015 when I overheard a conversation on the Metrolink travelling into work. I was stunned as I had heard nothing about it before and had received no letter from the DWP informing me of this change. I was working at Manchester City Council at the time. I mentioned the conversation to my colleagues within a couple of weeks of overhearing it. The majority were not aware. I went online and googled the changes and stumbled upon the Back to 60 Facebook page."

80. The Claimants rely on other witnesses giving similar evidence as to their persisting lack of awareness of the changes affecting them.

81. Part of the Claimants' case is to emphasise that the Defendant was aware that many women affected by the changes in SPA remained in ignorance. A Pension Education Working Group advising the then Department of Social Security in 1998/9 recorded that:

> "19. Getting people to think that pensions are important can be very difficult. Many may be ignorant of, or indifferent to, pension provision. For young people, retirement is too far away. Traditionally many women have relied on their partners to provide the majority of pension income in old age. For many nearing retirement, there is a feeling of "too little too late". The most profitable publicity strategy in these circumstances may be to link questions of pension provision with events in people's lives (school and college leavers seeking jobs; people changing jobs; people marrying; people having children). The DSS view is that such life events can provide information and marketing opportunities such as recruitment fairs; induction processes in companies; bride and home press; child benefit order books; information in registry offices.
>
> 20. The Group also considered the public reaction to the TUC women and pensions helpline which ran from 22 September to 3 October 1997 and which was launched by the Secretary of State for Social Security and Kamlesh Bahl, Chairwomen of the Equal Opportunities Commission. This was a freephone helpline where callers could receive impartial and expert assistance on their pensions problem. The response to the experiment, which had to be extended from one week to two, was overwhelming with 4,000 calls dealt with and 140,000 calls unable to get through.
>
> 21. An analysis of the responses received revealed widespread ignorance of pensions, including state pension provision, but on the positive side, a desire for information and advice on a wide range of pensions issues. Many women were unaware that their Basic Retirement Pension was protected by Home Responsibilities Protection. Many married women paying the "small stamp" were unaware that they would not receive a Basic Retirement Pension in their own right. Any action that could be taken to improve levels of understanding and information in these areas would help to ensure that women could take action in good time to improve their pensions situation should they wish to do so. The extent of the response seemed to the Group to demonstrate that there was a considerable demand for pension advice services that were readily accessible and offered general, impartial, advice."

82. By way of further example from much later in the relevant period, in 2012 the Defendant's department conducted a detailed study of the knowledge on the part of men and women below the state pension age of when their state pension would be paid.

> "Focusing first on women, it can be seen that among women overall, one in ten (11 per cent) correctly identified their SPA. For the remainder, forecasts were skewed towards those who were overly optimistic in terms of the age at which they thought they would be eligible. Over six in ten (62 per cent) women who had not yet reached SPA believed that they would receive their State Pension before their real age entitlement, while two in ten (21 per cent) believed that they would receive this after their real age entitlement.
>
> Percentages of over- and under-estimates of SPA were similar for those reaching SPA at 66, 67 or 68. Compared with those reaching SPA at 66 a lower percentage of those reaching SPA at 68 correctly predicted this (14 per cent and seven per cent respectively) and a higher percentage did not know when they would reach SPA (11 per cent compared with five per cent reaching SPA at 68).
>
> …
>
> Compared with women, forecasts of SPA were more accurate among men. A quarter (25 per cent) of all men below SPA correctly anticipated SPA, more than twice the equivalent percentage of women (11 per cent). In addition, the direction of inaccurate forecasts was more balanced for men, with similar percentages thinking they would reach SPA later (33 per cent) and earlier (38 per cent) than actual SPA."

83. The Claimants also rely on the recognition by successive governments that such changes require gradual introduction, since the individuals affected need time to plan and prepare for such a change. This was recognised by the government of the day in the run-up to the 1995 Act: see for example the Hansard extract from 1993 set out in paragraph 13 above, the 1993 White Paper quoted in paragraph 14 above, and by way of much later example, the Defendant's state pension age review of July 2017, which summarises the policy approach:

> "… adopted for this review were outlined in the White Paper '*The single-tier pension: a simple foundation for saving*', published in January 2013, which set out the framework for considering changes to State Pension age in the future, as follows:
>
> - It should be based on maintaining a given proportion of adult life in receipt of State Pension,

- It should take into account the latest demographic data available and be informed by wider factors that could be taken into account when setting State Pension age; and

- It should seek to provide a minimum of 10 years' notice for individuals affected by changes to State Pension age."

84. The Claimants relied on other examples of government acknowledgement of this problem.

85. Picking up the theme of a ten-year notice period, the Claimants argue that "inadequate and ineffective notice was given". Personal notification, in the sense of direct letters to the individuals affected, specifying their revised individual SPAs were first sent between April 2009 and November 2013. In many cases these letters were despatched much closer in time than ten years to the revised SPA.

86. The Claimants argue, relying on the decision of the Supreme Court in *Re Finucane* [2019] UKSC 7, that "it is for the court to decide what fairness requires". In general terms, and without relying on particular passages from *Finucane* or other authority, the Claimants submit that the suggested failure to give adequate notice was unlawful because the Claimants (and many others in their position) had a legitimate expectation that the Defendant would provide sufficient notice: crystallised in the submission that there was a requirement for direct personal notice at least ten years ahead of an altered SPA.

87. At the close of Mr Mansfield's submission on this aspect of the case, he argued that the Claimants' case on these issues could be encapsulated in a short series of points. Both common law fairness and legitimate expectation were engaged, even where the relevant changes were enshrined in a primary Act of Parliament. The need for adjustment to the change of SPA required adequate notice. The test for the lawfulness of the "notice period" was rationality. In the face of knowledge on the part of successive governments of the ignorance of a high number of the women affected, to adhere to the timetable laid down, without giving additional notice, was irrational, unfair, and an abuse of power.

