

Equality Impact Assessment - Results

Title Of Policy	2015 Remedy – Implementing the 2015 Remedy in the Scottish Teachers’ Pension Schemes
Summary of aims and desired outcomes of the policy	To equalise the treatment of all eligible members of the Scottish Teachers’ Pension Schemes in the implementation of the 2015 Remedy (“the 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).
SG Directorate	The Scottish Public Pensions Agency

Executive Summary

1. This assessment measures the impact of policy proposals to implement the Teachers’ 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 teachers 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 teachers

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

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 2015¹, the UK Government agreed that responsible authorities could allow those closest to their retirement age to stay in their legacy schemes. These arrangements were referred to as 'transitional protection' arrangements. For the Scottish Teachers' Pension Schemes, the types of protection and eligibility criteria is set out in Schedule 3 of the Teachers' Pension Scheme (Scotland) (No 2) Regulations 2014 and is also referenced on page 4 of the report by the scheme actuary, the Government Actuary's Department (GAD), titled "2015 Remedy: Retrospective Remedy Phase - Analysis to Support the Equalities Impact Assessment" document which accompanies this consultation. In short, those members within ten years of normal pension age (NPA) were fully protected, and others between 10 and 13.5 years of NPA were entitled to "tapered protection".

¹ This was the case for most schemes established by the Public Service Pensions Act 2013 – however in England and Wales, the Local Government Pension Scheme was reformed in 2014.

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 sex discrimination.
10. The proposals set out in the attached consultation and in the accompanying draft regulations (The Teachers’ Pension Scheme (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 Teachers’ Pension Scheme (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 2022 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 requirements of the 2022 Act, 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. GAD has based the analysis on the active membership data used in the 2016 scheme valuation. 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 the active membership as at 31 March 2016 means 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, we share GAD's view that including these members would not 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 76,892 active members of the Scottish Teachers' Pension Schemes in 2016, 63,261 (82%) are eligible for retrospective Remedy. This includes 54% who were unprotected because they were under the protection age criteria and 28% were protected (or tapered protected) 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 not eligible for full protection who will be eligible to choose between legacy and reformed scheme benefits are generally between ages 30 to 64 as at 31 March 2016.²
22. This policy aims to ensure all eligible members are treated in the same way as those members who received full protection in 2015. A central finding based on the overall assumptions in the report by GAD indicates that members of all ages have the potential to benefit from the Remedy, as the aggregated cost of Remedy is higher than the aggregated base (pre-Remedy) cost.

Age

23. The highest proportion of active members in the Scottish Teachers' Pension Schemes in 2016 who are eligible for a choice of benefits are within the 30-64 year age group. The highest proportion of active members not eligible for a choice of benefits are in the 20-39 year age group. Those not eligible to choose between legacy and reformed scheme benefits are generally younger than the overall active membership. However, the reason for this is because the majority of new joiners since 1 April 2012 are expected to be younger on average than the overall population, and these members are not eligible for Remedy.
24. 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

² Table at 3.4 of Analysis to Support the Equalities Impact Assessment

analysis identifies that of eligible members aged 49 or below, the majority are unprotected. Tapered protected members are more likely to be aged 50 to 54, with the vast majority of protected members aged 55 and above,. 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.

Sex

25. On 31 March 2016, 75% of active members eligible for Remedy were women, with 25% of eligible members men. The analysis shows that the majority of active members who are eligible to choose between legacy and reformed schemes in the remedy period are women. Women also make up the highest proportion of protected and unprotected members. This is consistent with the proportion of women in the overall scheme population. .

26. In Scotland, women are most likely to work part time than men and the analysis shows that of the 26,718 members eligible to choose benefits in the remedy period, 22,003 are women. The analysis shows that members eligible to choose benefits in the remedy period are more likely to work part time, and the members who are not eligible to choose benefit are less likely to work part time.

