

Equality Impact Assessment - Results

Title Of Policy	2015 Remedy – Implementing the 2015 Remedy in the Police Pension Scheme
Summary of aims and desired outcomes of the policy	To equalise the treatment of all eligible members of the Police Pension Scheme in the implementation of the 2015 remedy as required by the Public Service Pensions and Judicial Offices Act 2022. To ensure that eligible members can choose between legacy pension scheme benefits or benefits equivalent to those available under the reformed pensions scheme for service in the remedy period (between 1 April 2015 and 31 March 2022).
Scottish Government Directorate	The Scottish Public Pensions Agency

Executive Summary

1. This assessment measures the impact of policy proposals to implement the Police Pensions (Remediable Service) (Scotland) Regulations 2023.
2. The summary of the aims and desired outcome of the policy is to:
 - (a) equalise the terms by which protected groups of officers enter into the reformed scheme.
 - (b) ensure there are no members negatively impacted by the implementation of the Remedy, and to ensure that eligible members can choose legacy pension scheme benefits or benefits equivalent to those available under the reformed pensions scheme for service in the remedy period (between 2015 and 2022).
3. The assessment finds that the policy changes will not disproportionately benefit or harm the protected groups of officers

and will equalise the terms on which all members enter into the Reformed scheme.

The Public Sector Equality Duty

4. The Public Sector Equality Duty ('PSED') was created by the Equality Act 2010 and is supported by the specific duties contained in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, as amended.
5. The PSED requires the Scottish Government to assess the impact of applying a proposed new or revised policy or practice. Scottish Ministers must have 'due regard' to the need to eliminate discrimination, advance equality of opportunity and foster good relations between people with different protected characteristics when carrying out their activities.
6. There are nine protected characteristics identified in the Equality Act 2010: (1) sex, (2) age, (3) disability, (4) race, (5) religion or belief, (6) gender reassignment, (7) pregnancy and maternity, (8) sexual orientation, (9) marital or civil partnership status.
7. The equality duty is an ongoing duty and we will continue to consider and amend this assessment until the final regulation amendments for retrospective remedy are laid.

Background

8. When public service pension reforms were introduced in 2015, the UK Government agreed to allow those closest to their retirement age to stay in their legacy schemes. These arrangements were referred to as 'transitional protection' arrangements. For the Police Pension Scheme (Scotland), the types of protection and eligibility criteria is set out in Schedule 4 of the Police Pension Scheme (Scotland) Regulations 2015 and is also referenced on page 4 of the Government Actuary's Department (GAD) report titled "2015 Remedy: Retrospective Remedy Phase - Analysis to Support the Equalities Impact Assessment" document which accompanies this Consultation.
9. This approach was the subject of legal challenge on the grounds of unlawful age discrimination, and in December 2018, the Court of Appeal found that such transitional arrangements amounted to discrimination against younger, "unprotected" employees, and gave rise to indirect age discrimination.

10. The proposals set out in the attached consultation and in the accompanying draft regulations (The Police Pensions (Remediable Service) (Scotland) Regulations 2023) are part of a package of measures to rectify the position, and are required by the Public Sector Pensions and Judicial Offices Act 2022 (“the 2022 Act”), and subsequent HM Treasury Directions. Scottish Ministers are obliged to implement the remedy according to the Act and the Treasury Directions. The consultation explains where amendments to the scheme regulations are required by HM Treasury and sets out the detail of proposals on matters where the Scottish Ministers have some discretion.
11. An Equality Impact Assessment was completed for both the 2022 Act and HM Treasury’s subsequent Directions. Copies of those assessments can be found at: [here](#) for the 2022 Act and [here](#) for the Directions.