88. The Defendant's answer to these arguments is essentially two-fold: firstly, they are misconceived as to the law; secondly, they are wrong on the facts. No legitimate expectation arises. The Court cannot impose requirements of common law fairness so as to override an Act of Parliament. We are not here concerned with procedural requirements but with substantive provisions of primary legislation. A cardinal reason why that is so is that no remedy can arise: the court cannot prevent the operation or implementation of an Act of Parliament. In any event, whatever the difficulties and however imperfect may be the outcome in terms of the knowledge of the public, successive governments have made proper efforts to inform those affected of the changes to the SPA.

89. It should be emphasised that the Defendant's principal arguments are those in law. We address them below. However, we begin by summarising the Defendant's response on the facts.

90. The principal evidence for the Defendant as to how these matters were handled comes from the witness statements of Wendy Fox, Head of Customers, Intelligence and Digital in the Operational Excellence Directorate of the Department for Work and Pensions. She has given two witness statements reviewing the steps over time. This evidence is not contradicted.

91. Ms Fox begins by emphasising that it is the Defendant's view there is no legal requirement for the government to notify people, generally or in this context as an exception, that they are or may be affected by primary legislation. She emphasises the view of government that passing primary legislation through Parliament is itself a public process, in this instance attended by various consultation processes and Green and White Papers.

92. In her review of the historic publicity generated by government, Ms Fox enters the caveat that it has not been possible to reconstruct a comprehensive account, due to the long period in question.

93. Government experience of general information campaigns is that they are not necessarily effective and can be problematic to construct. In the 1980s and early 1990s, government seeking to give information about the AIDS epidemic used television advertising and a leaflet sent to every household. The leaflets were generic in terms of content and were delivered to every address in the country. Partly due to that experience, the government campaign to improve the use of rear seat belts in 1993 used television advertising rather than any direct communications. Ms Fox's understanding, following consultation with other officials, is that bulk direct mailings to citizens not already customers of a specific government department –

> "…have only become a realistic proposition with the last 15-20 years with the development of national databases based on National Insurance and benefit records and IT capable of manipulating such data on the scale required. It is for this reason that government has typically preferred broadcast mediums such as television and the distribution of leaflets to direct mailing over the years."

94. The approach to communicating the changes to SPA from the 1995 Act onwards are, it is said, consistent with that general approach. As part of the "Compliance Cost Assessment" of the 1993 White Paper it is clear that government envisaged taking a role in publicising the changes generally, but made two assumptions: firstly, that individuals were primarily responsible for finding out how they were affected by changes in primary legislation, and secondly that affected citizens would be notified individually by their employers or occupational pension providers, since at that period the SPA and the age of retirement from work were generally synonymous.

95. After noting various initiatives taken by a number of trades unions to inform their membership in connection with the 1993 White Paper and the 1995 Act, Ms Fox summarises the steps taken directly by government. In 1993, the Department of Social Security created and published a number of information leaflets explaining the relevant changes. Posters were displayed in Social Security Offices and a telephone information line was created, allowing individuals to request copies of the relevant leaflet. This publicity campaign was reviewed in 1997, with the conclusion by the

government of the day that sufficient was being done to publicise the respective changes.

96. Since then the DWP has monitored the level of awareness amongst the groups affected by SPA changes.

97. In 1995 steps were taken to publicise the SPA change through additional print media. Press releases were issued by the DSS about the 1995 Act. A research exercise has demonstrated an extensive archive of news articles resulting from this campaign in national and local newspapers, revealing a minimum of 548 mentions of the SPA changes between 1993 and 2006. These cuttings are to be found in general news pages as well as finance sections and letters pages.

98. A revised leaflet entitled "*Equality in State Pension Age – A Summary of the Changes*" was created in July 1995 and republished in 1996. The leaflet explained the effect of the 1995 Act in detail, including a table showing the dates of birth related to the new SPA. Again, a telephone information line was made available. A further revised leaflet was produced in February 1996 and updated in 1997, and that process was continued through various other leaflets throughout the rest of the 1990s and the first decade of the 21st Century. Ms Fox details nine successive written leaflets or guides directing attention to the revised state pension age.

99. Throughout the period since 1995 individuals have been able to request a personalised "State Pension Forecast". Any person who did so would have obtained not only an estimate of the likely amount of the state pension they would receive but also the earliest date upon which they could obtain the state pension, according to the legislation in force at the time of the request. The provision of tailored state pension forecasts went online in 2016 and since then Ms Fox informs the court that more than 12 million forecasts have been viewed online.

100. Between 2003 and 2007, the Defendant's department sent 17.8 million unsolicited printed state pension statements, called "Automatic Pension Forecasts". These were accompanied by a supplementary leaflet, giving general information about SPA equalisation. Ms Fox notes that the Automatic Pension Forecasts did not include the SPA for the intended individual recipient. This was a deliberate omission:

> "…founded in concerns over the accuracy of the address data held by government at the time about its citizens."

People often fail to tell government about a change of address, and so it was thought risky to send unsolicited forecasts "exposing citizens' personal data".

