



Government  
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# Transitional Protection Remedy: *Retrospective Remedy Phase*

## Analysis to Support the Equalities Impact Assessment Firefighters' Pension Schemes (Wales)

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This report assesses only the impact of the 'Retrospective Remedy Phase' of the Transitional Protection Remedy. The Retrospective Remedy Phase relates to the policy decision to provide all eligible members with a choice of benefits over the remedy period 1 April 2015 to 31 March 2022.

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# 1. Introduction

## Purpose

- 1.1. This report is addressed to, and has been prepared at the request of, Welsh Ministers.
- 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) (Wales) Regulations 2011.
- 1.3. The PSED requires Welsh Ministers to assess the impact of applying a proposed new or revised policy or practice. Those setting policy 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. In Wales, the PSED contains additional express provisions about engagement (Regulation 5) and equality impact assessments (Regulation 8).
- 1.6. Regulation 5 requires that where an authority has to comply with engagement provisions under these Regulations it must involve those persons that the authority considers represent the interests of persons who share one or more of the protected characteristics and who have an interest in the way the authority carries out its functions. An authority may also involve or consult such other persons as it considers appropriate.
- 1.7. Regulation 8 requires an authority to make arrangements in order to assess the likely impact of proposed policies and practices on its ability to comply with the general duty, as well as the impact of any policy or practice that an authority has decided to review or any proposed revision to a policy or practice. There must be arrangements for publishing reports regarding these assessments where the assessment shows that there is likely to be a substantial impact on an authority's ability to comply with the general duty. When assessing such matters under regulation 8(1)(a) or (b) an authority must comply with the engagement provisions and have due regard to the relevant information. Also an authority must monitor the impact of its policies and practices on its ability to comply with the general duty.

- 1.8. The purpose of this report is to provide analysis, specifically in relation to the Firefighters' Pension Schemes (Wales), to support Welsh 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.**

## Background

- 1.9. When public service pension reforms were introduced in 2015, the Ministers agreed to allow those closest to their retirement age to stay in their legacy schemes. These arrangements were referred to as 'transitional protection' arrangements.
- 1.10. For the Firefighters' Pension Scheme (Wales), this meant:
- A. Active members who, on 1 April 2012, were in the 1992 Scheme or 2007 Scheme (Special) and aged 45 or over would remain in the 1992 Scheme or 2007 Scheme (Special).
  - B. Active members who, on 1 April 2012, were in the 2007 Scheme (Standard) and aged 50 or over would remain in the 2007 Scheme (Standard).
  - C. There would be a further period of tapered protection for up to 4 years for scheme members. Members who were within 4 years 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 53 days of protection. The period of protected service for any member under these tapering arrangements would finish by 31 March 2022. At the end of their protected period, they would be transferred into the 2015 Scheme.
- These members fall into two categories:
- a. 1992 members and 2007 (Special) members who on 1 April 2012 were aged 41 – 45 years
  - b. 2007 (Standard) members who on 1 April 2012 were aged 46 – 50 years
- 1.11. In this report, members in categories A and B above are referred to as 'Protected' members, and members in category C are referred to as 'Tapered Protected' members.
- 1.12. 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.
- 1.13. 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:

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<sup>1</sup> For the Firefighters' Pension Schemes (Wales), the legacy schemes are the 1992 Scheme, the 2007 Scheme (Standard), the 2007 Scheme (Special) and the reformed scheme is the 2015 Scheme

- legacy scheme benefits (i.e. benefits in the 1992 Firefighters' Pension Scheme, 2007 (Standard) or 2007 (Special) Firefighters' Pension Scheme);  
or
  - benefits equivalent to those available under the reformed scheme (i.e. benefits in the 2015 Firefighters' Pension Scheme).
- 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.
- 1.14. 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 it applies across all schemes in the UK in relation to the Transitional Protection Remedy. This came into force on 1 April 2022. An [Equality Impact Assessment](#) ('EqIA') was carried out alongside this Act.
- 1.15. Welsh Ministers are responsible for making the secondary legislation to amend the Firefighters' Pension Schemes (Wales). This secondary legislation 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 who continued in pensionable service from 1 April 2022 do 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.

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<sup>2</sup> As set out in 1.8 (C), members who were, as of 1 April 2012, within 4 years of qualifying for transitional protection, would have previously been eligible for what is referred to as 'tapered protection'. The effect of the judgment in the McCloud case was that this tapered protection was considered to be discriminatory, and 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.

