



Government  
Actuary's  
Department

# **2015 Remedy:** *Retrospective Remedy Phase*

## **Analysis to Support the Equalities Impact Assessment NHS Pension Scheme (Scotland)**

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# 1. Introduction

## Purpose

- 1.1. This report is addressed to, and has been prepared at the request of, the Scottish Public Pensions Agency ('SPPA').
- 1.2. 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.
- 1.3. 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.
- 1.4. 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.
- 1.5. The purpose of this report is to provide analysis, specifically in relation to the NHS Pension Scheme (Scotland), to support SPPA who is acting on behalf of Scottish Ministers, in considering **the impact of the policy decision to provide all eligible members with a choice of legacy scheme<sup>1</sup> or reformed scheme benefits, in relation to service from 1 April 2015 to 31 March 2022.**
- 1.6. This is one aspect of the approach to address the age discrimination identified in the 2015 public service pension reforms, referred to as 'Transitional Protection Remedy', or '2015 Remedy'. A separate report has already been provided, which covers the policy decision to close all legacy schemes to future accrual with effect from 1 April 2022.

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<sup>1</sup> For the NHS Pension Scheme (Scotland), the legacy schemes are the 1995 Section and the 2008 Section, and the reformed scheme is the 2015 Scheme.

## Background

- 1.7. 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.
- 1.8. For the NHS Pension Scheme (Scotland), this meant:
- A. **1995 section - excluding Special Classes**
    - All 1995 section members in pensionable service on 1 April 2012 or members with entitlement to vested benefits in the Scheme from service before that date who re-join pensionable service within five years of their date of leaving and whose date of birth is on or before 1 April 1962, **would remain in their existing Scheme.**
    - Any members exercising the option to switch to the 2008 section were treated as 2008 section members for the purposes of protection.
  - B. **1995 section - Special Classes**
    - All members in special class posts as at 1 April 2012, or otherwise with entitlement to vested benefits from service before 1 April 2012 and in reserved posts as at 1 April 2015 or their date of ceasing to accrue benefits in the Scheme and who were within 10 years of their earliest pension age as at 1 April 2012 i.e. whose date of birth is between 1 April 1962 and 1 April 1967, **would remain in their existing Scheme.**
    - Entitlement to unreduced benefits before age 60 continued to be based on the existing criteria.
    - Any members exercising the option to switch to the 2008 section were treated as 2008 section members for the purposes of protection.
  - C. **2008 section**
    - All 2008 section members in pensionable service on 1 April 2012 or members with entitlement to vested benefits in the Scheme from service before that date who re-join pensionable service within five years of their date of leaving and whose date of birth is on or before 1 April 1957, **would remain in their existing Scheme.**
    - Members in scope of protection were provided with a one-off opportunity to switch to the 2015 scheme with effect from 1 April 2015.
  - D. There would be a further period of tapered protection for up to 3 years 5 months for scheme members. Members who were within 3 years 5 months of qualifying for transitional protection, as of 1 April 2012, would have limited protection so that, on average, for every month closer to qualifying for transitional protection, they gain about two months of protection. The period of protected service for any member under these tapering arrangements will have finished by 31 March 2022. At the end of their protected period, they will be transferred into the 2015 Scheme.
- 1.9. In this report, members in categories A, B and C above are referred to as ‘Protected’ members and members in category D are referred to as ‘Tapered Protected’ members.

- 1.10. Following a challenge in the Courts, however, it was found that such transitional arrangements were discriminatory on the grounds of age and, for certain schemes, gave rise to indirect sex and race discrimination.
- 1.11. To address the discrimination identified, it was announced that:
- In relation to service from 1 April 2015 to 31 March 2022 (known as the ‘Remedy Period’), all eligible members will have a choice between:
    - legacy scheme benefits (i.e. benefits in the 1995 Section or 2008 Section of the NHS Pension Scheme (Scotland))
    - or
    - benefits equivalent to those available under the reformed scheme (i.e. benefits in the 2015 Scheme in NHS Pension Scheme (Scotland))
  - There will not be an option to have a combination of benefits in the legacy scheme and the reformed scheme over the Remedy Period<sup>2</sup>.
  - Eligible members were defined as those who were in service on or before 31 March 2012 and who were still in service on or after 1 April 2015. This includes members who are currently active, deferred or retired and those with a non-disqualifying break in service of no more than five years.
  - Members will be able to make their choice at the point at which they will receive their scheme benefits. Where a member’s benefits are already in payment, the choice will be offered as soon as practicable.
  - From 1 April 2022, all members will accrue benefits in their reformed scheme, regardless of age. There will be no further benefits accrued in the legacy schemes from this point.
- 1.12. The [Public Service Pensions and Judicial Offices Act 2022](#) is the legislative vehicle that sets out the provisions that give effect to the above announcements and applies across all schemes in the UK in relation to the 2015 Remedy. This came into force on 1 April 2022. An [Equality Impact Assessment](#) (‘EqIA’) was carried out alongside this Act.