101. Ms Fox notes that, starting in the 1990s but continuing through the decades since, the relevant departments have spent many millions of pounds on communications aimed to educate citizens on many aspects of pensions. In 1997, for example, the government of the day supported a TUC-led "Pension Power for You" pilot campaign aimed specifically at women, with a further TUC campaign and helpline in the summer of 1999. In 1997, as we indicated above, the government formed the Pensions Education Working Group, with the support of the TUC, industry representatives, the CBI, the NatWest Group and the Equal Opportunities Commission. It was this group that published the report in 1998 "*Getting to Know*

about Pensions". This report noted that "traditionally many women have relied on their partners to provide the majority of pension income in old age … For many nearing retirement, there is a feeling of 'too little too late'". The Working Group recommended a major pensions education and awareness programme.

102. In response the DSS ran a large-scale pensions education campaign from June 1998 to April 2000 to give fuller information about pensions, including the specific changes to the SPA following from the 1995 Act. The campaign, amongst other things, launched a new range of Plain English Campaign-approved leaflets in June 1998, including a leaflet tailored specifically for women. This dealt fully with the changes in SPA. This campaign also included press notices and inserts in national, local and specialist hobby publications, bus and phone box advertising, and focussed advertising in magazines such as *Woman*, *TV Times* and others. A pensions website was created, including the content of all relevant leaflets from time to time. Advertisements including reference to the SPA changes were created on the information televisions displaying to those standing in Post Office queues and at exhibitions, including the Ideal Home Show. Ms Fox has established that by July 1999, 34,000 individuals and 8,000 organisations had requested between 70,000 and 90,000 leaflets covering the relevant changes.

103. A fresh pensions education campaign was begun in early 2001, aimed at raising awareness generally. A submission to ministers in the year 2000 specifically recognised that pensions represented "a highly complex and confusing subject" and one of the relevant factors was the equalisation of SPA. This campaign cost more than £10m and was significantly covered at its launch by the national press. Television advertising was placed on ITV, Channel 4, Channel 5 and cable and satellite channels, as well as cinema advertising. There was accompanying press advertising in national tabloid newspapers and in magazines. There was in addition what is described by Ms Fox as "direct marketing" reaching 190,000 recipients, individuals who had asked for information about pensions.

104. Between January 2001 and March 2002, the campaign received 1.1 million responses via the website, telephone helpline and returned coupons. This level of response led to the campaign being extended into 2003. In 2004, the pensions service booklets were updated and continued to be supplied following requests from groups and individuals.

105. Following the direct mailings of unsolicited advice between 2003 and 2007, as earlier indicated, the department began to use individual direct mail letters with tailored information as to the SPA. Ms Fox acknowledges there were two main drivers for that change. Firstly, DWP research in 2006/2007 suggested that most people knew women's SPA was going to increase from 60, but survey evidence suggested that more than 50% of women were unaware of their correct SPA. Secondly, from 2005, the DWP had access to a CIS and the availability of that database, it is suggested, will have reduced concern about inadvertent disclosure of individual citizen's data. Between April 2009 and March 2011, the DWP sent out 1.16 million letters to women using the postal addresses held on the Customer Information System database. The women who were closest to their SPA were mailed first. The direct mailing exercise was "paused" as the Pensions Act 2011 was introduced, but then between January 2012 and November 2013 more than 5 million personalised letters were sent to those affected by the 2007 and 2011 Acts. Since the enactment of the 2014 Act, the DWP

has continued to use direct mailings, including for example an exercise between December 2016 and May 2018 sending communications to around one million people whose SPA will change under the 2014 Act.

106. Ms Fox emphasises that there are "limits and costs to using direct mail as an information channel". People often do not read or absorb such communications. Moreover, in recent times the public is more used to digital communication. From 2014 to the present, large-scale publicity campaigns about the new state pension, including state pension ages, have been mounted using press, radio and digital advertising. From 2015 onwards, personalised state pension statements have been available to anyone over the age of 55 and from early 2016 an online "check your state pension service" has been available on demand.

107. Ms Fox also summarises some of the steps taken by the Defendant's department to survey the public awareness of SPA equalisation. In a study published in 2004, the research demonstrated that 59% of working-age respondents were aware of the future increase in women's SPA. Indeed 73% of women aged between 45 to 54 were aware of the changes in this study, although many of those with general awareness were not clear as to their own SPA. In 2006, the DWP commissioned three surveys to measure attitudes and awareness to pensions issues for people aged 45-54. 90% of women and 82% of men were aware that the age at which women would receive the state pension was to increase.

108. A further survey in 2009 indicated that awareness of the SPA had declined since 2006. The study suggested that:

> "this could be due to media discussion and publicity around the anticipated rise in SPA which could have caused confusion as to when these changes will take place and the particular time period which the questions were asking about."

109. Again in 2012 a further study showed that knowledge of women's current SPA had decreased since 2009. 40% of women were "definitely or possibly sure" that women would not receive the state pension at age 60. Only 6% of women within ten years of the SPA expected to be eligible to receive the state pension at age 60. Ms Fox notes that a survey commissioned by the charity Age UK in 2011 found that by then nearly nine out of ten respondents were aware the government had announced changes to SPA and almost half of respondents expected equalisation to happen before 2018.

110. In addressing the criticisms of government communications, Ms Fox makes two or three key points. At the time of the 1995 Act, the government did not have a "realistically usable national database of name, address and birth date data" for those affected and it was therefore "essentially impossible" to mount direct notification of all affected individuals, at least until the development of the CIS database. The only collection of relevant data about individual citizens nationwide would have been National Insurance records. Until 1999/2000 such a database would not have been a practical basis for individualised letters, since it would have relied on clerical input by tax office staff. It was the development of the new database which facilitated the 17.8 million APFs dispatched between 2003 and 2007. Ms Fox's understanding is that the CIS enabled the department to "source names and addresses of people affected by SPA changes at a far lower cost". Her evidence is that it "would not have been

realistically feasible to carry out a nationwide individual direct mail exercise by coordinating local Benefit Offices to undertake a manual identification and mailing exercise. Such an exercise, if possible at all, would have likely been hugely time-consuming, expensive, inconsistent and subject to human error".