## Policy to be assessed

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

## Next steps

- 1.18. Chapters 3-5 consider the potential impact of the proposed measures by reference to the protected characteristics identified in the Equality Act 2010.
- 1.19. We have included commentary on the analysis of the data which the Welsh Ministers may wish to use in the preparation of its EqIA. However, it is important to note that **it is for Welsh 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**

- 2.1. As outlined in 1.130, members eligible or 'in scope' for Transitional Protection 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 members who were in service on or before 31 March 2012. We could then assess the characteristics of all members who are eligible for the Transitional Protection 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 Scheme 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. The next best alternative was to analyse the active membership as at 31 March 2016, which was provided to GAD by the three individual Fire and Rescue Services in Wales for the purposes of the 31 March 2016 actuarial valuation. From this, members who were eligible or 'in scope' for Transitional Protection 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). Some members who joined the scheme in the period 1 April 2015 to 31 March 2016 will be included, but these members would only ever have access to the 2015 Scheme under the changes made to introduce the 2015 Firefighters' Pension Scheme to new entrants from 1 April 2015. However, we do not believe that amending the dataset to include/exclude these members respectively would make a material difference to the outcomes of this analysis, given that we expect the vast majority of eligible members will be active 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 either directly by the three individual Fire and Rescue Services in Wales 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. In addition, the data used for the 31 March 2020 valuation would include active members who had joined the scheme during the period 1 April 2016 to 31 March 2020. It would not be appropriate to include these members in the analysis as these members would only ever have access to the 2015 Scheme under the changes made to introduce the 2015 Firefighters' Pension Scheme to new entrants from 1 April 2015.

### **Identifying 'in scope' members**

2.6. We have then identified members as being 'in scope' of the Transitional Protection 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 Tapered 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 Firefighters' Pension Schemes (Wales), but they may have had previous service in a different public sector scheme which brings them in scope for the Transitional Protection Remedy. 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 Transitional Protection Remedy	<i>Unprotected members</i>	1,120	40%
	<i>Tapered Protected members</i>	352	13%
	<i>Protected members</i>	452	16%
	<b>Total</b>	<b>1,924</b>	<b>69%</b>
Not eligible for Transitional Protection Remedy		<b>850</b>	<b>31%</b>
<b>Total</b>		<b>2,774</b>	<b>100%</b>



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2.9. The following table sets out which legacy scheme the 1,924 members who are eligible for Transitional Protection Remedy accrued/ are accruing benefits in:

	1992 Scheme	2007 Scheme (Standard)	2007 Scheme (special)	Total
Unprotected members	422 (41%)*	658 (87%)	40 (29%)	<b>1,120</b>
Tapered Protected members	276 (27%)	48 (6%)	28 (20%)	<b>352</b>
Protected members	337 (33%)	46 (6%)	69 (50%)	<b>452</b>
<b>Total</b>	<b>1,035</b>	<b>752</b>	<b>137</b>	<b>1,924</b>

\* This is the percentage of overall total in that particular scheme

2.10. This analysis identifies that:

- 54% 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 1992 Scheme. 39% are accruing or have accrued benefits in the 2007 Scheme (Standard) and 7% are accruing or have accrued benefits in the 2007 Scheme (Special).
- A significant proportion of eligible members who accrued benefits in the 2007 Scheme (Standard) are Unprotected members.
- Half of eligible members who accrued benefits in the 2007 Scheme (Special) are Protected members, and almost a third are Unprotected members.
- Eligible members who accrued benefits in the 1992 Scheme are split across the protection groups, with the Unprotected member group having the highest proportion of members.

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.

2.12. Throughout this report there are membership groups or age ranges in which very few members sit. Where there are members in a group, but the proportion rounds to 0% (to the nearest percent) we show 0%. If the group contains no data we indicate this with a blank cell.

2.13. Additionally, due to rounding, some tables of percentages in this report may not add to 100%.

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

- 2.14. As outlined in 1.130, 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).
- 2.15. 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, early retirement) and indeed their preferences for certain aspects of a particular benefits' package (e.g. dependant's pension).
- 2.16. Additionally, for active members, future experience (e.g. an individual's salary progression and whether or not they hit their legacy scheme service cap), may influence which benefits will be more appealing to them, at the point at which they are asked to make this choice.
- 2.17. 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.
- 2.18. Therefore, all eligible members could be considered as 'benefitting' from being offered a choice of benefits in the Remedy Period.
- 2.19. An alternative interpretation is that members who choose different benefits to those 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.
- 2.20. In this report, we have estimated the members who are more likely to choose alternative benefits to those which they accrued prior to Transitional Protection Remedy, so as to analyse how the protected characteristics of these members compare with those of the members who are not expected to choose alternative benefits.

