



Government  
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# NHS Pension Schemes (Scotland)

Guidance for applying McCloud remedy to benefits  
relating to member voluntary contributions (MVCs)

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## 1. Introduction

1.1 This guidance is addressed to the Scottish Public Pensions Agency (SPPA) as scheme manager of the NHS Pension Schemes (Scotland) ('the Schemes'). The Schemes include:

- "the legacy scheme" which has two sections: the 1995 section (for new entrants who first joined the Schemes up to 31 March 2008, with a Normal Pension Age (NPA) of 60) and the 2008 section (for new entrants who first entered the Schemes between 1 April 2008 and 31 March 2015, with an NPA of 65).
- "the 2015 scheme" which is the 2015 career average scheme (for existing members of the Schemes who transitioned from the legacy scheme to the reformed scheme from 1 April 2015 under the transitional protection arrangements or joined the Schemes for the first time after that date). Normal Pension Age for this scheme is the later of 65 or State Pension Age (SPA).

This guidance has been prepared for the use of the scheme administrator for the purposes of adjusting remediable benefits arising from member voluntary contributions (MVCs) paid to the Schemes. Remediable MVCs are those in relation to members who are eligible for the public service pensions remedy ("remedy members") where the arrangement for the MVC started in the remedy period, 1 April 2015 to 31 March 2022. Member voluntary contributions may have been paid towards:

- Additional pension (AP)
- Election to buy out the standard reduction (ERRBO)

1.2 The contributions paid towards these benefits are collectively referred to in this guidance as MVCs.

1.3 Depending on the type of MVC, the Remediable Service regulations:

- may automatically vary the member's 2015 scheme remediable MVC rights to the equivalent AP in the relevant legacy scheme;
- may enable the member to opt for it to be varied; or
- may enable the member to receive compensation.

1.4 This guidance sets out the adjustment calculations required where the value of the rights in the alternative scheme needs to be determined.

1.5 Where compensation of the MVCs is to be paid by the Schemes, this should amount to the total of all relevant remediable voluntary contributions paid by the member, less an amount in respect of the value of tax relief in accordance with the relevant paragraphs of Direction 5 of the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022<sup>1</sup>, with interest applied in line with relevant paragraphs of Directions 14 and 15 and relevant HMRC guidance.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1124480/The\\_Public\\_Service\\_Pensions\\_Exercise\\_of\\_Powers\\_Compensation\\_and\\_Information\\_Directions\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1124480/The_Public_Service_Pensions_Exercise_of_Powers_Compensation_and_Information_Directions_2022.pdf)

- 1.6 The effective dates of the adjustment calculations are to be in line with that set out in this guidance. Any adjusted benefit should be adjusted thereafter in line with the relevant scheme's rules, for example to reflect early or late retirement factors at the retirement date or to allow for revaluation.
- 1.7 Regulation 15 of the SSI 2023/246 The National Health Service Pension Schemes (Remediable Service) (Scotland) Regulations 2023 sets out the additional pension limits from the purchase of additional pension. Therefore, this guidance does not consider limits on additional pension.
- 1.8 Since AP cannot be purchased after reaching NPA, in line with current regulations, the policy decision taken by SPPA is that:
- Where the member elects for legacy scheme benefits and has paid additional pension contributions past Normal Pension Age, the member will be provided with a refund of contributions.
  - For members electing for 2015 Scheme benefits, the member will not be offered a refund of contributions for contributions paid after the legacy schemes' Normal Pension Age.
- 1.9 This note has been prepared in accordance with the following Regulations of SSI 2023/246 The National Health Service Pension Schemes (Remediable Service) (Scotland) Regulations 2023– referred to in this note as the Remediable Service Regulations):

Administrative procedure	Regulation(s)	Relevant section of this document
<b>Calculating and/or varying remediable MVCs in 2015 scheme to AP in the legacy scheme</b>		
<b>Early retirement buy-out contributions (ERRBO)</b>	18(7),18(9) 22(3)(c)	4
<b>Additional pension</b>	15(6), 21(3)	2
<b>Varying remediable AP in legacy scheme to AP in 2015 scheme on election</b>	17(3) 19(2), 20(2),	3
<b>Allowing for remediable additional pension contributions in considering additional pension limits in the 2015 scheme</b>	15(6)	2-5

- 1.10 The guidance provided in this document has been prepared in light of our advice to SPPA in the technical bulletin dated 27 September 2023, the email from Tim Weir dated 20 December 2023 in relation to the alternative approaches to the calculation of additional pension, and confirmation from SPPA on 23 April 2024 regarding the preferred approach.

- 1.11 Where reference in this guidance is made to calculating the benefits in relation to the remediable MVCs, unless specified otherwise, calculations should be undertaken using the related guidance and factors effective at the original date of calculation. A summary of the historical guidance and factors is set out below.

