

Equality Impact Assessment - Results

Title Of Policy	2015 Remedy – Implementing the 2015 Remedy in NHS Pension Scheme (Scotland)
Summary of aims and desired outcomes of the policy	To equalise the treatment of all eligible members of the NHS Pension Scheme (Scotland) 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 pension scheme for service in the remedy period (between 2015 and 2022).
SG Directorate	The Scottish Public Pensions Agency

Executive Summary

1. This assessment measures the impact of policy proposals to implement the National Health Service Pension Schemes (Remediable Service) (Scotland) Regulations 2023 (the 2023 Regulations).
2. In summary, the aims and desired outcome of the policy are to:
 - a) equalise the terms by which protected groups of officers enter the reformed scheme, and
 - 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 between 2015 and up to 2022 (the remedy period).
3. The assessment finds that the policy changes will not disproportionately benefit or harm the protected groups within the NHS Scotland workforce and will equalise the terms on which all scheme members enter 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, if necessary, make changes to this assessment up until the regulations for retrospective remedy are laid before parliament.

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 NHS Pension Scheme (Scotland), the types of protection and eligibility criteria is set out in The National Health Service Pension Scheme (Scotland) Regulations 2015, 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 10 years of normal pension age (NPA) were fully protected, and others between 10 and 13. years and 5 months of their NPA were entitled to "tapered protection".
9. This approach was the subject of legal challenge on the grounds of unlawful age discrimination, and in December 2018, the Court of

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.

Appeal found that such transitional arrangements amounted to discrimination against younger “unprotected” employees and gave rise to indirect discrimination.

10. The UK Government consulted on legislation to remedy the discrimination and introduced the Public Service Pensions and Judicial Offices Act 2022 (the 2022 Act). The proposals set out in the attached consultation and in the accompanying draft 2023 Regulations are part of a package of measures to rectify the position as required by the 2022 Act, and subsequent HM Treasury Directions. Scottish Ministers are obliged to implement the remedy according to the 2022 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 [here](#) and HM Treasury’s subsequent Directions [here](#).

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 was implemented by the National Health Service 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, when the relevant legislation comes into force on 1 October 2023, affected members will revert to their legacy schemes for the remedy period.
 - c. Establishing the mechanisms by which affected members can choose, at the point of retirement (or immediately, if they have already retired), which scheme they will hold membership of for 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 177,070 active members of the NHS Pension Schemes (Scotland) on 31 March 2016, 119,986 (68%) members eligible for retrospective remedy. This includes 40% who were unprotected because they were under the protection age criteria and 28% who were fully protected (or tapered protected) members who will now be given the same remedy choices to ensure that further age discrimination is not inadvertently introduced.
21. The largest proportion of the active scheme population is between ages 30 to 59 and includes almost all (96%) of the members eligible to choose between legacy and reformed scheme benefits for the remedy period.
22. This policy aims to ensure all eligible members are treated in the same way as those members closest to retirement (i.e. protected or tapered members). The overall assumptions in the GAD report indicate that members of all ages have the potential to benefit from the remedy, as the aggregated remedy cost is higher than the aggregated base cost of the schemes.

Age

23. The highest proportion of members active in 2016 who are eligible for a choice of benefits are within the 35-59 year age group. The highest proportion of active members not eligible for a choice of benefits are in the 20-49 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 scheme membership 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 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, 81% of active members eligible for Remedy were women, with 19% 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 membership population.
26. In Scotland, women are more likely to work part time than men and the analysis shows that of the 53,927 part time members eligible to choose benefits in the remedy period, 51,241 are women. The analysis shows that members eligible to choose benefits in the remedy period are slightly less likely to work part time (45% of the total), and the members who are not eligible to choose benefits in the remedy period are more likely to work part time (57% of those not eligible).

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 some of the remaining protected characteristics has previously been published by the Information Services Division (ISD), a business operating unit of the NHS National Services Scotland, in relation to the wider NHS Scotland workforce. Given the expected generally high participation rate in the National Health Service (Scotland) Pension Schemes, we believe this represents a reasonable approximation to the membership of the Scheme².

Disability

29. The NHS workforce statistics show that the proportion of NHS workers reporting a disability increased from 0.5% on 31 March 2013 to 0.7% on 31 March 2016. This may indicate that those with a disability in the wider NHS workforce are less likely to be able to be eligible to make a choice of benefits. However, we do not believe

² Overall membership participation rate was estimated at 92.2% on 31 December 2022 (Papers of the NHS (Scotland) Scheme Advisory Board).

that these members are adversely, or otherwise, impacted by these proposals.

Religion or Belief

30. NHS Scotland workforce statistics show that the proportion of NHS workers who have declared a religion or belief declined marginally between 31 March 2013 and 31 March 2016. Within this group those identifying with Christian religions was by far the highest proportion even though the total for this group declined from 35.0% in 2013 to 30.4% in 2016. The proportion of those identifying as “other” with regards to religion grew from 1.6% to 4.4% while the proportion of those declaring no religion rose marginally from 15.1% in 2013 to 15.8% in 2016. The proportion of those whose religion is “not known” or who declined to answer increased from 46.8% in 2013 to 48.1% in 2016.
31. This might suggest that those eligible to make a choice are more likely to class themselves as Christian than any other religions, including those classing themselves as holding “other” religious belief. The increasing number of those identifying as “no religion” may indicate that those eligible to make a choice of benefits are more likely to class themselves as having a religion compared to the wider NHS population. The intention to provide all eligible members with a choice of benefits means that we do not believe that these members are adversely, or otherwise, impacted by these proposals.

Sexual Orientation

32. There is limited evidence of this characteristic available, as for the vast majority of the workforce this characteristic was either not known or not shared. The slight increase in proportion of the NHS Scotland workforce identifying as lesbian, gay or bisexual (LGB) (0.8% at 31 March 2013³ and 0.9% as at 31 March 2016) might suggest that members eligible to make a choice of legacy or reformed scheme benefits over the Remedy Period may be marginally less likely to identify as LGB compared with those not eligible to make a choice. However, we do not believe these members are adversely, or otherwise, impacted by these proposals.

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https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.isdscotland.org%2FHealth-Topics%2FWorkforce%2FPublications%2F2013-05-28%2FEquality_and_Diversity_M2013.xls&wdOrigin=BROWSELINK

Race /Ethnicity

33. The proportion of staff identifying from a minority ethnic community increased from 2.7% in 2013 to 3.1% in 2016. This may imply that members who are eligible to make a choice of reformed or legacy scheme benefits in the remedy period may be marginally 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

34. There is limited data available for this protected characteristic with less than 0.1% of the NHS Scotland workforce declaring transgender status. 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

35. There is limited data available on these protected characteristics for the NHS workforce in Scotland. 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

36. There is limited data held in relation to marital or civil partnership status for the NHS workforce in Scotland, or the NHS Pension Scheme 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

37. This policy aims to ensure all eligible members are treated in the same way as those members closest to retirement. The overall assumptions in the GAD analysis indicates that members of all ages have the potential to benefit from the remedy, as the aggregated remedy cost is higher than the aggregated base cost.
38. It is our opinion that by offering all eligible members a choice of benefits and removing the transitional protections, the age discrimination will be removed. Although there are a greater proportion of unprotected members under the age of 49, all ages of eligible members, including those who were protected and tapered protected are likely to benefit from being offered this choice. This policy aims to ensure that all eligible members, regardless of previous protection status, are treated equitably.
39. 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.
40. 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.
41. We therefore conclude that the changes proposed in the Consultation in support of the 2022 Act do not give rise to indirect discrimination against the protected characteristics.