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<sup>2</sup> As set out in 1.8 (D), some members would have previously been eligible for what is referred to as ‘tapered protection’, where, as of 1 April 2012, they were within 3 years and 5 months of qualifying for transitional protection. The effect of the judgment in the McCloud case was that this tapered protection was considered to be discriminatory, and that this discrimination was unlawful. Maintaining an age-based system of tapered protection would therefore be perpetuating or indeed extending such discrimination. As a result, all eligible members are able to choose legacy scheme benefits or reformed scheme benefits for the whole Remedy Period. They are not able to choose a mixture of the two.

- 1.13. Scottish Ministers are responsible for making the secondary legislation to amend the NHS Pension Scheme (Scotland). This secondary legislation was/will be delivered in two phases:
- A. *Prospective Remedy Phase (in force from 1 April 2022):*
- Legacy schemes closed on 31 March 2022 and all members continuing in pensionable service from 1 April 2022 did so as members of the 2015 Scheme.
- B. *Retrospective Remedy Phase (by October 2023):*
- From 2023, eligible members will be able to choose to receive legacy pension scheme benefits or benefits equivalent to those available under the reformed pension scheme for service between 2015 and 2022.

## Policy to be assessed

- 1.14. **This report is intended to support consideration of the impact of (B) above.**
- 1.15. Further information on our approach to assessing this is provided in chapter 2.

## Next steps

- 1.16. Chapters 3-5 consider the potential impact of the proposed measures by reference to the protected characteristics identified in the Equality Act 2010.
- 1.17. We have included commentary on the analysis of the data which SPPA may wish to use in the preparation of its EqlA. However, it is important to note that **it is for SPPA, acting on behalf of Scottish Ministers, to review this analysis and ultimately determine their view of the assessment of the equalities impact** i.e. have 'due regard' as to whether the policy treats someone less favourably due to a protected characteristic.

## 2. Approach to Assessment

**This Chapter sets out the information we will use as a basis for examining the equality impacts of the policy decision to provide eligible members with a choice of either legacy or reformed scheme benefits in the Remedy Period.**

### **Members eligible to choose benefits in the Remedy Period**

#### ***Data used***

- 2.1. As outlined in 1.11, members eligible or ‘in scope’ for 2015 Remedy, and therefore, eligible to choose between accruing legacy or reformed scheme benefits in the Remedy Period, are those who were in service on or before 31 March 2012 and who were still in service on or after 1 April 2015. This includes members who are currently active, deferred or retired and those with a non-disqualifying break in service of no more than five years.
- 2.2. Ideally, we would therefore analyse the active membership as at 1 April 2015, and then identify active members who were in active service on or before 31 March 2012. We could then assess the characteristics of all members who are eligible for the 2015 Remedy and compare this to the characteristics of the overall scheme membership, to determine whether the policy treats a subsection of the membership less favourably, due to a protected characteristic.
- 2.3. Although the Government Actuary’s Department (‘GAD’) does hold some membership data as at 1 April 2015, this data is not as detailed, and has not undergone as rigorous checks, as that used for quadrennial valuations of the Scheme. Therefore, it was not deemed suitable to use for this purpose.
- 2.4. Therefore, the next best alternative is to analyse the active membership as at 31 March 2016, which was provided to GAD by SPPA for the purposes of the 31 March 2016 actuarial valuation. From this, members who were eligible or ‘in scope’ for 2015 Remedy were identified. We acknowledge that analysing only active members as at 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). We do not believe including these members would make a material difference to the outcomes of this analysis given that we expect the vast majority of eligible members will still have been in active service in the Scheme as at 31 March 2016.
- 2.5. Data on the membership of the Scheme as at 31 March 2020 has also been provided to GAD by SPPA for the purposes of the 31 March 2020 actuarial valuation. However, identifying eligible members within this dataset would require consideration of active, deferred and pensioner members (as well as deaths/other movements over the period since 2015). We did not believe there would be any additional benefits to analysing the membership data as at 31 March 2020, compared with analysing the active membership as at 31 March 2016.

### **Identifying ‘in scope’ members**

- 2.6. We have then identified members as being ‘in scope’ of the 2015 Remedy (and therefore, eligible to choose between accruing either legacy or reformed scheme benefits in the Remedy Period), if they meet the following criteria:
- Date of Joining before 1 April 2012, or
  - Protected or Taper Protected Status (even if recorded Date of Joining after 1 April 2012)
- 2.7. Please note that this will not always accurately identify members in scope. For example, members may have a Date of Joining after 1 April 2012 which reflects the date they first joined the NHS Pension Scheme (Scotland), but they may have had previous service in a different public sector scheme which brings them in scope for the 2015 Remedy (e.g. as a result of a bulk transfer). Again, we do not expect such limitations to have a material impact on this analysis.
- 2.8. We have therefore identified the following number of members as eligible to choose between legacy and reformed scheme benefits in the Remedy Period:

