

## Equality Impact Assessment - Results

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

### Executive Summary

1. This assessment measures the impact of policy proposals to implement the Firefighters’ 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 firefighters 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 firefighters 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 Firefighters' Pension Scheme (Scotland), the types of protection and eligibility criteria is set out in Schedule 2 of the Firefighters' Pension Scheme (Scotland) Regulations 2015 and is also referenced on page 4 of the report of the Government Actuary's Department (GAD) titled "2015 Remedy: Retrospective Remedy Phase Analysis to Support the Equalities Impact Assessment" 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 sex discrimination.
10. The proposals set out in the attached consultation and in the accompanying draft regulations (The Firefighters' 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 Firefighters’ 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 on 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 5,580 active members of the Firefighter's Pension Schemes (Scotland) in 2016, 4,868 (87%) are eligible for retrospective remedy.

This includes 47% who were unprotected because they were under the protection age and service-based criteria, 15% were tapered protected members and 25% were 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 who were unprotected and tapered protected and will be eligible to choose between legacy and reformed scheme benefits were between ages 20 to 54 as of 31 March 2016<sup>1</sup>.
22. This policy aims to ensure all eligible members are treated in the same way as those members who were closest to retirement at the time of the reforms – in effect extending the same provision to those who were unprotected or taper-protected.. Based on the assumptions adopted for the 2016 actuarial valuation of the Scheme, GAD's analysis indicates that, for all ages of members, the overall benefits in the legacy 1992 scheme have a higher actuarial value than 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. However, legacy 2006 scheme benefits may not in all cases be actuarially more valuable to members so it is possible that some members in this position may choose reformed scheme benefits rather than legacy scheme benefits.
23. In turn, it would be reasonable to assume that those members who accrued reformed scheme benefits in the remedy period will choose legacy 1992 scheme benefits at the point at which they are asked to make a choice. Similarly, there are likely to be some scenarios where members who accrued legacy 2006 scheme benefits during the Remedy period (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 Firefighters' Pension Schemes (Scotland) in 2016 who are eligible for a choice of benefits in the remediable service period are within the 35-54 year

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<sup>1</sup> Table at 3.12 of Analysis to Support the Equalities Impact Assessment

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 that they may not have been employed in any of the Scottish Fire and Rescue services 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 or are Retained/ Special firefighters).<sup>2</sup>

25. The transitional protections were found to be discriminatory as they 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, the vast majority 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 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 44. 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 1992 scheme before age 55**

26. Members of the 1992 scheme with a combined service of 25 or more years between both legacy and reformed schemes can access their 1992 scheme benefits between age 50 to 55, or later. However, benefits accrued in the reformed scheme are not accessible before Normal Minimum Pension Age (NMPA) 55. This interaction of retirement ages between the Firefighters' pension schemes has resulted in some members being able to access their 1992 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 actuarial

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<sup>2</sup> The Scottish Fire and Rescue Service was formed in 2013, following the merger of the eight regional fire and rescue services that existed up until that point, and in which eligible firefighters would have been employed on 31 March 2012.

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. The earliest that a member can take their 1992 scheme benefits is age 50 (with a minimum of 25 years' pensionable service). However, those retiring during the remediable period who did not achieve one of the two milestones (30 years' service over age 50, or age 55) were restricted to a lump sum of 2.25 times their annual pension<sup>3</sup>.
29. Although 1992 scheme members can retire before the age of 55, doing so would mean they would have to defer payment of any reformed scheme pension. The actuarial reductions in the reformed scheme are higher when benefits are claimed from deferred member status because deferred benefits are reduced by reference to state pension age rather than at age 60 (retirement from active service).
30. The commutation factors for the lump sum at retirement (which are based on member age in years and months at the date of retirement) are designed to be actuarially neutral. In practice this means that firefighters retiring at a lower age will receive a proportionately higher lump sum than those retiring at a later age. This provision may influence member's retirement plans<sup>4</sup>.
31. The provision giving eligible members 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.
32. It's important to note that the interaction of the retirement ages between the Firefighters' Pension Schemes is a feature of the overall public service pension reforms and not part of the retrospective

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<sup>3</sup> The Firemen's Pension Scheme (Amendment) (Scotland) Order 2022 [SSI 2022/79] removed this restriction with effect from 1 April 2022, however as this was not effective until after the remedy period it does not apply to pensions that became payable during the remedy period.

remedy. The 2015 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

33. On 31 March 2016, 5% of active members eligible for remedy were women, with 95% of eligible members men. The analysis shows that of the eligible members who are unprotected, the proportion who are men is lower than that of the overall eligible member population. Members who are eligible to choose between legacy and reformed schemes in the remedy period are more likely to be men compared to those not eligible to make this choice. The members likely to benefit most from being offered a choice of legacy and reformed scheme benefits for remedy are marginally more likely to be women as compared to the overall scheme membership. Those members less likely to benefit from being offered a choice are less likely to be women, as compared to the overall scheme membership.