111. Ms Fox makes the supplementary point that, even once the CIS database came into existence, internal research demonstrates limitations to what can be achieved through direct mailing. Internal research in 2008 found that, of the 2.2 million records for women in the UK "in the age group in question", around 235,000 were marked "DLO", a marker suggesting that previous communications had been returned undelivered. A further 65,000 entries consisted of addresses of such quality that the Post Office would not have been able to deliver a letter.

112. As to the effectiveness of direct mail communications, a research pilot programme in November 2014 found that "there were particular difficulties with the effectiveness of direct mail due to the lack of attention paid to it by recipients". The research demonstrated that just under half of those who had received a direct mail recalled doing so. Of those who did recall receiving a letter, just over half said they had read all or some of it, "with a further 33% having 'just glanced at it'" and 8% noting they did not look at it at all.

113. Based on this evidence, the Defendant submits that the approach of government to publicising these changes was not merely adequate but proper and reasonable.

Defendant's Submissions on the Law Relating to Notification

114. The Defendant's counter to the Claimants' case is that the presumed foundation of the legitimate expectation that the women born in the 1950s would receive a state pension from the age of 60, as a necessary prelude to the obligation to notify, is simply ill-founded. The Defendant observes that there is no promise or practice identified which would give rise to the legitimate expectation. The understanding of the women before change must perforce have been based on the pre-existing legislative position. The Defendant argues that "there can be no legitimate expectation that parliament will not act so as to change the law". As Lord Rodger observed in *Wilson v First County Trust (No 2)* [2003] UKHL 40 [2004] 1 AC 816 at paragraph 192:

> "No one has a vested right to continuance of the law as it stood in the past."

115. Any case based on legitimate expectation must inevitably involve the contention that parliament can make no change to the SPA without a prior process of consultation with those affected. That contention, it is argued, would involve an interference by the court with proceedings in parliament, constituting a breach of Article 9 of the Bill of Rights 1689. The Defendant observes that the only way in which such a breach of the Bill of Rights could be circumvented would be an asserted legitimate expectation of consultation before the legislation was passed. But that argument fails, says the Defendant, partly because there was no such promise of consultation in advance of legislation; and also because once the three critical Acts of 1995, 2007 and 2011 had received royal assent, the relevant changes had been made and there was nothing further upon which to consult.

116. The Defendant counters the Claimants' argument on procedural fairness by observing that, as a matter of law, the enactment of statutes carries no justiciable obligations of fairness. Such controls as there are on the enactment of statute are "administrative and political": see Sedley LJ in *R (BAPIO Action Ltd) v SSHD* [2007] EWCA Civ 1139 per Sedley J at paragraph 34. The Defendant adds that this proposed obligation, too, runs into the difficulty that the asserted obligation to give notice is said to arise after the time when the statute has been enacted. There is no case, says the Defendant, in which any such obligation has been recognised. Moreover, the Defendant submits that there are:

> "very powerful reasons of principle against the existence of any such obligation. The process of enacting primary legislation and the fact of it when enacted are public. Parliamentary debate and the legislative process itself provides such notification. The asserted obligation would be entirely impractical …. If this part of the Claimants' case were right, it would logically follow that every Act substantially affecting members of the public would require some further act of personal notification by a Minister."

117. The third argument deployed by the Defendant is closely linked to the constitutional point made as to the separation of powers. Suppose the court were persuaded of the justice of the Claimants' argument for an obligation of notification, whether on the basis of legitimate expectation or procedural fairness, what remedy would be available to the court? No court order could possibly set aside the implementation of primary statute on such a basis.

Our Conclusions on Notification

118. Essentially for the reasons given by the Defendant, we are clear that the Claimants' case on notification must fail. If and insofar as the argument based on legitimate expectation is founded on any implied undertaking or promise to those in the Claimants' position, that promise could only amount to: Parliament will not alter the state pension age unless there has been prior consultation with the individuals affected. No such promise or representation was ever made. In addition, it is clear that successive governments engaged in extensive consultation with a wide spread of interested bodies before the successive Pensions Acts were brought before Parliament.

119. The form and content of the relevant successive Acts of Parliament did not constitute acts of the government, or public policy formulated and publicised by government. Parliament could have included obligations of notice to the individuals affected by these successive changes but did not do so. Moreover, as the Defendant points out, any duty to give notice to those affected arising other than from the statutes themselves would come after the event. A failure to give such notice could not conceivably lead to the abrogation of the relevant statute. For similar constitutional reasons, the Defendant is also correct that, even if the court were able to impose obligations of notice giving proceeding from common law fairness, no breach could commit or empower the court to suspend the operation of primary legislation. There would be no remedy for any such breach.