*Estimating members who might choose alternative benefits*

- 2.21. The accrual rate and payment age in the 1992 Scheme and 2007 Scheme (Special) are such that the actuarial value of these schemes exceeds the actuarial value of the 2015 Scheme, at each age<sup>3</sup>.
- 2.22. Therefore, this would suggest that for 1992 Scheme and 2007 Scheme (Special) members:
- There are likely to be many scenarios where those members who accrued legacy scheme benefits prior to Transitional Protection Remedy, will choose legacy scheme benefits at the point at which they are asked to make a choice.
  - There are likely to be few scenarios where those members who accrued legacy scheme benefits prior to Transitional Protection Remedy, will choose 2015 Scheme benefits at the point at which they are asked to make a choice.
  - There are likely to be many scenarios where those members who accrued reformed scheme benefits prior to Transitional Protection Remedy, will choose legacy scheme benefits at the point at which they are asked to make a choice.
- 2.23. Accordingly, this would imply that 1992 Scheme and 2007 Scheme (Special) Unprotected and Tapered 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 1992 Scheme and 2007 Scheme (Special) Protected members.
- 2.24. There are circumstances where the actuarial value of the 2007 Scheme (Standard) exceeds that of the 2015 Scheme, and vice versa. The age at which the member retires (early retirement terms are more generous in the 2015 Scheme) has a significant influence on the relative values of the two schemes.
- 2.25. Accordingly, this would imply that almost all 2007 Scheme members have the potential to benefit from being offered the choice of either legacy or reformed scheme benefits in the Remedy Period, so all such members might choose alternative benefits to those that they originally accrued.
- 2.26. In this report, when comparing those likely to benefit from the choice against those not likely to benefit, we have analysed the protected characteristics of the eligible Unprotected and Tapered Protected members and compared these to the protected characteristics of the Protected members.
- 2.27. There are only 46 members in the 2007 Scheme (Standard) who are Protected (10% of the whole Protected member group). As outlined in 2.24 and 2.25 above these members have the potential to benefit from the choice of scheme benefits. However, we have not separated these members out of the Protected member

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<sup>3</sup> Please note that this is a high-level assessment under the assumptions used for the 2016 valuation. 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). It may be that the comparison of benefits would be very different when analysing, for instance, a member retiring early, a member retiring due to ill health, or a member who has reached the maximum amount of pensionable service they can accrue in their legacy scheme. **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.**

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group and added them to the eligible Unprotected and Tapered Protected (ie allocated these members to these members as more likely to benefit from being offered a choice of either legacy or reformed scheme benefits in the Remedy Period) on the grounds of materiality.

- 2.28. The following table sets out the number of members within each group. The subsequent table sets out further information on the legacy scheme those members who are most/least likely to benefit from being offered a choice of benefits in the Remedy Period are/were accruing benefits in:

		Number of members
<b>Eligible Unprotected and Tapered Protected members</b>	Unprotected	1,120
	Tapered Protected	352
	<b>Total</b>	<b>1,472</b>
<b>Eligible Protected members</b>		<b>452</b>
<b>Total Eligible members</b>		<b>1,924</b>

	1992 Scheme	2007 Scheme (Standard)	2007 Scheme (Special)	Total
Eligible Unprotected	442	658	40	1,120
Eligible Tapered Protected	276	48	28	352
<b>Total</b>	<b>698</b> <b>(67%)*</b>	<b>706</b> <b>(94%)</b>	<b>68</b> <b>(50%)</b>	<b>1,472</b> <b>(77%)</b>
Eligible Protected	337 (33%)	46 (6%)	69 (50%)	452 (23%)
	<b>1,035</b>	<b>752</b>	<b>137</b>	<b>1,924</b>

\* This is the percentage of overall total in that particular scheme.

- 2.29. This analysis identifies that:

- 67% of 1992 Scheme members who are eligible for Transitional Protection Remedy, might be expected to benefit from being offered a choice of legacy and reformed scheme benefits in the Remedy Period.
- 50% of 2007 Scheme (Special) members who are eligible for Transitional Protection Remedy, might be expected to benefit from being offered a choice of legacy and reformed scheme benefits in the Remedy Period. This is a much lower proportion than expected in the 1992 Scheme due to a higher proportion of 2007 Scheme (Special) members being Protected members.
- As noted above, almost all 2007 Scheme (Standard) members have the potential to benefit from being offered a choice of legacy and reformed scheme benefits in the Remedy Period (depending on when they choose to retire).

## Assessing Protected Characteristics: Data Used

- 2.30. Data on sex and age (and service, and part-time status) of the membership of the Firefighters' Pension Schemes (Wales) was provided to GAD by the three individual Fire and Rescue Services in Wales for the purposes of the 31 March 2016 actuarial valuation.
- 2.31. For the other protected characteristics under the Equality Act 2010, neither GAD nor Welsh Ministers hold complete or up-to-date data for the pension scheme members. However, often we can use the data for the whole of the Fire and Rescue Service (Wales) workforce for certain protected characteristics. Given the current participation rate in the Firefighters' Pension Schemes (Wales) is high<sup>4</sup>, this represents a reasonable approximation to the membership of the Scheme. However we could not locate any relevant data and would welcome a discussion on how we can access this information.