The Scope of the EQIA

12. There are three main elements to the Treasury’s reform package:
 - a. Transferring all remaining members of legacy schemes into the 2015 Scheme on 1 April 2022 so that all active members regardless of age are now in the 2015 scheme. This has been implemented, under the Police Pensions (Scotland) Amendment) Regulations 2022.
 - b. Most members originally transferred to the 2015 scheme from 1 April 2015. Some members nearest to retirement age were able to remain in the legacy scheme up to 31 March 2022 (depending on tapering). However, affected members will be reverted into their legacy schemes for the remedy period. On 1 April 2022, all members regardless of age were transferred into the 2015 scheme.
 - c. Establishing the mechanisms by which affected members can choose at the point of retirement (or immediately, if they have already retired), the scheme which applies to their service during the remedy period and providing for the consequences.
13. The consultation, regulations and this Equality Impact Assessment deal with issues relating to points **b** and **c** above. As the consultation is fundamentally about remedying age discrimination, much of its

content contains details of the impact for this protected characteristic. This EQIA therefore seeks to summarise the key proposals and impacts with references to the key sections of the consultation document itself for any further detail required.

14. As set out earlier, HM Treasury has conducted an equality impact assessment, which considers the impact of the overarching policy and the Act's powers and requirements. As set out in that assessment, in particular paragraph 1.8, that assessment "does not cover secondary legislation made using powers in this Bill. Separate analysis to consider the impact of changes to scheme regulations (beyond those covered and/or directed by the measures in the Bill) will be produced when the powers to do so are exercised".
15. This assessment therefore focusses on the impact of the proposed changes to scheme rules necessary to deliver the Act requirements, specifically in relation to the second phase of remedy ("retrospective").
16. GAD has provided an analysis to support Scottish Ministers in considering the impact of the policy proposals set out below.
17. The analysis uses data taken from the active members identified in the 2016 scheme valuation as this was considered the most appropriate complete set of relevant member data to use for this particular analysis, as this data set captures the majority of those members who are in-scope for the 2015 Remedy, including those members who have since retired or otherwise left the scheme with remediable service. Further information is provided in GAD's report.
18. It is acknowledged that analysing only active members as of 31 March 2016 may mean certain eligible members may not be included in the analysis (e.g. those who left the Scheme or retired after 1 April 2015 and before 31 March 2016). However, GAD do not believe that including these members would make a material difference to the outcomes of the analysis, as the vast majority of eligible members were active in the Scheme at 31 March 2016.
19. The report containing GAD's full analysis accompanies this document.

Key Findings

Members being given a choice of benefits in the remedy period

20. Of the 16,599 active members of the Police Pension Schemes (Scotland) in 2016, 14,089 (85%) are eligible for retrospective remedy. This includes 49% who were unprotected because they were under the protection age and service based criteria, and 36% were protected (and tapered) members who will now be given the same remedy choices as unprotected members to ensure that further age discrimination is not inadvertently introduced.
21. Members who were unprotected and tapered protected and will be eligible to choose between legacy and reformed scheme benefits were aged between ages 25 to 49 as at 31 March 2016¹.
22. This policy aims to ensure all eligible members are treated in the same way as those members closest to retirement (i.e. Protected members). Based on the assumptions adopted for the 31 March 2016 actuarial valuation of the Scheme, GAD's analysis indicates that, for all ages of members, the overall benefits in the legacy schemes have a higher actuarial value, compared to the overall benefits in the reformed scheme. Therefore, this would suggest many members are likely to choose legacy benefits for the remedy period as opposed to choosing reformed scheme benefits.
23. In turn, this would suggest there are likely to be many scenarios where those members who accrued reformed scheme benefits prior to 2015 Remedy (i.e. unprotected and taper protected members), will choose legacy scheme benefits at the point at which they are asked to make a choice. Similarly, there are likely to be few scenarios where those members who accrued legacy scheme benefits prior to 2015 Remedy (i.e. protected members), will choose reformed scheme benefits at the point at which they are asked to make a choice. Accordingly, this would imply unprotected and taper protected members are more likely to benefit from being offered a choice of either legacy or reformed scheme benefits in the Remedy Period, compared to protected members.