120. Even in the context of amendments to the Immigration Rules and to government advice given in the immigration context, the authorities suggest there is no basis for the imposition of an obligation to consult those affected. That was the factual context for the decision of the Court of Appeal in *BAPIO*, where the problem was addressed by Sedley LJ in the following terms:

> "43. The real obstacle which I think stands in the appellants' way is the difficulty of propounding a principle which reconciles fairness to an adversely affected class with the principles of public administration that are also part of the common law. These are not based on administrative convenience or potential embarrassment. They arise from the separation of powers and the entitlement of executive government to formulate and reformulate policy, albeit subject to such constraints as the law places upon the process and the product. One set of such constraints in modern public law are the doctrines of legitimate expectation, both procedural and substantive. Some have been touched on above – for example the requirements of candour and open-mindedness where either law or established practice calls for consultation. The duty to give reasons is another area in which there has been marked growth. It is not unthinkable that the common law could recognise a general duty of consultation in relation to proposed measures which are going to adversely affect an identifiable interest group or sector of society.
>
> 44. But what are its implications? The appellants have not been able to propose any limit to the generality of the duty. Their case must hold good for all such measures, of which the state at national and local level introduces certainly hundreds, possibly thousands, every year. If made good, such a duty would bring a host of litigable issues in its train: is the measure one which is actually going to injure particular interests sufficiently for fairness to require consultation? If so, who is entitled to be consulted? Are there interests which ought *not* to be consulted? How is the exercise to be publicised and conducted? Are the questions fairly framed? Have the responses been conscientiously taken into account? The consequent industry of legal challenges would generate in its turn defensive forms of public administration. All of this, I accept, will have to be lived with if the obligation exists; but it is at least a reason for being cautious.
>
> 45. The proposed duty is, as I have said, not unthinkable – indeed many people might consider it very desirable - but thinking about it makes it rapidly plain that if it is to be introduced it should be by Parliament and not by the courts. Parliament has the option, which the courts do not have, of extending and configuring an obligation to consult function by function. It can also abandon or modify obligations to consult

> which experience shows to be unnecessary or unworkable and extend those which seem to work well. The courts, which act on larger principles, can do none of these things.
>
> …
>
> 47. For all these reasons I am not prepared to hold that there was at common law an obligation to consult those affected or their representatives before introducing the material changes to the Immigration Rules. I do not seek to elevate this to a general rule that fairness can never require consultation as a condition of the exercise of a statutory function; but in the present context it seems to me that a duty to consult would require a specificity which the courts, concerned as they are with developing principles, cannot furnish without assuming the role of a legislator. We would have, for example, to determine whether the duty contended for under s.3 of the 1971 Act arises before or after the formation of the policy prompting the rule-change; whether consultation is to be obligatory or discretionary; whether it is to take the form of a limited approach or a public exercise; whether the identity of the consultees should be prescribed or left to the Secretary of State; if the former, who they should be; if the latter, according to what criteria, if any, they should be chosen; and so forth. It is only if BAPIO could show that it would be entitled to be consulted whatever scheme was chosen that it might be able to overcome these obstacles. But, while I readily recognise the strength of its claim to be heard as the main representative of the cohort most directly and adversely affected, I do not think it can make out such a case. It is not inconceivable, for example, that a prescribed scheme, however controversially, would name the BMA as a sole consultee, relying on the s.71 exercise to reveal any unjustifiable disparate racial or national impact. We simply cannot know."

121. In the case of *Finucane* the Supreme Court was dealing with the very different factual context of policy adopted by the state to ensure compliance with the obligations under Article 2 of the European Convention on Human Rights as to a proper investigation of a death. In the course of his leading judgment, Lord Kerr reviewed the authorities on the issue of legitimate expectation. It is not necessary for present purposes to follow him through that extensive review, but Lord Kerr's conclusion on the necessary basis for a legitimate expectation was expressed as follows:

> "62. From these authorities it can be deduced that where a clear and unambiguous undertaking has been made, the authority giving the undertaking will not be allowed to depart from it unless it is shown that it is fair to do so. The court is the arbiter of fairness in this context. And a matter sounding on the question of fairness is whether the alteration in policy frustrates any reliance which the person or group has placed on it. This is quite different, in my opinion, from saying that it is a

> prerequisite of a substantive legitimate expectation claim that the person relying on it must show that he or she has suffered a detriment.
>
> 63. In this case, it was argued for the respondent that it was incumbent on Mrs Finucane to show that she had suffered a detriment. That argument simply does not avail in this instance, since the question of detriment can only arise, if it arises at all, in the context of a substantive legitimate expectation. Here the promise made did not partake of a substantive benefit to a limited class of individuals (as, for instance, in *Ex p Coughlan*); it was a policy statement about procedure, made not just to Mrs Finucane but to the world at large.
>
> 64. The onus of establishing that a sufficiently clear and unambiguous promise or undertaking, sufficient to give rise to a legitimate expectation, is cast on the party claiming it - see, for instance, *In re Loreto Grammar School's Application for Judicial Review* [2012] NICA 1; [2013] NI 41, para 42 *et seq.* In *Paponette v Attorney General of Trinidad and Tobago* [2012] 1 AC 1, para 37, Lord Dyson said:
>
> > "The initial burden lies on an applicant to prove the legitimacy of his expectation. This means that in a claim based on a promise, the applicant must prove the promise and that it was clear and unambiguous and devoid of relevant qualification. If he wishes to reinforce his case by saying that he relied on the promise to his detriment, then obviously he must prove that too.""

122. In our judgment in the instant case there is no question of a clear and unambiguous undertaking that the individuals affected by these successive Acts of Parliament would be given individual notice of the changes to SPA affecting them.

123. For these reasons the Claimants' Ground 1 relating to notice must fail as a matter of law. In any event, we are not in a position to conclude that the steps taken to inform those affected by the changes in the SPA for women were inadequate or unreasonable.

Delay

124. We do not intend to address the question of delay at any length, since we have considered and reached substantive conclusions on the arguments advanced. However, it must be recorded that the chief substantive changes to the SPA for the cohort of women represented by the Claimants came in a 1995 Act of Parliament. A delay of more than 20 years before the relevant legal challenge would in our view be fatal in any event.