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<sup>4</sup> As at 31 March 2016, there were 3,317 Firefighters in Wales <https://statswales.gov.wales/Catalogue/Community-Safety-and-Social-Inclusion/Community-Safety/Fire-Service-Operational-Statistics/fireandrescueservicesummaryinformation-by-asset-financialyear>. This compares with 2,774 active members in the Firefighters Pension Scheme (Wales) as at 31 March 2016. Therefore, 84% of active Firefighters were members of the Scheme at 31 March 2016.

## 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

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

- 3.4. The following table sets out the age profile for the following groups in the Firefighters' Pension Schemes (Wales) as at 31 March 2016:
- all active members
  - active members eligible to choose between legacy and reformed scheme benefits in the Remedy Period
  - active members not eligible to choose between legacy and reformed scheme benefits in the Remedy Period

Age as at 31 March 2016	All Active Members	Active Members Eligible for Choice	Active Members NOT Eligible for Choice
16-19	0%		1%
20-24	5%	0%	16%
25-29	11%	6%	21%
30-34	13%	11%	19%
35-39	16%	16%	15%
40-44	16%	17%	12%
45-49	20%	25%	10%
50-54	14%	19%	4%
55-59	4%	5%	1%
60-65	1%	1%	
<b>Total</b>	<b>2,774</b>	<b>1,924</b>	<b>850</b>

- 3.5. This analysis identifies that:
- 52% of the active scheme population is between ages 35 and 49 as at 31 March 2016.
  - 61% of members eligible to choose between legacy and reformed scheme benefits in the Remedy Period are between ages 40 to 54 as at 31 March 2016.
  - 56% of members not eligible to choose between legacy and reformed scheme benefits are between ages 20 to 34 as at 31 March 2016.
  - Members eligible to choose between legacy and reformed scheme benefits are slightly older than the overall active membership. Those not eligible to choose between legacy and reformed scheme benefits are generally younger than the overall active membership.

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- 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:

	1992 Scheme	2007 Scheme (Standard)	2007 Scheme (Special)	Total
<b>20-24</b>		100%		0%
<b>25-29</b>	1%	99%		6%
<b>30-34</b>	17%	80%	3%	11%
<b>35-39</b>	46%	51%	3%	16%
<b>40-44</b>	63%	30%	6%	17%
<b>45-49</b>	72%	21%	7%	25%
<b>50-54</b>	74%	17%	8%	19%
<b>55-59</b>	37%	38%	26%	5%
<b>60-65</b>		24%	76%	1%

The percentages shown under each Scheme represent the percentage of eligible members in that Scheme, within each age group.

- 3.7. This analysis identifies that:

- At ages 40 - 54, the majority of members eligible to be offered a choice of benefits in the Remedy Period, have accrued benefits in the 1992 Scheme.
- At ages 20 – 34, the majority of members eligible to be offered a choice of benefits in the Remedy Period, have accrued benefits in the 2007 Scheme (Standard).
- At a much older age range, at ages 60+, the majority of members eligible to be offered a choice of benefits in the Remedy Period, have accrued benefits in the 2007 Scheme (Special).

- 3.8. This is as expected as it is consistent with the average entry age of members into the Firefighters' Pension Schemes (Wales) and the closure of the 1992 Scheme / opening of the 2007 Scheme (Standard) for new entrants from 2007 (i.e. younger members are more likely to be in the 2007 Scheme (Standard)).

- 3.9. The population of active members above age 60 is very small and is predominantly made up of 2007 Scheme (Special) members.



3.10. 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	Tapered Protected Members	Protected Members	Total
<b>20-24</b>	100%			0%
<b>25-29</b>	100%			6%
<b>30-34</b>	100%			11%
<b>35-39</b>	100%			16%
<b>40-44</b>	100%			17%
<b>45-49</b>	28%	64%	8%	25%
<b>50-54</b>	2%	13%	85%	19%
<b>55-59</b>			100%	5%
<b>60-65</b>			100%	1%

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

3.11. This analysis identifies that:

- Of the eligible members aged 44 or below, all are Unprotected members. Of the members above aged 50 and above, the vast majority are Protected members.
- As expected, Tapered Protected members fall mainly within the 45-49 age group, with some members in the 50-54 age group.
- Protected members make up the majority or all of the older age groups.

3.12. The age profile of the members in each protection status is as expected based on criteria for the protection status (e.g. Protected Members are oldest and closest to retirement, and Tapered Protected members are closer than unprotected members to retirement).