		Number of members	Proportion of the membership (based on number of members)
Eligible for 2015 Remedy	<i>Unprotected members</i>	70,602	40%
	<i>Tapered Protected members</i>	14,472	8%
	<i>Protected members</i>	34,912	20%
	<b>Total</b>	<b>119,986</b>	<b>68%</b>
Not eligible for 2015 Remedy		<b>57,084</b>	<b>32%</b>
<b>Total</b>		<b>177,070</b>	<b>100%</b>

- 2.9. The following table sets out which legacy scheme the 119,986 members who are eligible for 2015 Remedy accrued / are accruing benefits in:

	1995 Section	2008 Section	Total
Unprotected members	45,609 (49%)*	24,993 (91%)	<b>70,602</b>
Tapered Protected members	13,329 (14%)	1,143 (4%)	<b>14,472</b>
Protected members	33,548 (36%)	1,364 (5%)	<b>34,912</b>
<b>Total</b>	<b>92,485</b>	<b>27,501</b>	<b>119,986</b>

\* This is the percentage of overall total in that particular scheme  
Due to rounding, numbers in each column may not add to 100%

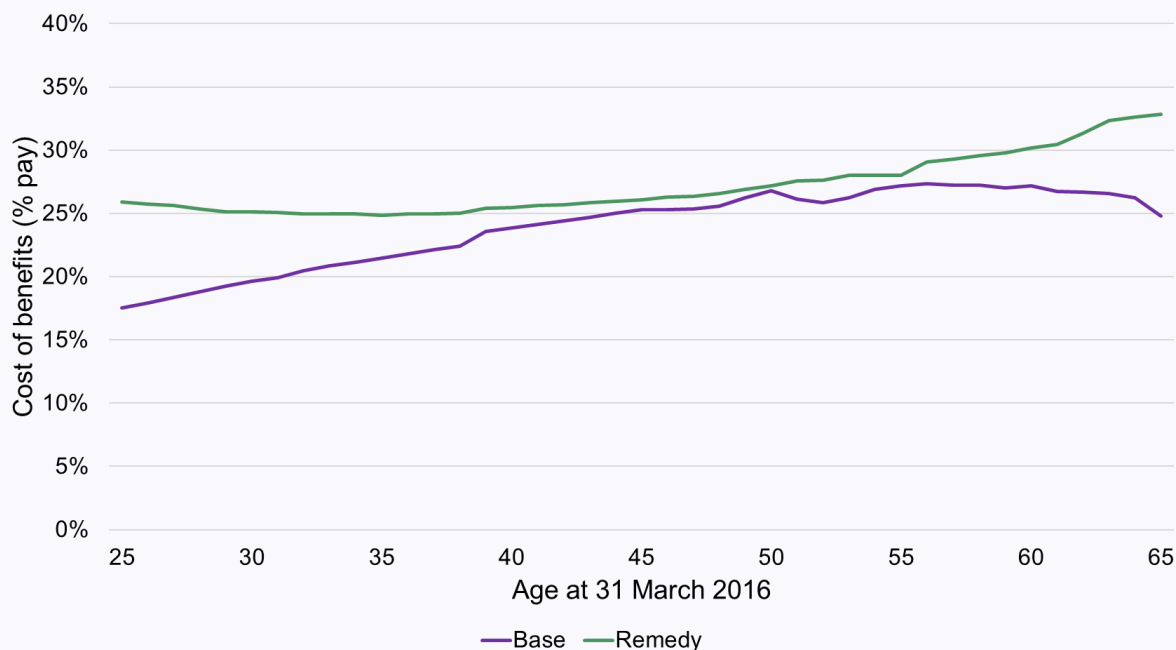


- 2.10. This analysis identifies that:
- 77% of the members in this Scheme who are eligible to choose between legacy and reformed scheme benefits, are accruing or have accrued benefits in the 1995 Section (92,485 ÷ 119,986). 23% are accruing or have accrued benefits in the 2008 Section (27,501 ÷ 119,986).
  - Eligible members who accrued benefits in the 2008 Section are predominantly Unprotected members.
  - Of the eligible members who accrued benefits in the 2008 Section, the proportion who are Tapered Protected or Protected and the proportion who are Unprotected members is broadly similar.
- 2.11. In this report, we have analysed the protected characteristics of all members eligible to choose between accruing either legacy or reformed scheme benefits in the Remedy Period.

## **Members benefitting from having a choice of benefits in the Remedy Period**

- 2.12. As outlined in paragraph 1.11, all eligible members will have a choice between legacy scheme benefits or reformed scheme benefits, in relation to service in the Remedy Period. Members will be able to make their choice at the point at which they will receive their scheme benefits, e.g. retirement. That is, the benefits are provided as a Deferred Choice Underpin.
- 2.13. A member's preference for either legacy or reformed scheme benefits will depend on their individual circumstances, including the circumstances under which they are retiring, e.g., retirement due to ill-health, and indeed their preferences for certain aspects of a particular benefits' package.
- 2.14. Additionally, for active members, future experience, e.g., an individual's salary progression, may influence which benefits will be more appealing to them, at the point at which they are asked to make this choice.
- 2.15. Asking eligible members to choose between accruing legacy or reformed scheme benefits in the Remedy Period, at the point at which the member is due to receive benefits, allows members to consider the benefit that is best for them, with the knowledge of the circumstances under which they are retiring, and the exact benefits available to them under each option.
- 2.16. Therefore, all eligible members could be considered as 'benefitting' from being offered a choice of benefits in the Remedy Period.
- 2.17. An alternative interpretation is that members who choose different benefits to the 'Base' benefits which they had already accrued prior to Transitional Protection Remedy, could be seen as having 'benefitted' from being offered a choice of benefits in the Remedy Period.