Conclusion

125. We are saddened by the stories we read in the evidence lodged by the Claimants. But our role as judges in this case is limited. There is no basis for concluding that the

policy choices reflected in this legislation were not open to government. We are satisfied that they were. In any event they were approved by Parliament. The wider issues raised by the Claimants, about whether these choices were right or wrong or good or bad, are not for us; they are for members of the public and their elected representatives.

ANNEX 1
Pensions Act 1995 (As Enacted)
SCHEDULE 4
EQUALISATION
PART I
PENSIONABLE AGES FOR MEN AND WOMEN
Rules for determining pensionable age

1. The following rules apply for the purposes of the enactments relating to social security, that is, the following Acts and the instruments made, or having effect as if made, under them: the Social Security Contributions and Benefits Act 1992, the Social Security Administration Act 1992 and the Pension Schemes Act 1993.

Rules

(1) A man attains pensionable age when he attains the age of 65 years.

(2) A woman born before 6th April 1950 attains pensionable age when she attains the age of 60.

(3) A woman born on any day in a period mentioned in column 1 of the following table attains pensionable age at the commencement of the day shown against that period in column 2.

(4) A woman born after 5th April 1955 attains pensionable age when she attains the age of 65.

Table

(1) ***Period within which woman's birthday falls***	***(2)*** ***Day pensionable age attained***
6th April 1950 to 5th May 1950	6th May 2010
6th May 1950 to 5th June 1950	6th July 2010
6th June 1950 to 5th July 1950	6th September 2010
6th July 1950 to 5th August 1950	6th November 2010
6th August 1950 to 5th September 1950	6th January 2011
6th September 1950 to 5th October 1950	6th March 2011
6th October 1950 to 5th November 1950	6th May 2011
6th November 1950 to 5th December 1950	6th July 2011
6th December 1950 to 5th January 1951	6th September 2011
6th January 1951 to 5th February 1951	6th November 2011
6th February 1951 to 5th March 1951	6th January 2012
6th March 1951 to 5th April 1951	6th March 2012
6th April 1951 to 5th May 1951	6th May 2012
6th May 1951 to 5th June 1951	6th July 2012
6th June 1951 to 5th July 1951	6th September 2012
6th July 1951 to 5th August 1951	6th November 2012
6th August 1951 to 5th September 1951	6th January 2013
6th September 1951 to 5th October 1951	6th March 2013
6th October 1951 to 5th November 1951	6th May 2013
6th November 1951 to 5th December 1951	6th July 2013

6th December 1951 to 5th January 1952	6th September 2013
6th January 1952 to 5th February 1952	6th November 2013
6th February 1952 to 5th March 1952	6th January 2014
6th March 1952 to 5th April 1952	6th March 2014
6th April 1952 to 5th May 1952	6th May 2014
6th May 1952 to 5th June 1952	6th July 2014
6th June 1952 to 5th July 1952	6th September 2014
6th July 1952 to 5th August 1952	6th November 2014
6th August 1952 to 5th September 1952	6th January 2015
6th September 1952 to 5th October 1952	6th March 2015
6th October 1952 to 5th November 1952	6th May 2015
6th November 1952 to 5th December 1952	6th July 2015
6th December 1952 to 5th January 1953	6th September 2015
6th January 1953 to 5th February 1953	6th November 2015
6th February 1953 to 5th March 1953	6th January 2016
6th March 1953 to 5th April 1953	6th March 2016
6th April 1953 to 5th May 1953	6th May 2016
6th May 1953 to 5th June 1953	6th July 2016
6th June 1953 to 5th July 1953	6th September 2016
6th July 1953 to 5th August 1953	6th November 2016
6th August 1953 to 5th September 1953	6th January 2017
6th September 1953 to 5th October 1953	6th March 2017
6th October 1953 to 5th November 1953	6th May 2017
6th November 1953 to 5th December 1953	6th July 2017
6th December 1953 to 5th January 1954	6th September 2017
6th January 1954 to 5th February 1954	6th November 2017
6th February 1954 to 5th March 1954	6th January 2018
6th March 1954 to 5th April 1954	6th March 2018
6th April 1954 to 5th May 1954	6th May 2018
6th May 1954 to 5th June 1954	6th July 2018
6th June 1954 to 5th July 1954	6th September 2018
6th July 1954 to 5th August 1954	6th November 2018
6th August 1954 to 5th September 1954	6th January 2019
6th September 1954 to 5th October 1954	6th March 2019
6th October 1954 to 5th November 1954	6th May 2019
6th November 1954 to 5th December 1954	6th July 2019
6th December 1954 to 5th January 1955	6th September 2019
6th January 1955 to 5th February 1955	6th November 2019
6th February 1955 to 5th March 1955	6th January 2020
6th March 1955 to 5th April 1955	6th March 2020

ANNEX 2

[The Amended Schedule to the 1995 Act]