3.13. **Commentary on analysis:**

*As illustrated above, members eligible to choose between legacy and reformed scheme benefits are slightly older than the overall active member population, and older than those members not eligible for Transitional Protection Remedy. The eligible members in the 1992 and 2007 (Standard) Scheme are younger than those eligible for Transitional Protection Remedy in the 2007 Scheme (Special). The Protected members are much older than the Unprotected and Tapered Protected members.*

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

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

3.14. The following table sets out the age profile for the following groups in the Firefighters' Pension Schemes (Wales) as at 31 March 2016:

- all active members
- active members eligible for choice
- eligible members most likely to benefit from choice (Unprotected and Tapered members)
- eligible members least likely to benefit from choice (Protected members)

	Actives Members as at 31 March 2016	Active members Eligible for Choice	Eligible Unprotected and Tapered Protected Members	Eligible Protected Members
<b>20-24</b>	5%	0%	0%	
<b>25-29</b>	11%	6%	8%	
<b>30-34</b>	13%	11%	14%	
<b>35-39</b>	16%	16%	21%	
<b>40-44</b>	16%	17%	23%	
<b>45-49</b>	20%	25%	30%	9%
<b>50-54</b>	14%	19%	4%	67%
<b>55-59</b>	4%	5%		21%
<b>60-65</b>	1%	1%		4%
<b>Total</b>	<b>2,774</b>	<b>1,924</b>	<b>1,472</b>	<b>452</b>

3.15. This analysis identifies that:

- Although we have identified that younger members are less likely to be eligible to make a choice of legacy and reformed scheme benefits, of those that are eligible, younger members are more likely to benefit from being offered this choice.

3.16. This is to be expected given that Unprotected and Tapered Protected members are, by definition, younger than Protected members.

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- 3.17. The following table sets out the age profile of the members eligible to choose between legacy and reformed scheme benefits and most likely to benefit from being offered this choice of benefits (i.e. the Unprotected and Tapered Protected members), split by applicable legacy scheme:

	1992 Scheme	2007 Scheme (Standard)	2007 Scheme (Special)	Total
<b>20-24</b>		100%		0%
<b>25-29</b>	1%	99%		8%
<b>30-34</b>	17%	80%	3%	14%
<b>35-39</b>	46%	51%	3%	21%
<b>40-44</b>	63%	30%	6%	23%
<b>45-49</b>	70%	23%	7%	30%
<b>50-54</b>		100%		4%
<b>55-59</b>				
<b>60-65</b>				
<b>Total</b>	<b>698</b>	<b>706</b>	<b>68</b>	<b>1,472</b>

Due to rounding, numbers may not add to 100%. To be clear, the percentages shown under each Scheme represent the percentage of eligible members in that Scheme, within each age group.

- 3.18. This analysis identifies that:

- At ages 35 - 49 the majority of eligible members who are most likely to benefit from being offered a choice of benefits in the Remedy Period have accrued benefits in the 1992 Scheme.
- At ages 20 - 34, the majority of eligible members who are most likely to benefit from being offered a choice of benefits in the Remedy Period have accrued benefits in the 2007 (Standard) Scheme.
- There are few eligible members who are most likely to benefit from being offered a choice of benefits in the Remedy Period in the 2007 Scheme (Special).
- Only 2007 Scheme (Standard) Unprotected and Tapered Protected members appear in the 50-54 age bracket as 1992 Scheme and 2007 Scheme (Special) members at this age belong to the Protected group and therefore less likely to benefit from being offered the choice of benefits.

- 3.19. **Commentary on analysis:**

*As illustrated above, members expected to be most likely to benefit from being offered a choice of benefits in the Remedy Period are younger than the eligible member population. Furthermore, younger members are more likely to a member of the 2007 Scheme (Standard).*

*However, given that this policy decision aims to ensure all eligible members are treated equitably with those members closest to retirement (i.e. Protected members), this was to be expected.*

### ***Members reaching the service cap in the 1992 scheme before age 55***

#### *Background*

- 3.20. Benefits in the 1992 scheme can be accessed from age 50 provided the member has completed at least 25 years' service but commutation would be restricted if the member had not accrued 30 years of service<sup>5</sup> before age 55. However, benefits in the reformed scheme cannot be accessed before the Minimum Pension Age of 55.
- 3.21. Two members may, therefore, have joined the 1992 scheme on the same date (but at different ages) and achieve the requisite number of years' service at the same time (but at different ages). Where those members have also accrued benefits in a reformed scheme, the older member is more likely to be able to access those (reformed scheme) benefits simultaneously, as they are more likely to have achieved the minimum pension age in the reformed scheme.
- 3.22. Although members can still retire from the 1992 scheme before age 55, to do this they would need to become deferred members in the 2015 Scheme, and delay accessing the 2015 Scheme benefits until age 55, or later. The actuarial reductions applied on early retirement from the 2015 Scheme to deferred members are less favourable than those applied to active members.
- 3.23. In addition, if such members opt to delay receiving their 1992 Scheme benefits beyond the age at which they first become payable, there is no actuarial uplift applied to allow for the later commencement date.
- 3.24. It has therefore been suggested that members who build up a combination of 1992 Scheme and reformed scheme benefits are penalised if they reach 30 years of combined scheme service before age 55.