- 2.18. Analysis conducted as part of the 2016 Cost Control valuation<sup>3</sup> identified that almost all NHS Pension Scheme (Scotland) members eligible for Transitional Protection Remedy have the potential to benefit from the alternative benefits available.
- 2.19. The following graph from the analysis shows the weighted average cost of benefits by age (as a percentage of pensionable pay), for both the 'Base' benefits, under the transitional protection arrangements, and the 'Remedy' benefits under the Deferred Choice Underpin.



- 2.20. Please note that this is a high-level assessment. It is not a detailed member-by-member analysis, nor does it examine the comparison of benefits under each potential contingency event (e.g. withdrawal, early retirement, ill-health retirement, death, etc).
- 2.21. As a result, it may be that the comparison of benefits would be very different when analysing, for instance, a member retiring early or a member retiring due to ill health. **Rather than placing any reliance on the information above, individuals should consider their own specific circumstances and possibly seek Independent Financial Advice before deciding which benefits package they will opt for.**
- 2.22. Broadly speaking, however, this analysis indicates that, based on the assumptions adopted, the aggregated Remedy cost is higher than the aggregated Base cost. This suggests that members at all ages have the potential to benefit from the Remedy.
- 2.23. In this report, we have therefore maintained the assumption that almost all members eligible for Transitional Protection Remedy are likely to benefit.

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<sup>3</sup> [2016 Cost control valuation report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk). Further information on the assumptions are detailed in our report "[NHS Pension Scheme \(Scotland\) - Actuarial valuation as at 31 March 2016: Advice on assumptions](#)" of 15 February 2019 and "[NHS Pension Scheme \(Scotland\) - Cost-cap valuation as at 31 March 2016: Assumptions, methodology and data](#)" of 18 January 2022.

## **Assessing Protected Characteristics: Data Used**

- 2.24. Data on sex and age (and service, and part-time status) of the membership of the NHS Pension Scheme (Scotland) was provided to GAD by SPPA for the purposes of the 31 March 2016 actuarial valuation.
- 2.25. For the other protected characteristics under the Equality Act 2010, SPPA does not hold complete or up-to-date data. However, data for the whole of the NHS Scotland workforce is available for certain protected characteristics and has been used. Given the expected generally high participation rate in the NHS Pension Scheme (Scotland) we believe this represents a reasonable approximation to the membership of the Scheme.

## 3. Equality Impact Analysis: Age

This Chapter sets out our analysis of the equality impacts of the policy decision to provide eligible members with a choice of either legacy or reformed scheme benefits in the Remedy Period, on the protected characteristic of age, as identified in the Equality Act 2010.

### Introduction

- 3.1. As previously outlined, the Courts determined that the transitional protection element of the 2015 public service pension scheme reforms treated those members who were closest to retirement more favourably than younger members, and this amounted to direct age discrimination.
- 3.2. The UK Government's policy decision to provide all eligible members with a choice of legacy scheme or reformed scheme benefits in the Remedy Period is one aspect of the approach that is to be taken to address the age discrimination identified.
- 3.3. We have analysed below the split by age, of both members eligible to choose between legacy and reformed scheme benefits in the Remedy Period and those expected to be more likely to benefit from having this choice.

### Analysis: Age

- 3.4. The following table sets out the age profile of all active members in the NHS Pension Scheme (Scotland) as at 31 March 2016, as well as the age profile of the active members eligible to choose between legacy and reformed scheme benefits in the Remedy Period, and those not eligible:

Age as at 31 March 2016	All Active Members	Active Members Eligible for Choice	Active Members NOT Eligible for Choice
16-19	-*	-	1%
20-24	4%	-*	12%
25-29	9%	4%	21%
30-34	11%	9%	14%
35-39	12%	11%	12%
40-44	12%	13%	11%
45-49	16%	18%	11%
50-54	18%	22%	9%
55-59	13%	16%	6%
60-64	5%	6%	3%
65+	1%	1%	-*
<b>Total</b>	<b>177,070</b>	<b>119,986</b>	<b>57,084</b>

\* Note this is not actually zero, but denoted '-' as less than 0.5%  
Due to rounding, numbers in each column may not add to 100%

3.5. This analysis identifies that:

- Most of the active scheme population is between ages 30 and 59 (c. 82%).
- Most members eligible to choose between legacy and reformed scheme benefits in the Remedy Period are between ages 35 to 59 as at 31 March 2016 (c. 80%).
- Most members not eligible to choose between legacy and reformed scheme benefits are between ages 20 to 49 as at 31 March 2016 (c. 81%).
- Members eligible to choose between legacy and reformed scheme benefits are therefore generally older than the overall active membership. This is to be expected as 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.