Table 1

(1) *Period within which woman's birthday falls*	*(2)* *Day pensionable age attained*
6 April 1950 – 5 May 1950	6 May 2010
6 May 1950 – 5 June 1950	6 July 2010
6 June 1950 – 5 July 1950	6 September 2010
6 July 1950 – 5 August 1950	6 November 2010
6 August 1950 – 5 September 1950	6 January 2011
6 September 1950 – 5 October 1950	6 March 2011
6 October 1950 – 5 November 1950	6 May 2011
6 November 1950 – 5 December 1950	6 July 2011
6 December 1950 – 5 January 1951	6 September 2011
6 January 1951 – 5 February 1951	6 November 2011
6 February 1951 – 5 March 1951	6 January 2012
6 March 1951 – 5 April 1951	6 March 2012
6 April 1951 – 5 May 1951	6 May 2012
6 May 1951 – 5 June 1951	6 July 2012
6 June 1951 – 5 July 1951	6 September 2012
6 July 1951 – 5 August 1951	6 November 2012
6 August 1951 – 5 September 1951	6 January 2013
6 September 1951 – 5 October 1951	6 March 2013
6 October 1951 – 5 November 1951	6 May 2013
6 November 1951 – 5 December 1951	6 July 2013
6 December 1951 – 5 January 1952	6 September 2013
6 January 1952 – 5 February 1952	6 November 2013
6 February 1952 – 5 March 1952	6 January 2014
6 March 1952 – 5 April 1952	6 March 2014
6 April 1952 – 5 May 1952	6 May 2014
6 May 1952 – 5 June 1952	6 July 2014
6 June 1952 – 5 July 1952	6 September 2014
6 July 1952 – 5 August 1952	6 November 2014
6 August 1952 – 5 September 1952	6 January 2015
6 September 1952 – 5 October 1952	6 March 2015
6 October 1952 – 5 November 1952	6 May 2015
6 November 1952 – 5 December 1952	6 July 2015
6 December 1952 – 5 January 1953	6 September 2015
6 January 1953 – 5 February 1953	6 November 2015
6 February 1953 – 5 March 1953	6 January 2016
6 March 1953 – 5 April 1953	6 March 2016
6 April 1953 – 5 May 1953	6 July 2016
6 May 1953 – 5 June 1953	6 November 2016
6 June 1953 – 5 July 1953	6 March 2017

6 July 1953 – 5 August 1953	6 July 2017
6 August 1953 – 5 September 1953	6 November 2017
6 September 1953 – 5 October 1953	6 March 2018
6 October 1953 – 5 November 1953	6 July 2018
6 November 1953 – 5 December 1953	6 November 2018

(5) A person born on any day in a period mentioned in column 1 of table 2 attains pensionable age at the commencement of the day shown against that period in column 2.

Table 2

(1) ***Period within which birthday falls***	***(2)*** ***Day pensionable age attained***
6 December 1953 – 5 January 1954	6 March 2019
6 January 1954 – 5 February 1954	6 May 2019
6 February 1954 – 5 March 1954	6 July 2019
6 March 1954 – 5 April 1954	6 September 2019
6 April 1954 – 5 May 1954	6 November 2019
6 May 1954 – 5 June 1954	6 January 2020
6 June 1954 – 5 July 1954	6 March 2020
6 July 1954 – 5 August 1954	6 May 2020
6 August 1954 – 5 September 1954	6 July 2020
6 September 1954 – 5 October 1954	6 September 2020

(6) A person born after 5 October 1954 but before 6 April 1960 attains pensionable age when the person attains the age of 66.

(7) A person born on any day in a period mentioned in column 1 of table 3 attains pensionable age when the person attains the age shown against that period in column 2.

Table 3

(1) ***Period within which birthday falls***	***(2)*** ***Age pensionable age attained***
6 April 1960 – 5 May 1960	66 years and 1 month
6 May 1960 – 5 June 1960	66 years and 2 months
6 June 1960 – 5 July 1960	66 years and 3 months
6 July 1960 – 5 August 1960	66 years and 4 months
6 August 1960 – 5 September 1960	66 years and 5 months
6 September 1960 – 5 October 1960	66 years and 6 months
6 October 1960 – 5 November 1960	66 years and 7 months
6 November 1960 – 5 December 1960	66 years and 8 months
6 December 1960 – 5 January 1961	66 years and 9 months
6 January 1961 – 5 February 1961	66 years and 10 months
6 February 1961 – 5 March 1961	66 years and 11 months

(7A) For the purposes of table 3 –

(a) a person born on 31 July 1960 is to be taken to attain the age of 66 years and 4 months at the commencement of 30 November 2026;

(b) a person born on 31 December 1960 is to be taken to attain the age of 66 years and 9 months at the commencement of 30 September 2027;

(c) a person born on 31 January 1961 is to be taken to attain the age of 66 years and 10 months at the commencement of 30 November 2027.

(8) A person born after 5 March 1961 but before 6 April 1977 attains pensionable age when the person attains the age of 67.

(9) A person born on any day in a period mentioned in column 1 of table 4 attains pensionable age at the commencement of the day shown against that period in column 2.

Table 4

(1) ***Period within which birthday falls***	***(2)*** ***Day pensionable age attained***
6 April 1977 – 5 May 1977	6 May 2044
6 May 1977 – 5 June 1977	6 July 2044
6 June 1977 – 5 July 1977	6 September 2044
6 July 1977 – 5 August 1977	6 November 2044
6 August 1977 – 5 September 1977	6 January 2045
6 September 1977 – 5 October 1977	6 March 2045
6 October 1977 – 5 November 1977	6 May 2045
6 November 1977 – 5 December 1977	6 July 2045
6 December 1977 – 5 January 1978	6 September 2045
6 January 1978 – 5 February 1978	6 November 2045
6 February 1978 – 5 March 1978	6 January 2046
6 March 1978 – 5 April 1978	6 March 2046

(10) A person born after 5 April 1978 attains pensionable age when the person attains the age of 68.

ANNEX 3
Pensions Act 2007

13 Increase in pensionable age for men and women

(1) Schedule 3 amends section 126 of, and Part 1 of Schedule 4 to, the Pensions Act 1995 (c.26) for the purpose of increasing the pensionable age for men and women […].
(2) Part 8 of Schedule 1 contains consequential amendments.
(3) The amendments made by that Part of that Schedule have effect as from [6th December 2018].