#### *Relevance for this Analysis*

- 3.25. As previously highlighted, our analysis has concluded that we expect that many members who previously accrued benefits in the 1992 Scheme, will choose to build up legacy scheme benefits until 2022.
- 3.26. Therefore, the 1992 Scheme members impacted by this situation are:

- Protected members who choose to remain in active service beyond reaching 30 years' service (and beyond 2022) and who subsequently wish to retire before reaching age 55.

We expect there to be very few such members.

- Tapered Protected and Unprotected members who reach 30 years of service **after 2022** and before age 55.

Therefore, members who joined the Firefighters' Pension Schemes (Wales) before age 25 and who had less than 24 years' service as at 31 March 2016 may be impacted by this.

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<sup>5</sup> Combined scheme service (i.e. legacy and reformed scheme service) is considered for those who have service in both schemes

- 3.27. However, as this is a feature of overall public sector pension reforms rather than being introduced through the Retrospective Remedy Phase, it is out of the scope of this analysis.
- 3.28. We note, that the policy decision to provide members with a choice of benefits in the Remedy Period, has resulted in an expectation that many more members will reach 30 years of service with a higher proportion of their overall pension relating to their legacy scheme benefits. In turn, this would mean a lower proportion of their pension would be subject to deferred early retirement reductions in the 2015 Scheme noted above. Therefore, this policy decision could be argued to have had a positive impact on this issue.

## 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>6</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

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

- 4.4. The following table sets out the sex profile for the following groups in the Firefighters' Pension Schemes (Wales) as at 31 March 2016:
  - all active members
  - active members eligible to choose between legacy and reformed scheme benefits in the Remedy Period
  - active members not eligible to choose between legacy and reformed scheme benefits in the Remedy Period

	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>	96%	96%	95%
<b>Females</b>	4%	4%	5%
<b>Total</b>	<b>2,774</b>	<b>1,924</b>	<b>850</b>

<sup>6</sup> The Equalities Act 2010 lists 'sex' as a protected characteristic. Data for the Firefighters' Pension Schemes (Wales) 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.

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4.5. This analysis identifies that:

- The vast majority of active members are male, and so too are the majority of active members who are eligible/ineligible to choose between reformed and legacy scheme benefits over the Remedy Period.
- The percentage of the members not eligible to choose between reformed and legacy scheme benefits over the Remedy Period who are female is slightly higher than the percentage of female members eligible to make this choice. This follows because more recent joiners are more likely to be female.

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:

	1992 Scheme	2007 Scheme (Standard)	2007 Scheme (Special)	Total
<b>Males</b>	97%	95%	99%	<b>96%</b>
<b>Females</b>	3%	5%	1%	<b>4%</b>
<b>Total</b>	<b>1,035</b>	<b>752</b>	<b>137</b>	<b>1,924</b>

4.7. This analysis identifies that:

- The percentage of eligible members who are females and accruing/have accrued benefits in the 2007 (Standard) Scheme, is slightly more than the percentage in the overall eligible member population.
- The percentage of eligible members who are females and accruing/have accrued benefits in the 1992 Scheme and 2007 (Special) Scheme, is lower than that of the percentage in the overall eligible member population.

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>	95%	99%	99%	<b>96%</b>
<b>Females</b>	5%	1%	1%	<b>4%</b>
<b>Total</b>	<b>1,120</b>	<b>352</b>	<b>452</b>	<b>1,924</b>

4.9. This analysis identifies that:

- The percentage of members who are males is greatest amongst the Protected and Tapered Protected Members.

4.10. **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 slightly more likely to be male, compared to those not eligible.*

*There is a higher proportion of male members who are eligible to choose between legacy and reformed scheme benefits in the Remedy Period in the 1992 Scheme and 2007 Scheme (Special) than in the overall eligible member population.*

*There is also a higher proportion of male Protected and Tapered Protected members than there is in the Unprotected and overall eligible populations.*

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

4.11. The following table sets out the sex profile for the following groups in the Firefighters' Pension Schemes (Wales) as at 31 March 2016:

- all active members
- active members eligible for choice
- eligible members most likely to benefit from choice (Unprotected and Tapered Protected members)
- eligible members least likely to benefit from choice (Protected members)

	Active Membership as at 31 March 2016	Active members eligible for remedy as at 31 March 2016	Eligible Unprotected and Tapered Protected Members	Eligible Protected Members
<b>Males</b>	96%	96%	96%	99%
<b>Females</b>	4%	4%	4%	1%
<b>Total</b>	<b>2,774</b>	<b>1,924</b>	<b>1,472</b>	<b>452</b>

4.12. This analysis identifies that:

- Those members who are most likely to benefit from being offered a choice of benefits in the Remedy Period, is consistent with the general eligible member population.
- Those members who are least likely to benefit from being offered a choice of benefits in the Remedy Period, are less likely to be female than the general eligible member population.