3.6. The following table sets out the age profile of the members eligible to choose benefits in the Remedy Period, split to show their relevant legacy scheme:

	1995 Section	2008 Section	Total
<b>20-24</b>	-	100%	-*
<b>25-29</b>	15%	85%	<b>4%</b>
<b>30-34</b>	54%	46%	<b>9%</b>
<b>35-39</b>	75%	25%	<b>11%</b>
<b>40-44</b>	80%	20%	<b>13%</b>
<b>45-49</b>	82%	18%	<b>18%</b>
<b>50-54</b>	86%	14%	<b>22%</b>
<b>55-59</b>	86%	14%	<b>16%</b>
<b>60-64</b>	81%	19%	<b>6%</b>
<b>65+</b>	78%	22%	<b>1%</b>

\* Note this is not actually zero, but denoted '-' as less than 0.5%

To be clear, the percentages shown under each section column represent the percentage of eligible members in that section, within each age group.

3.7. This analysis identifies that:

- At ages 20 - 29, the majority of members eligible to be offered a choice of benefits in the Remedy Period, have accrued benefits in the 2008 Section.
- At ages 30 – 65+, the majority of members eligible to be offered a choice of benefits in the Remedy Period, have accrued benefits in the 1995 Section.

3.8. This is as expected as it is consistent with the average entry age of members into the NHS Pension Scheme (Scotland) and the opening date of the 2008 Section being more recent (i.e. younger members are more likely to be in the 2008 Section).

- 3.9. The following table sets out the age profile of the members eligible to choose between legacy and reformed scheme benefits, split by protection status:

	Unprotected Members <sup>4</sup>	Tapered Protected Members	Protected Members	Total
<b>20-24</b>	100%	-	-	-*
<b>25-29</b>	100%	-	-	<b>4%</b>
<b>30-34</b>	100%	-	-	<b>9%</b>
<b>35-39</b>	100%	-	-	<b>11%</b>
<b>40-44</b>	100%	-	-	<b>13%</b>
<b>45-49</b>	84%	14%	3%	<b>18%</b>
<b>50-54</b>	28%	39%	33%	<b>22%</b>
<b>55-59</b>	6%	6%	89%	<b>16%</b>
<b>60-64</b>	2%	-	98%	<b>6%</b>
<b>65+</b>	1%	-	99%	<b>1%</b>

\* Note this is not actually zero, but denoted '-' as less than 0.5%

To be clear, the percentages shown under each protection status column represent the percentage of eligible members in that protection status, within each age group.

Due to rounding, numbers in each row/column may not add to 100%

- 3.10. This analysis identifies that:

- Of the eligible members aged 49 or below, the majority are Unprotected members.
- Of the members aged 50 to 54, these are broadly split between Unprotected, Tapered Protected and Protected members.
- Of the members above aged 55 and above, the majority are Protected members.

- 3.11. The age profile of the members in each protection status is broadly as expected based on criteria for the protection status (i.e., Protected Members are closest to retirement, and Tapered Protected members are closer than Unprotected members to retirement).

- 3.12. **Commentary on analysis:**

*As illustrated above, members eligible to choose between legacy and reformed scheme benefits are older than the overall active member population, and older than those members not eligible for 2015 Remedy.*

*The [EqIA](#) carried out as part of the [Public Service Pensions and Judicial Offices Act](#) recognised this point in section 3.6 (page 22).*

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<sup>4</sup> There are a small number of 'Unprotected members' at older ages where their protection status in the data provided is not consistent with the criteria set out in paragraphs 1.8 and 1.9 above. This may indicate a data inaccuracy, such as incorrect date joined scheme or recorded protection status, which is leading to the incorrect classification of these members. The cause of this inaccuracy is unclear from the data available. Due to the small number of members involved we do not believe that this has a material impact on the conclusions which can be drawn from the information shown, in the context of this analysis. We propose that the most practical way forward is to accept this data uncertainty, for the purposes of this analysis.

## 4. Equality Impact Analysis: Sex

This Chapter sets out our analysis of the equality impacts of the policy decision to provide eligible members with a choice of either legacy or reformed scheme benefits in the Remedy Period, on the protected characteristic of sex, as identified in the Equality Act 2010.

### Introduction

- 4.1. In determining that the transitional protection arrangements discriminated on the grounds of age, the Courts also concluded that if older members in a scheme were more likely to be male, providing older members with preferential terms amounted to indirect sex discrimination.
- 4.2. The UK Government's policy decision to provide all eligible members with a choice of legacy scheme or reformed scheme benefits in the Remedy Period is one aspect of the approach that is to be taken to address the age discrimination identified, and in turn, the indirect sex discrimination where it too applies.
- 4.3. We have analysed below the split by sex<sup>5</sup> of both members eligible to make a choice of legacy and reformed scheme benefit in the Remedy Period and those expected to be more likely to benefit from this choice.