Other Protected Characteristics

27. SPPA does not hold complete or up-to-date data on the other protected characteristics under the Equality Act 2010.

28. Data on sex and age (and service and part-time status) was provided to GAD by SPPA for the purposes of the 31 March 2016 actuarial valuation. Data on some of the remaining protected characteristics was difficult to locate therefore information was used from the Scottish Teachers census 2016. Given the expected generally high participation rate in the Scottish Teachers' Pension Schemes, we believe this represents a reasonable approximation to the membership of the Scheme.

Disability

29. There is limited data in relation to the teaching workforce in Scotland or the Scottish Teachers' Pension Schemes membership. This makes it difficult to draw any meaningful conclusions with

regards to disability of those members most likely to benefit from being offered a choice of benefits in the remedy period. If new data indicates that this group may suffer disproportionate adverse effects, we will consider the impact further. However, we do not believe these members are adversely, or otherwise, impacted by these proposals.

Religion or Belief

30. There is limited data on this characteristic for the teaching workforce in Scotland or the Scottish Teachers' Pension Schemes membership. This makes it difficult to draw any meaningful conclusions with regards to this group of members. If new data indicates that this group may suffer disproportionate adverse effects, we will consider the impact further. However, we do not believe these members are adversely, or otherwise, impacted by these proposals.

Sexual Orientation

31. There is limited data held on this characteristic for the teaching workforce in Scotland or the Scottish Teachers' Pension Schemes membership. This makes it difficult to draw any meaningful conclusions with regards to this group of. If new data indicates that this group may suffer disproportionate adverse effects, we will consider the impact further. However, we do not believe these members are adversely, or otherwise, impacted by these proposals.

Race /Ethnicity

32. The proportion of staff identifying from a minority ethnic community in primary schools decreased from 1.1% in 2012 to 1.0% in 2016. The secondary school proportion remained consistent at 1.7% for these dates. This may imply that members who are eligible to make a choice of reformed or legacy scheme benefits in the remedy period are no more or less likely to be from a minority ethnic community compared with those ineligible members. However, we do not believe these members are adversely, or otherwise, impacted by these proposals.

Gender Reassignment

33. There is limited data held on this characteristic for the teaching workforce in Scotland or the Scottish Teachers' Pension Schemes membership. This makes it difficult to draw any meaningful conclusions with regards to this group of members'. If new data

indicates that this group may suffer disproportionate adverse effects, we will consider the impact further. However, we do not believe these members are adversely, or otherwise, impacted by these proposals.

Pregnancy and Maternity

34. There is limited data held on these characteristics for the teaching workforce in Scotland or the Scottish Teachers' Pension Schemes membership. This makes it difficult to draw any meaningful conclusions with regards to this group of members. If new data indicates that this group may suffer disproportionate adverse effects, we will consider the impact further. However, we do not believe these members are adversely, or otherwise, impacted by these proposals.

Marriage and Civil Partnership

35. There is limited data held in relation to marital or civil partnership status for the teaching workforce in Scotland, or the Scottish Teachers' Pension Schemes membership. This makes it difficult to draw any meaningful conclusions with regards to this group of members. If new data indicates that this group may suffer disproportionate adverse effects, we will consider the impact further. However, we do not believe these members are adversely, or otherwise, impacted by these proposals.

Recommendations and Conclusion

36. 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, members of all ages have the potential to benefit from the Remedy, as the aggregated Remedy cost is higher than the aggregated base cost.

37. 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 49, who will now benefit from being offered this choice. This policy aims to ensure that all eligible members, regardless of previous protection status, are treated equitably.

38. It is our opinion that the protection policy aims to provide all eligible members with a choice thus equalising treatment over the remedy period and removing previous indirect sex discrimination.
39. There is limited data available to draw upon for the other protected characteristics of "disability; religion or belief; sexual orientation; gender reassignment; race/ ethnicity, pregnancy and maternity; marriage and civil partnership", however if new data indicates that this group may suffer disproportionate adverse effects, we will consider the impact further.
40. We are therefore confident that the changes proposed in the consultation in support of the 2022 Act do not give rise to indirect discrimination against the protected characteristics.