4.13. The following table sets out the percentage of male and female members who are eligible and estimated most likely to benefit from being offered a choice of benefits in the Remedy Period (i.e. Eligible Unprotected and Tapered Protected Members), and have accrued benefits in each of the legacy schemes:

	1992 Scheme	2007 Scheme (Standard)	2007 Scheme (Special)	Total
<b>Males</b>	96%	95%	98%	<b>96%</b>
<b>Females</b>	4%	5%	2%	<b>4%</b>
<b>Total</b>	<b>698</b>	<b>706</b>	<b>68</b>	<b>1,472</b>



4.14. This analysis identifies that:

- The percentage of eligible members who are most likely to benefit from being offered a choice and who are females with benefits in the 1992 Scheme, is consistent with that of the percentage in the overall eligible member
- The percentage of eligible members who are most likely to benefit from being offered a choice and are females with benefits in the 2007 (Standard) Scheme, is more than the percentage in the overall eligible member population.
- The percentage of eligible members who are most likely to benefit from being offered a choice and who are females with benefits in the 2007 (Special) Scheme, is lower than that of the percentage in the overall eligible member.

4.15. **Commentary on analysis:**

*Based on the analysis above, eligible members who are more likely to benefit from being offered a choice of legacy and reformed scheme benefits over the Remedy Period are no more likely to be female, compared to the overall eligible scheme population.*

*The Protected members, who are less likely to benefit from being offered a choice, are more likely to be male, compared to the overall eligible scheme population.*

*The policy decision to provide all members with a choice aims to ensure that all members are treated equitably over the Remedy Period, and remove any previous indirect sex discrimination (against females who are less likely to be a Protected member).*

## Analysis: Sex and Age

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

4.16. We have also set out below the percentage of males 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
20-24	97%	100%	97%
25-29	92%	92%	93%
30-34	94%	95%	94%
35-39	94%	93%	95%
40-44	94%	95%	91%
45-49	99%	99%	100%
50-54	99%	99%	100%
55-59	98%	98%	100%
60-65	100%	100%	100%

The percentages shown under each protection status column represent the percentage of male members within each age group and eligibility status.

4.17. This analysis identifies that:

- The percentage of the active member population that is male is very high, and generally increasing with ages. Accordingly, the overall percentage of members eligible to make a choice of benefits in the Remedy Period, and who are male, is generally consistent or slightly above with the active male population at each age.
- The percentage of members who are not eligible to make a choice of benefits in the Remedy period and are all males at older ages.

4.18. **Commentary on analysis:**

*The above analysis supports the previous comments that members who are eligible to choose between legacy and reformed scheme benefits in the Remedy Period are slightly more likely to be male, since we have seen that they are more likely to be older.*

**Members benefitting from choice of benefits in the Remedy Period**

4.19. We have also set out below the percentage of males at each age for the following groups in the Firefighters' Pension Schemes (Wales) as at 31 March 2016:

- all active members
- active members eligible for choice
- eligible members most likely to benefit from choice (Unprotected and Tapered Protected members)
- eligible members least likely to benefit from choice (Protected members)

Age as at 31 March 2016	Active Membership as at 31 March 2016	Eligible Members as at 31 March 2016	Eligible Unprotected and Tapered Protected Members	Eligible Protected Members
<b>20-24</b>	97%	100%	100%	
<b>25-29</b>	92%	92%	92%	
<b>30-34</b>	94%	95%	95%	
<b>35-39</b>	94%	93%	93%	
<b>40-44</b>	94%	95%	95%	
<b>45-49</b>	99%	99%	99%	97%
<b>50-54</b>	99%	99%	96%	99%
<b>55-59</b>	98%	98%		98%
<b>60-65</b>	100%	100%		100%

The percentages shown under each protection status column represent the percentage of male members within each age group and protection status.

4.20. This analysis identifies that:

- The percentage of members who are more likely to benefit from being offered a choice of benefits in the Remedy Period, and who are male, is broadly consistent with the overall scheme population and the eligible member population.
- Similarly, the percentage of Protected members (who are less likely to benefit from being offered a choice of benefits in the Remedy Period) who are male is broadly consistent with the overall scheme population and the eligible member population at older ages.