### Analysis: Sex

- 4.4. The following table sets out the sex profile of all active members in the NHS Pension Scheme (Scotland) as at 31 March 2016, as well as the sex profile of the active members eligible to choose between legacy and reformed scheme benefits, and those not eligible:

	Active Membership as at 31 March 2016	Active members as at 31 March 2016 eligible for Remedy	Active members as at 31 March 2016 NOT eligible for Remedy
<b>Males</b>	21%	19%	23%
<b>Females</b>	79%	81%	77%
<b>Total</b>	<b>177,070</b>	<b>119,986</b>	<b>57,084</b>

<sup>5</sup> The Equality Act 2010 lists 'sex' as a protected characteristic. Data for NHS Pension Scheme (Scotland) is also available by sex. However, it is important to note that sex and gender are two different concepts. A person's gender identity is not always the same as the sex assigned to them at birth, and some people may not identify as having a gender or as non-binary. Gender reassignment is also a protected characteristic under the Equality Act 2010, and this is examined in Section 5.

4.5. This analysis identifies that:

- The proportion of active members eligible for Remedy who are male is broadly consistent with the overall proportion of active members who are male
- The majority of active members are female, and so too are the majority of active members who are eligible to choose between reformed and legacy scheme benefits over the Remedy Period.
- The percentage of the eligible members who are female is slightly higher than the percentage of the overall scheme population who are female.
- The percentage of the members not eligible to choose between reformed and legacy scheme benefits over the Remedy Period who are male is higher than the percentage of male members eligible to make this choice.

4.6. The following table sets out the percentage of male and female members who are eligible, and have accrued benefits in each of the legacy schemes as at 31 March 2016:

	1995 Section	2008 Section	Total
<b>Males</b>	19%	20%	<b>19%</b>
<b>Females</b>	81%	80%	<b>81%</b>
<b>Total</b>	<b>92,485</b>	<b>27,501</b>	<b>119,986</b>

4.7. This analysis identifies that:

- The percentage of eligible members who are females and accruing/have accrued benefits in the 1995 Section, is slightly higher than the percentage accruing/have accrued benefits in the 2008 Section.
- The percentage of eligible members who are males and accruing/have accrued benefits in the 2008 Section, is slightly higher than the percentage in the overall eligible member population, or percentage accruing/have accrued benefits in the 1995 Section.

4.8. The following table sets out the percentage of male and female members who are eligible, in each protection status as at 31 March 2016:

	Unprotected Members	Tapered Protected Members	Protected Members	Total
<b>Males</b>	19%	21%	20%	<b>19%</b>
<b>Females</b>	81%	79%	80%	<b>81%</b>
<b>Total</b>	<b>70,602</b>	<b>14,472</b>	<b>34,912</b>	<b>119,986</b>

4.9. This analysis identifies that the sex split of eligible members is broadly consistent across protection status.



**Commentary on analysis:**

*Based on the analysis above, members who are eligible to choose between legacy and reformed scheme benefits in the Remedy Period are more likely to be female, compared to those not eligible, but this is consistent with the proportion of females in the overall scheme population.*

## Analysis: Sex and Age

- 4.10. We have also set out below the percentage of females in both the overall scheme population and the population eligible to choose benefits in the Remedy Period, at each age range:

Age as at 31 March 2016	Active Membership as at 31 March 2016	Active members as at 31 March 2016 eligible for Remedy	Active members as at 31 March 2016 NOT eligible for Remedy
16-19	73%	-	73%
20-24	82%	80%	82%
25-29	80%	86%	77%
30-34	81%	85%	77%
35-39	80%	83%	74%
40-44	79%	80%	74%
45-49	80%	81%	75%
50-54	80%	80%	79%
55-59	78%	78%	78%
60-64	76%	76%	74%
65+	64%	68%	39%

- 4.11. This analysis identifies that:

- The percentage of members who are eligible to make a choice of benefits in the Remedy period and who are females, is generally higher than the overall scheme population for the age bands shown, except for age bands 20-24 where it is lower and age bands 50-54, 55-59 and 60-64 where it is consistent with the overall scheme population at those ages.
- The percentage of members who are not eligible to make a choice of benefits in the Remedy period and who are females, is generally lower than the overall scheme population at those ages, except for age bands 16-19, 20-24 and 55-59 where it is consistent with the overall scheme population at those ages.

- 4.12. **Commentary on analysis:**

*The above analysis supports the previous comments members who are eligible to choose between legacy and reformed scheme benefits in the Remedy Period are more likely to be female, across all age bands, compared to those not eligible,*

*reflecting the larger number of females in the overall active membership of the scheme. However, this is broadly consistent with the overall population splits.*

## Analysis: Sex and Employment Status

- 4.13. In Scotland, women are more likely to work part-time than men<sup>6</sup>. It is therefore worth considering the equalities impact of those who work part-time within this protected characteristic.
- 4.14. The analysis below provides a split of the scheme membership into those working part-time and those not.

