

## Equality Impact Assessment - Results

Title Of Policy	2015 Remedy – Implementing the 2015 Remedy in the Local Government Pension Scheme (Scotland)
Summary of aims and desired outcomes of the policy	To equalise the treatment of all eligible members of the local Government Pension Scheme (Scotland) in the implementation of the 2015 Remedy as required by the Public Service Pensions and Judicial Offices Act 2022. To extend the ‘underpin’ protection to the younger members of the scheme whom the courts found had been treated unlawfully. In the LGPS, the underpin is the means through which transitional protection was provided to older members.
SG Directorate	The Scottish Public Pensions Agency

### Executive Summary

1. This assessment measures the impact of policy proposals to implement the Local Government Pension Scheme (Scotland) (Amendment)(No.2) Regulations 2023 (the 2023 Regulations).
2. The summary of the aims and desired outcome of the policy is to:
  - a) equalise the underpin protection to all members of the Local Government Pension Scheme, and
  - b) ensure there are no members negatively impacted by these regulatory changes.
3. The assessment finds that the policy changes will not disproportionately benefit or harm the protected groups within the Scottish Local Government workforce and will equalise the terms on which all scheme members are offered underpin protection.
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 2015<sup>1</sup>, 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. All Local Government Pension Scheme (Scotland) members were moved to the reformed, career average scheme on 1st April 2015, but for older protected members, the pension payable was ‘underpinned’ against what they would have built up in the legacy final salary scheme. The underpin protection and eligibility criteria is set out in Regulation 4 of The Local Government Pension Scheme (Transitional Provisions and Savings)(Scotland) Regulations 2014 and is also referenced on page 6 of the report by the scheme actuary, the Government Actuary’s Department (GAD), entitled “Local Government Pension Scheme (Scotland) – McCloud/ Sargeant litigation: Equalities impact” document which accompanies this Consultation. In short, those members within 10 years of normal pension age (NPA) and age 55 or above were protected with an underpin based on the existing final salary scheme.

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 discrimination.

10. The UK Government consulted on legislation to Remedy the

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<sup>1</sup> 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.

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 two main elements to the Treasury's reform package:

- a. Allowing all members of Local Government (Scotland) legacy schemes to have the same 'underpin' protection as the protected older members of the scheme – amendments relating to the 'statutory underpin.'
- b. Establishing the mechanisms by which all eligible scheme members can have their legacy and reformed pensions compared, and the effect of this on their retirement benefits.

13. The consultation, regulations and this Equality Impact Assessment deal with issues relating to points **a** and **b** 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 2017 valuation assumptions and member data as at 31 March 2017. Based on the current data available, it is not possible to precisely identify all eligible members and we have assumed that a member who joined the fund before 1 April 2012 and remains active at 31 March 2017 will be eligible for Remedy underpin protection. This could be affected by future aggregation decisions and additional information of other public service scheme membership and valuations but is not expected to be material. If different assumptions were adopted, the results would be different.

18. As the local Government Pension Scheme (Scotland) is a funded scheme, assumptions have been made about members' future careers, their length of service and their future pay increases. Further information is provided in GAD's report.

## **Key Findings**

### **Underpin eligibility**

19. Of the active members of the Local Government Pension Scheme (Scotland) on 31 March 2017, the highest proportion of members benefitting from the Remedy are within the 46-50 age group. Younger members who qualify for the underpin may be less likely to benefit as they are more likely to leave service and not obtain the pay increases to make final salary benefits higher than career average scheme benefits. However, the Remedy gives them the same underpin protection to ensure that further age discrimination is not inadvertently introduced.

20. The analysis shows that the sex proportions are almost identical between members who qualify for the Remedy and members who will benefit from the Remedy.

21. This policy aims to ensure all eligible members are treated in the same way as those members closest to retirement (protected members). The overall assumptions in the GAD report indicate that members below age 60 have the potential to benefit from the Remedy.

### **Age**

22. The majority of active members at 31 March 2017 who are eligible for

Remedy are within the 46-55 year age groups. Members not eligible for Remedy and who already have underpin protection are aged 60 or over.

23. The underpin 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 60 or below, the majority are unprotected. Members aged 53 or older are not expected to benefit from underpin protection given the shorter time for accrual of salary increases for final salary comparisons. However, it is our opinion that by offering all eligible members the underpin protection, the age discrimination is removed.

## **Sex**

24. The analysis of the 31 March 2017 valuation shows that 54% of eligible women and 56% of eligible men were expected to have the underpin extended to them as a result of the Remedy. Of these percentages, 22% of men will benefit from the Remedy compared to 20% of women. Therefore, the analysis shows that proportionally more men may be expected to be eligible and benefit from the Remedy underpin than women, who make up a greater proportion of post 31 March 2012 joiners who would be ineligible for the Remedy.

25. For members who have a different potential underpin status, the analysis shows that 7% of women and 8% of men who had active membership at 1 April 2012 have underpin protection. 54% of women and 56% of men with active membership at 1 April 2012 do not have underpin protection. People who were not active scheme members at 1 April 2012 and are ineligible for Remedy comprise 40% of women and 36% of men.

## **Other Protected Characteristics**

26. SPPA has considered data from the Annual Population Survey for the protected characteristics of race/ethnicity, disability, religion or belief and marriage and civil partnership but it is difficult to draw any meaningful conclusions from this. We have not been able to identify any data for the protected characteristics of sexual orientation, gender reassignment, pregnancy and maternity under the Equality Act 2010. However, we have no reason to believe members who identify with any of the protected characteristics would be adversely or otherwise, impacted by these proposals

## **Recommendations and Conclusion**

27. 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 both sexes below age 60 have the potential to benefit from the Remedy, as they are more likely to be unprotected.

28. It is our opinion that by offering all eligible members the benefit of underpin protection, the age discrimination will be removed. The estimated cost of extending the underpin is sensitive to assumptions that have different impacts on the benefits payable, such as salary, CPI increases and withdrawal. However, we believe this policy aims to ensure that all eligible members, regardless of previous protection status, are treated equitably.

29. There is limited data available to draw upon for the other protected characteristics of race/ethnicity, disability, religion or belief and marriage and civil partnership, and there is no suitable data for the protected characteristics of sexual orientation, gender reassignment, pregnancy and maternity. However, if new data indicates that these groups may suffer disproportionate adverse effects, we will consider the impact further.

30. 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.