4.21. **Commentary on analysis:**

*The above analysis supports the previous comments that eligible members who are more likely to benefit from being offered a choice have a generally similar likelihood to be female than the overall scheme population and the eligible member population.*

## Analysis: Sex and Employment Status

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

- 4.22. In Wales, women are more likely to work part-time than men.<sup>7</sup> It is therefore worth considering the equalities impact of those who work part-time within this protected characteristic.
- 4.23. We understand from the part-time indicator provided in the valuation data highlights members who were **currently** working part-time as at 31 March 2016, rather than identifying whether the member has any part-time service. This data forms the basis of the analysis below. It is possible that an analysis of members who have ever had part-time service may differ.
- 4.24. 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
<b>Full-time</b>	51%	63%	25%
<b>Part-time</b>	49%	37%	75%
<b>Total</b>	<b>2,774</b>	<b>1,924</b>	<b>850</b>

- 4.25. Of the 713 members as at 31 March 2016 who are eligible to choose benefits in the Remedy Period and who work part-time:
- 25 are female (4%)
  - no members are accruing benefits in the 1992 scheme.
- 4.26. This analysis identifies that:
- The percentage of those members eligible to choose benefits in the Remedy Period, and working work part-time, is less than 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 significantly more than 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 (4%) is consistent with the percentage of overall active member population that is female and eligible member population that is female (4%).

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<sup>7</sup> [https://www.cardiff.ac.uk/\\_data/assets/pdf\\_file/0014/104603/Working-Patterns-In-Wales.pdf](https://www.cardiff.ac.uk/_data/assets/pdf_file/0014/104603/Working-Patterns-In-Wales.pdf)

4.27. **Commentary on analysis:**

*Based on the above analysis, members eligible to choose benefits in the Remedy Period are less likely to work part-time than the active membership.*

*Members who are not eligible to choose benefits, are more likely to work part-time than the active membership.*

**Members benefitting from choice of benefits in the Remedy Period**

4.28. We have also set out below the percentage of part time workers for the following groups in the Firefighters' Pension Schemes (Wales) as at 31 March 2016:

- all active members
- active members eligible for choice
- eligible members most likely to benefit from choice (Unprotected and Tapered Protected members)
- eligible members least likely to benefit from choice (Protected members)

	Active membership as at 31 March 2016	Eligible members as at 31 March 2016	Eligible Unprotected and Tapered Protected Members	Eligible Protected Members
<b>Full-time</b>	51%	63%	59%	76%
<b>Part-time</b>	49%	37%	41%	24%
<b>Total</b>	<b>2,774</b>	<b>1,924</b>	<b>1,472</b>	<b>452</b>

4.29. Of the 604 members as at 31 March 2016 who are eligible to choose benefits in the Remedy Period and are most likely to benefit from being offered this choice, and work part-time:

- 23 are female (4%)
- no members are accruing benefits in the 1992 scheme.

4.30. This analysis identifies that:

- The percentage of those members eligible to choose benefits in the Remedy Period and expected to be most likely to benefit from being offered this choice, who work part-time, is less than the overall active member population who work part-time.
- Of those eligible members who are expected to be most likely to benefit from being offered this choice and who work part-time, the percentage that are female (4%) is consistent with the percentage of overall active member population that is female and eligible member population that is female (4%).
- The percentage of the Protected members eligible to choose benefits in the Remedy Period who work part-time, is lower than the overall member population that is eligible to make this choice and who work part-time.

4.31. **Commentary on analysis:**

*Based on the above analysis, eligible members expected to be less likely to benefit from being offered a choice of benefit in the Remedy Period, are significantly less likely to be part-time than the overall eligible population.*

*Eligible 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.*

## 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.**

- 5.1. The proposed changes will apply to all members regardless of these protected characteristics.
- 5.2. Neither GAD nor Welsh Ministers hold complete or up-to-date pension scheme member data on the protected characteristics listed in 1.4 which are not covered in the preceding sections of this report.
- 5.3. The available workforce data for the Fire & Rescue Services (Wales) as a whole can be considered since it is thought to give an adequate representation of the scheme membership (due to high pension scheme participation).
- 5.4. Unfortunately, we were unable to locate any relevant workforce data on these protected characteristics in relation to the Fire and Rescue Services (Wales) workforce.

# Appendix A: Data and Assumptions

## Data

- The analysis shown in this report is based on the three individual Fire and Rescue Services in Wales to GAD for the 2016 actuarial valuation, as detailed in our report ["Firefighters Pension Schemes \(Wales\) - Actuarial valuations as at 31 March 2016: Report on membership data"](#) of 28 February 2019.
- In preparing this report, GAD has relied on data and other information supplied by the three individual Fire and Rescue Services in Wales described in the report detailed above. 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.
- Please note that a member has been classed as 'part-time' if the part-time indicator provided either directly by the three individual Fire and Rescue Services in Wales, for the purposes of the 31 March 2016 actuarial valuation, was recorded as "Y". All other members (apart from the Retained 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 ["Firefighters Pension Schemes \(Wales\) - Actuarial valuation as at 31 March 2016: Advice on assumptions"](#) of 28 February 2019.



## Appendix B: Compliance and limitations

- This report has been prepared for the use of Welsh Ministers 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 Welsh Ministers, 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 for any failure to act, either in whole or in part, on the basis of this report.
- 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.