	Active membership as at 31 March 2016	Eligible members as at 31 March 2016	Members NOT eligible as at 31 March 2016
Full-time	51%	55%	43%
Part-time	49%	45%	57%
Total	177,070	119,986	57,084

- 4.15. Of the 53,927 members as at 31 March 2016 who are eligible to choose benefits in the Remedy Period and who work part-time:
- 51,241 are female (95%)
  - 40,539 are accruing benefits in the 1995 Section (75%).
- 4.16. This analysis identifies that:
- The percentage of those members eligible to choose benefits in the Remedy Period, and work part-time, is lower than the percentage of the overall active member population who work part-time.
  - The percentage of those members not eligible to choose benefits in the Remedy Period, who work part-time, is higher than the percentage of the overall active member population who work part-time.
  - Of those members who are eligible to choose benefits in the Remedy Period and who work part-time, the percentage that are female (95%) is higher than the percentage of the overall active member population that is female (79%) and the percentage of the eligible member population that is female (81%).
- 4.17. **Commentary on analysis:**  
*Based on the above analysis, members eligible to choose benefits in the Remedy Period are less likely to work part-time. Members not eligible to choose benefits in the Remedy Period are more likely to work part-time.*

<sup>6</sup> <https://www.closesthegap.org.uk/content/gap-statistics/>

## 5. Equality Impact Analysis: Other Protected Characteristics

**This Chapter sets out our analysis of the equality impacts of the policy decision to provide eligible members with a choice of either legacy or reformed scheme benefits in the Remedy Period, on the other protected characteristics, as identified in the Equality Act 2010.**

### Introduction

- 5.1. The proposed changes will apply to all members regardless of these protected characteristics. However, we have considered the potential impact of these individually below.

#### *Data Analysed*

- 5.2. SPPA does not hold complete or up-to-date data on the other protected characteristics under the Equality Act 2010.
- 5.3. 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 generally high participation rate in the NHS Pension Scheme (Scotland) it is our view that the overall statistics in relation to the wider NHS Scotland workforce represents a reasonable approximation to the active membership of the Scheme.
- 5.4. Eligible members are those who were in service on or before 31 March 2012 and who were still in service on or after 1 April 2015
- 5.5. While we have used data on active membership of the scheme as at 31 March 2016 for the analysis by age and sex, the analysis has excluded individuals who joined the scheme after 1 April 2012.
- 5.6. Therefore, comparing characteristics of the NHS Scotland workforce as a whole in 2012 with the characteristics as at 2016 could provide an indication as to whether the protected characteristics of the eligible membership might differ to the membership as whole.
- 5.7. Workforce data relating to protected characteristics as at 31 March 2012 is no longer publicly available due to “the risk of potential disclosure”. As such, for the purposes of our analysis we have used data at the next available date (31 March 2013).
- 5.8. We have used information from the following sources to comment on the protected characteristics:
- [NHS Scotland workforce statistics – Equality and diversity \(data table\) – 31 March 2013](#)

- [NHS Scotland workforce statistics – Equality and diversity \(data table\) – 31 March 2016](#)

5.9. The information above is based on self-reporting by staff in NHS Scotland. Data is collected via staff engagement forms when people join or change organisations within NHS Scotland, or via a questionnaire exercise undertaken for all staff in post. Completion of the questionnaire exercise was optional and response rates varied across the country. It is important to consider this when drawing conclusions from the information. There is a large proportion of equality and diversity data which is either unknown or employees have declined to answer.

## Disability

- 5.10. Based on the above data sources, the proportion of the NHS Scotland workforce reporting a disability increased from 0.5% as at 31 March 2013 to 0.7% as at 31 March 2016.
- 5.11. This might suggest that members eligible to make a choice of legacy or reformed scheme benefits over the Remedy Period may be less likely to have a disability compared with those not eligible to make a choice.

## Religion or Belief

- 5.12. The table below sets out the proportion of the NHS Scotland workforce split between declared religions, based on the above data, as at the stated dates:

	31 March 2013	31 March 2016
<b>Christian Religions<sup>7</sup></b>	35.0%	30.4%
<b>Buddhist</b>	0.2%	0.2%
<b>Hindu</b>	0.6%	0.4%
<b>Jewish</b>	0.1%	0.1%
<b>Muslim</b>	0.6%	0.6%
<b>Sikh</b>	0.1%	0.1%
<b>Other</b>	1.6%	4.4%
<b>No religion</b>	15.1%	15.8%
<b>Not known / declined to answer</b>	46.8%	48.1%

*Due to rounding, numbers in each column may not add to 100%.*

- 5.13. The proportion of the NHS Scotland workforce identifying as “Christian Religions” with regards to declared religion, has decreased over the period 2013 to 2016.

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<sup>7</sup> ‘Christian Religions’ include those who have self-classified as Church of Scotland, Roman Catholic or Christian - Other.