34. In Scotland, women are much more likely to work part-time than men<sup>5</sup>. Eligible members expected to be more likely to benefit from being offered a choice of benefits in the remedy period (unprotected and tapered protected members) are more likely to work part-time, than protected members, who are expected to be less likely to benefit from being offered this choice.

35. Therefore, in our opinion, the policy aims to provide all eligible members with a choice thus equalising treatment over the remedy period and removing previous indirect sex discrimination.

## Other Protected Characteristics

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

37. Data on some of the remaining protected characteristics is held by the Scottish Fire and Rescue Service (SFRS). However, data in relation to both wholetime and retained serving firefighters' is not

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<sup>5</sup> On-call (retained) firefighters are included in the part-time member data provided for this analysis. Members deemed ineligible for remedy would have been recruited in the period 01/01/2012 to 31/03/2016. This suggests that most of the recruitment around that time was for on-call (retained) firefighters.

separately identified. Given the current participation rate in the Firefighters' Pension Schemes (Scotland) was of the order of 90% on 31 March 2016, it is our view that the overall statistics in relation to serving firefighters' represents a reasonable approximation to the active membership of the Scheme.

38. GAD's analysis explored both publicly available information on the remaining protected characteristics, as well as additional information provided by SFRS, in its workforce statistics on 31 March 2016 and 31 December 2022.

## **Disability**

39. The data to facilitate analysis of disability was provided by SFRS as workforce data from 2011-2021. The proportion of firefighters reporting a disability has increased over the period 2011 to 2021 for both wholetime and retained firefighters but remains below 1%. This might suggest that members eligible to make a choice of reformed or legacy benefits over the remedy period (who must have joined before 1 April 2012) might be less likely to have a disability compared with the overall scheme membership. However, we do not believe these members are adversely, or otherwise, impacted by these proposals.

## **Religion or Belief**

40. Disclosure of this protected characteristic is voluntary and a large proportion of members on 31 December 2016 and 31 December 2022 chose not to disclose their religion or belief. Therefore, it is difficult to draw any meaningful conclusions from comparisons between these datasets, in terms of identifying a trend. In addition, the information available is not detailed enough to analyse the 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**

41. Analysis of the data for 2016 and 2020 shows that a large proportion of those questioned (59.25% and 57.86%) opted not to answer the question about sexual orientation. Therefore, it is difficult to draw any meaningful conclusions from analysing the data over 2016-2022, in terms of identifying a trend. The information available is not

detailed enough to determine sexual orientation of those members who are 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**

42. The analysis of race/ethnicity was provided by SFRS as workforce data from 2011-2021. Although there has been an increasing proportion of staff identifying as from a minority ethnic community from 2011 to 2021, SFRS does not hold enough information to determine whether or not 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**

43. Analysis of the data for 2016 and 2020 shows that a large proportion (83% in 2016 and 81.94% in 2020) of those questioned opted not to answer the question about identifying as transgender. Therefore, it is difficult to draw any meaningful conclusions from analysing the data over 2016-2022, in terms of identifying a trend. However, we do not believe that these members will be adversely, or otherwise, impacted by these proposals.

## **Pregnancy and Maternity**

44. The data in relation to this protected characteristic was provided by SFRS and combines both wholetime and retained firefighters'. A small proportion of firefighters' took maternity leave in 2016 (0.3%) and in 2022 (0.2%). This aligns with the small percentage of women in the Scheme. This might suggest that members who joined the scheme before 1 April 2012 who are eligible to make a choice of legacy or reformed scheme benefits over the remedy period are no more or less likely to have taken maternity leave compared with the overall scheme membership. Therefore, we do not believe these members are adversely, or otherwise, impacted by these proposals.

## **Marriage and Civil Partnership**

45. SFRS holds combined data for both wholetime and retained firefighters. On 31 December 2016 45.94% of firefighters who were questioned stated they were married or in a civil partnership,

whereas on 31 December 2022, this has reduced to 35.10%. This might suggest that members who joined the scheme before 1 April 2012 who are eligible to make a choice of legacy or reformed scheme benefits over the remedy period are more likely to be married or in a civil partnership compared with the overall scheme membership. Therefore, we do not believe these members are adversely, or otherwise, impacted by these proposals

## **Recommendations and Conclusion**

46. 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, for most members, 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.
47. It is our opinion that by offering all members a choice of benefits and removing the transitional protections, the age discrimination will be removed. There are a greater proportion of unprotected members under the age of 44, 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.
48. The interaction of the retirement ages between the 1992 and 2015 firefighters' pension schemes is a consequence of the overall public service pension reforms. It is not a consequence of the changes being delivered in the statutory instrument. Whilst it is recognised that the interaction of pension ages is an important consideration for members, the 2015 Remedy will give members in this position the benefit of choosing the best option for their particular circumstances.
49. 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.
50. 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 these members are adversely, or otherwise, impacted by these proposals.

51. 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.