SCHEDULE 3
INCREASE IN PENSIONABLE AGE FOR MEN AND WOMEN

1
In the sidenote to section 126 of the Pensions Act 1995 (c.26), at the end insert "and increase in pensionable age".

2
In section 126 of that Act (equalisation of pensionable age) in paragraph (a), at the end insert "and to increase the pensionable age for men and women progressively over a period of 22 years beginning with 6th April 2024".

…

4
(1) Paragraph 1 of Part 1 of Schedule 4 to that Act (pensionable ages for men and women) is amended as follows.
(2) In sub-paragraph (1), after "man" insert "born before 6th April 1959".
(3) In sub-paragraph (3), for "the following table" substitute "Table 1".
(4) […]
(5) For the heading for the table substitute "TABLE 1".
(6) After the table insert –
"(5) a person born on any day in a period mentioned in column 1 of table 2 attains pensionable age at the commencement of the day shown against that period in column 2.

Table 2

(1)	***(2)***
Period within which birthday falls	***Day pensionable age attained***
6th April 1959 to 5th May 1959	6th May 2024
6th May 1959 to 5th June 1959	6th July 2024
6th June 1959 to 5th July 1959	6th September 2024
6th July 1959 to 5th August 1959	6th November 2024
6th August 1959 to 5th September 1959	6th January 2025
6th September 1959 to 5th October 1959	6th March 2025
6th October 1959 to 5th November 1959	6th May 2025
6th November 1959 to 5th December 1959	6th July 2025
6th December 1959 to 5th January 1960	6th September 2025
6th January 1960 to 5th February 1960	6th November 2025

6th February 1960 to 5th March 1960	6th January 2026
6th March 1960 to 5th April 1960	6th March 2026

(6) A person born after 5th April 1960 but before 6th April 1968 attains pensionable age when the person attains the age of 66.

(7) A person born on any day in a period mentioned in column 1 of table 3 attains pensionable age at the commencement of the day shown against that period in column 2.

Table 3

(1)	***(2)***
Period within which birthday falls	***Day pensionable age attained***
6th April 1968 to 5th May 1968	6th May 2034
6th May 1968 to 5th June 1968	6th July 2034
6th June 1968 to 5th July 1968	6th September 2034
6th July 1968 to 5th August 1968	6th November 2034
6th August 1968 to 5th September 1968	6th January 2035
6th September 1968 to 5th October 1968	6th March 2035
6th October 1968 to 5th November 1968	6th May 2035
6th November 1968 to 5th December 1968	6th July 2035
6th December 1968 to 5th January 1969	6th September 2035
6th January 1969 to 5th February 1969	6th November 2035
6th February 1969 to 5th March 1969	6th January 2036
6th March 1969 to 5th April 1969	6th March 2036

(8) A person born after 5th April 1969 but before 6th April 1977 attains pensionable age when the person attains the age of 67.

(9) A person born on any day in a period mentioned in column 1 of table 4 attains pensionable age at the commencement of the day shown against that period in column 2.

Table 4

(1)	***(2)***
Period within which birthday falls	***Day pensionable age attained***
6th April 1977 to 5th May 1977	6th May 2044
6th May 1977 to 5th June 1977	6th July 2044
6th June 1977 to 5th July 1977	6th September 2044
6th July 1977 to 5th August 1977	6th November 2044
6th August 1977 to 5th September 1977	6th January 2045
6th September 1977 to 5th October 1977	6th March 2045
6th October 1977 to 5th November 1977	6th May 2045
6th November 1977 to 5th December 1977	6th July 2045
6th December 1977 to 5th January 1978	6th September 2045
6th January 1978 to 5th February 1978	6th November 2045

6th February 1978 to 5th March 1978	6th January 2046
6th March 1978 to 5th April 1978	6th March 2046

(10) A person born after 5th April 1978 attains pensionable age when the person attains the age of 68."

ANNEX 4

Pensions Act 2011

PART I

STATE PENSION

1. Equalisation of and increase in pensionable age for men and women

(1) In Schedule 4 to the Pensions Act 1995 (equalisation of and increase in pensionable age for men and women) paragraph 1 is amended as follows.
(2) In sub-paragraph (1) for "6th April 1959" substitute "6th December 1953".
(3) Omit sub-paragraph (4).
(4) In table 1 for the entries (in both columns) relating to each of the periods from "6th April 1953 to 5th May 1953" to "6th March 1955 to 5th April 1955" substitute—

"6th April 1953 to 5th May 1953	6th July 2016
6th May 1953 to 5th June 1953	6th November 2016
6th June 1953 to 5th July 1953	6th March 2017
6th July 1953 to 5th August 1953	6th July 2017
6th August 1953 to 5th September 1953	6th November 2017
6th September 1953 to 5th October 1953	6th March 2018
6th October 1953 to 5th November 1953	6th July 2018
6th November 1953 to 5th December 1953	6th November 2018"

(5) For table 2 substitute —

Table 2

(1) ***Period within which birthday falls***	***(2)*** ***Day pensionable age attained***
6th December 1953 to 5th January 1954	6th March 2019
6th January 1954 to 5th February 1954	6th May 2019
6th February 1954 to 5th March 1954	6th July 2019
6th March 1954 to 5th April 1954	6th September 2019
6th April 1954 to 5th May 1954	6th November 2019
6th May 1954 to 5th June 1954	6th January 2020
6th June 1954 to 5th July 1954	6th March 2020
6th July 1954 to 5th August 1954	6th May 2020
6th August 1954 to 5th September 1954	6th July 2020
6th September 1954 to 5th October 1954	6th September 2020

(6) In sub-paragraph (6) for "5th April 1960" substitute "5th October 1954".

(7) Schedule 1 (equalisation of and increase in pensionable age for men and women: consequential amendments) has effect.