- 5.14. This might suggest that members eligible to make a choice of legacy or reformed scheme benefits over the Remedy Period might be more likely to class themselves as Christian compared with the overall scheme population.
- 5.15. The proportion of the NHS Scotland workforce identifying as “Other” with regards to declared religion, has increased over the period 2013 to 2016.
- 5.16. This might suggest that members eligible to make a choice of legacy or reformed scheme benefits over the Remedy Period are less likely to identify as “Other” with regards to declared religion, compared with the overall scheme population.
- 5.17. There is an increasing proportion of the NHS Scotland workforce identifying as “No religion” over the period 2013 to 2016.
- 5.18. This might suggest that members eligible to make a choice of legacy or reformed scheme benefits over the Remedy Period might be more likely to class themselves as having a religion compared with the overall scheme population.

## Sexual orientation

- 5.19. The proportion of the NHS Scotland workforce identifying as lesbian, gay or bisexual (LGB) was 0.8% as at 31 March 2013, compared to 0.9% as at 31 March 2016.
- 5.20. This might suggest that members eligible to make a choice of legacy or reformed scheme benefits over the Remedy Period may be less likely to identify as LGB compared with those not eligible to make a choice.

## Race/Ethnicity

- 5.21. The proportion of the NHS Scotland workforce identifying as Black and Minority Ethnic (BME) increased from 2.7% as at 31 March 2013 to 3.1% as at 31 March 2016.
- 5.22. This might suggest that members eligible to make a choice of legacy or reformed scheme benefits over the Remedy Period may be less likely to identify as BME compared with those not eligible to make a choice.

## Gender reassignment

- 5.23. The proportion of the NHS Scotland workforce with a declared transgender status as at 31 March 2013 and 31 March 2016 was less than 0.1%.
- 5.24. This might suggest that members eligible to make a choice of legacy or reformed scheme benefits over the Remedy Period are no more or less likely to have a declared transgender status compared with those not eligible to make a choice.

## **Pregnancy and maternity**

- 5.25. There is no available data on these protected characteristics in relation to the NHS Scotland workforce or NHS Pension Scheme (Scotland) membership.

## **Marriage and civil partnership**

- 5.26. There is no available data on these protected characteristics in relation to the NHS Scotland workforce or NHS Pension Scheme (Scotland) membership.

# Appendix A: Data and Assumptions

## Data

- The analysis shown in this report is based on the data provided by SPPA to GAD for the 2016 actuarial valuation, as detailed in our report [“NHS Pension Scheme \(Scotland\) - Actuarial valuation as at 31 March 2016: Report on valuation data”](#) of 15 February 2019, together with the following publicly available sources on workforce statistics:
  - [NHS Scotland workforce statistics – Equality and diversity \(data table\) – 31 March 2013](#)
  - [NHS Scotland workforce statistics – Equality and diversity \(data table\) – 31 March 2016](#)
- Whilst comprehensive data was received from SPPA for the 2016 actuarial valuation, some aspects of the data were incomplete and/or unreliable for certain elements of our valuation calculations. It was not possible to fully resolve those data issues in the timescale required for the valuation, and therefore, assumptions were required in respect of incomplete and/or unreliable individual member records. Further information on the steps taken to address data issues can be found in the above report.
- Please note that a member has been classed as ‘part-time’ if the part-time indicator provided by SPPA for the purposes of the 31 March 2016 actuarial valuation, was recorded as “Y”. All other members have been assumed to be full time. Please note that rigorous checks were not carried out on the part-time indicators provided.

## Assumptions

- In order to estimate whether a member’s reformed or legacy scheme benefits over the Remedy Period have a ‘higher actuarial value’, we have used assumptions consistent with those used for the 2016 actuarial valuation of the Scheme.
- Further information on the assumptions are detailed in our report [“NHS Pension Scheme \(Scotland\) - Actuarial valuation as at 31 March 2016: Advice on assumptions”](#) of 15 February 2019.

## Appendix B: Compliance and limitations

This report is intended for the use of the Scottish Public Pensions Agency ('SPPA') for the purposes of analysing the potential impact of the 2015 Remedy and must not be reproduced, distributed or communicated in whole or in part to any other person without GAD's prior written permission.

Other than SPPA, no person or third party is entitled to place any reliance on the contents of this report, except to any extent explicitly stated herein. GAD has no liability to any person or third party for any action taken or any failure to act, either in whole or in part, on the basis of this report.

In preparing this report, GAD has relied on data and other information supplied by the Scheme Manager as described in the report. Any checks that GAD has made on this information are limited to those described in the report, including any checks on the overall reasonableness and consistency of the data. These checks do not represent a full independent audit of the data supplied. In particular, GAD has relied on the general completeness and accuracy of the information supplied without independent verification.

GAD are not lawyers, and our advice does not constitute legal advice. Advice in this area should be sought from an appropriately qualified person or source.

This report has been carried out in accordance with the applicable Technical Actuarial Standard: TAS 100 issued by the Financial Reporting Council (FRC). The FRC sets technical standards for actuarial work in the UK.