Age

24. The highest proportion of active members in the Police Pension Schemes (Scotland) in 2016 who are eligible for a choice of benefits in the remediable service period are within the 45-49 year age group. The highest proportion of active members not eligible for a choice of benefits are in the 25-29 year age group. Those not eligible to choose between legacy and reformed scheme benefits are

¹ Table at 3.13 of Analysis to Support the Equalities Impact Assessment

generally younger than the overall active membership. However, the reason for this is that they may not have been employed within Police Scotland at the relevant dates, or they may not have achieved the necessary service to fall into the eligibility category (a higher proportion of these members are in the 2006 scheme).

25. The transitional protection element was found to be discriminatory as it treated those members who were closest to retirement more favourably than younger members. The age profile shown in the analysis identifies that of eligible members aged 44 or below, the majority are unprotected. Of the members aged 50 and above, all are protected members. Members eligible to choose between legacy and reformed scheme benefits are older than the overall active member population and are older than those members who are ineligible for 2015 Remedy. It is our opinion that by offering all eligible members a choice of benefits, effectively removing the transitional protection, the age discrimination is removed as most unprotected members have been shown to be younger than age 40. Of those members eligible to make a choice, younger members are the cohort who will most likely benefit from being offered this choice. This is a natural consequence of the fact that this policy aims to ensure that all eligible members are treated equitably with those members closest to retirement (protected members).

Members who reached the 30 year service cap in the 1987 scheme before age 55

26. Members of the 1987 scheme with a combined service of 30 years between both legacy and reformed schemes can access their 1987 scheme benefits before age 55. However, benefits accrued in the reformed scheme are not accessible before Normal Minimum Pension Age (NMPA) 55. This interaction of retirement ages between the Police Pension Schemes has resulted in some members being able to access their 1987 scheme benefits but not being able to access reformed scheme benefits as they had not reached the NMPA for reformed scheme benefits. The reformed scheme benefits have been deferred which leads to actuarial reductions by reference to state pension age (SPA) if they choose to take those benefits before SPA (as opposed to at age 55 for members retiring from active service). Reductions on that basis are greater.
27. In this scenario, members who joined when they were older are more likely to be in a position to access both the legacy and reformed scheme benefits once they reached age 55, benefiting

from a more favourable actuarial reduction on the reformed scheme benefits.

28. Members who continue in police service after reaching 30 years' service up to age 55, and who access both sets of benefits upon retirement, do not see an actuarial uplift to their 1987 scheme benefits. Very few members remain in the 1987 scheme once they reach the maximum 30 years pensionable service, and some defer for a short time. However, the commutation factors for their lump sum at retirement (which are based on member age in years and months at the date of retirement) are broadly actuarially neutral, meaning that lump sums are higher per pension commuted, for officers retiring at a younger age. Therefore, members are generally keen to access their 1987 scheme benefits at age 55 or when they attain 30 years pensionable service (whichever is soonest).
29. The Policy decision to provide eligible members with a choice of benefits in the remedy period means that for those who choose legacy benefits, a lower proportion, or none of the benefits would be subject to deferred early retirement reductions.
30. This interaction of the retirement ages between the police pension schemes is a feature of the overall public service pension reforms and not part of the retrospective remedy. However, it is important to note that the remedy will give members in this position the benefit of choosing the best option for their particular circumstances so the decision to provide members with a choice for the remedy period will have a positive impact on eligible members retiring with 30 years' service before age 55 within or after the remedy period.

Sex

31. On 31 March 2016, 29% of active members eligible for remedy were women, with 71% of eligible members, men. The analysis shows that men are by far the highest proportion of protected members. Although men still make up vast majority of unprotected membership and taper protected membership, the proportion that are men is lower than the proportion of protected members that are men. So those eligible members who are most likely to benefit from being offered a choice of benefits in the remedy period (i.e. unprotected and taper protected members), are more likely to be women, compared to overall eligible member population. Protected members, who are least likely to benefit from being offered a choice, are more likely to be men. Therefore, the policy intention to provide

all eligible members with a choice will equalise treatment over the remedy period and remove previous indirect sex discrimination.

Other Protected Characteristics

32. SPPA does not hold complete or up-to-date data on the other protected characteristics under the Equality Act 2010.
33. Data on some of the remaining protected characteristics is held by the Scottish Police Authority. Data in relation to serving police officers is, in most cases, separately identified. Given the current participation rate in the Police Pension Schemes (Scotland) is of the order of 91%, it is our view that the overall statistics in relation to serving police officers represents a reasonable approximation to the active membership of the Scheme.
34. GAD's analysis explored both publicly available information on the remaining protected characteristics, as well as additional information provided by the Equality, Diversity and Inclusion team in the Scottish Police Authority.

Disability

35. The information available is not detailed enough to analyse the characteristics with regards to disability of those members most likely to benefit from being offered a choice of benefits in the remedy period. However, we do not believe members with a disability are adversely, or otherwise, impacted by these proposals.

Religion or Belief

36. The information available is not detailed enough to analyse the characteristics with regards to religion or belief of those members most likely to benefit from being offered a choice of benefits in the remedy period. However, we do not believe these members are adversely, or otherwise, impacted by these proposals.

Sexual Orientation

37. The information available is not detailed enough to analyse characteristics with regards to sexual orientation of those members most likely to benefit from being offered a choice of benefits in the remedy period. However, we do not believe these members are adversely, or otherwise, impacted by these proposals.

Race /Ethnicity

38. Although there has been an increasing proportion of police officers identifying as Black and Minority Ethnic ('BME') from 2010 and beyond, there is not enough information to determine whether this cohort would benefit from being offered a choice of benefits in the remedy period. However, we do not believe these members are adversely, or otherwise, impacted by these proposals.

Gender Reassignment

39. The data in relation to this protected characteristic that was provided by Police Scotland, combines both staff and police officers and sets out that <1% of the workforce is transgender for the period 2015 to 2022. Therefore, we do not believe that affected members will be more or less likely to be transgender compared with the overall scheme population, or that they will be adversely, or otherwise, impacted by these proposals.

Pregnancy and Maternity

40. There is no specific data held in relation to maternity leave by Police Scotland, the pattern of members taking maternity leave has remained stable in recent years at 7-9% per annum. We do not believe these members are adversely, or otherwise, impacted by these proposals.

Marriage and Civil Partnership

41. Police Scotland do not hold any data in relation to this characteristic, however, this policy aims to equalise treatment for all members therefore, we do not believe that members who are married or in a civil partnership are adversely or otherwise impacted by these proposals.

Recommendations and Conclusion

42. This policy aims to ensure all eligible members are treated in the same way as those members closest to retirement. The analysis in GAD's report indicates that, based on the assumptions used for the 31 March 2016 valuation, regardless of member age, the legacy schemes have a higher actuarial value in comparison to the reformed scheme. Therefore, we might expect more members to

choose legacy scheme benefits for the remedy period as opposed to choosing reformed scheme benefits.

43. It is our opinion that by offering all members a choice of benefits and removing the transitional protections, the age discrimination will be alleviated. There are a greater proportion of unprotected members under the age of 40, and those who are eligible will most likely benefit from being offered this choice. This policy aims to ensure that all eligible members are treated equitably with those protected members closest to retirement.

44. The interaction of the retirement ages between the police pension schemes is a feature of the overall public service pension reforms and not part of the retrospective remedy but it is an important consideration for members who have achieved 30 years' service before reaching age 55. We believe that the remedy will give members in this position the benefit of choosing the best option for their particular circumstances and have a positive impact on this member cohort.

45. It is our opinion that the policy aims to provide all eligible members with a choice thus equalising treatment over the remedy period and removing previous indirect sex discrimination.

46. In relation to the other protected characteristics which are "disability; religion or belief; sexual orientation; race/ ethnicity; gender reassignment; pregnancy and maternity; marriage and civil partnership", we do not believe that, as a result of these protected characteristics, members are adversely, or otherwise, impacted by these proposals.

47. We are therefore confident that the changes proposed in the Consultation in support of the PSPJOA Act do not give rise to indirect discrimination against the protected characteristics.