## Additional pension

GAD note	Guidance issued on	Effective from
<b><u>Legacy and 2015 schemes</u></b>		
<b>National Health Service Superannuation Scheme for Scotland Purchase of Additional Pension Factors and guidance</b>	27 March 2015	1 April 2015
<b>National Health Service Pension Scheme for Scotland Purchase of Additional Pension Factors and guidance</b>	27 September 2019	29 October 2018
<b>NHS Pension Scheme (Scotland) 2015 Purchase of Additional Pension</b>	27 March 2015	1 April 2015
<b>NHS Pension Scheme (Scotland) 2015 Purchase of Additional Pension</b>	27 September 2019	29 October 2018

## Early retirement reduction buy out (ERRBO)

GAD note	Guidance issued on	Effective from
<b><u>2015 scheme</u></b>		
<b>NHS Pension Scheme (Scotland) 2015 Early retirement reduction buy-out (ERRBO) Factors and guidance</b>	27 March 2015	1 April 2015
<b>NHS Pension Scheme (Scotland) 2015 Early retirement reduction buy-out (ERRBO) Factors and guidance</b>	27 September 2019	29 October 2018

## Exclusions

- 1.12 This guidance only applies to members of the Schemes who have remediable MVCs that fall under the scope of the remedy, and any subsequent reference to member is limited to this group. To be in scope of the remedy, a member must have remediable service as defined by Section 1 of the Public Services Pensions and Judicial Offices Act 2022. SPPA has also confirmed that members who retrospectively pay additional contributions to purchase additional pension in the legacy scheme will also be able to choose reconstruction of their legacy AP.
- 1.13 Nothing in this guidance should be read as overriding the regulations which govern the Schemes.
- 1.14 Furthermore, although a member may fall under the scope of the remedy, the Remediable Service Regulations may exclude specific MVCs from the remedy. An example of such an exclusion is legacy scheme MVCs where the contract began before 1 April 2015.

## Implementation

- 1.15 This guidance should be used with effect from 1 October 2023.
- 1.16 This guidance has been written for the scheme manager and scheme administrator, and assumes knowledge of general pension terminology and familiarity with retirement calculations for the Schemes. Any questions concerning the application of the guidance should, in the first instance, be referred to the scheme manager.
- 1.17 In line with best practice and in order to ensure that factors are being used as intended and the instructions are fit for purpose, we suggest that some example calculations are sent to GAD for review.

## Compliance and limitations

- 1.18 This guidance has been prepared for the use of SPPA and the scheme administrator for the purpose of applying the McCloud remedy to remediable MVCs. This guidance may be published on SPPA's website but must not otherwise be reproduced, distributed or communicated in whole or in part to any other person without GAD's prior written permission.
- 1.19 Other than SPPA, no person or third party is entitled to place any reliance on the contents of this guidance, 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 guidance, whether or not GAD has agreed to the disclosure of its advice to the third party.
- 1.20 If any cases arise which do not fall under the standard approach set out in this guidance, they should be referred to the scheme manager in the first instance.
- 1.21 This guidance 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.

## 2. Calculation of equivalent legacy scheme AP for 2015 scheme AP

- 2.1 Remediable MVCs used to purchase 2015 scheme AP must be converted to legacy scheme AP as part of the remedy, though members will have a choice about the treatment of additional pension contributions paid from 1 April 2022. The following section sets out the calculation of the equivalent legacy scheme AP to be offered on account of remediable MVCs used to purchase 2015 scheme AP.

### Method

- 2.2 SPPA has determined that the equivalent legacy scheme AP should be calculated by applying a ratio of appropriate factors to the remediable 2015 scheme AP, as shown below. The conversion of 2015 scheme additional pension to legacy scheme additional pension only applies to additional pension contributions paid over the remedy period.

#### Calculation of equivalent legacy scheme AP

$$\text{Legacy scheme AP} = \text{2015 scheme AP} \times \frac{\text{Cost of £250 of AP in 2015 scheme}}{\text{Cost of £250 of AP in legacy scheme}}$$

- 2.3 The factors used to calculate the legacy scheme AP should be factors which were effective at the contract election date, using the same variables as were originally used in calculating the 2015 scheme AP contributions, and should be based on the member's age at the contract election date, contract length if applicable and dependant provision. This means that the calculation does not allow for any updated factors introduced after the contract election date, which is an approximation to simplify the calculation.
- 2.4 Members of the scheme will make a choice on whether they wish to accrue legacy or reformed scheme AP post April 2022. Therefore, the calculation of equivalent legacy scheme AP is based only on the 2015 scheme AP accrued during the remedy period only.
- 2.5 Where members have AP that continues beyond the remedy period, the remedial action relates only to the remedy period. Therefore, it is necessary to determine the AP that relates to the remedy period. This means that the 2015 scheme AP in the above formula should reflect the AP secured over the remedy period only and the equivalent legacy scheme AP in the formula will therefore reflect the corresponding legacy AP over the remedy period. The method for AP calculations where contributions cease or lapse should be used to determine the portion of the AP purchase that relates to the remedy period.
- 2.6 Deferred choice members making an election about additional pension contributions that have been paid from 1 April 2022 have two main choices. They can choose to retain the legacy conversion in respect of contributions after 1 April 2022. Alternatively, members may elect to cancel the legacy conversion in respect of AP contributions paid from 1 April 2022 and have such contributions treated as 2015 scheme AP contributions. Where the member retains the contributions in the 2015 scheme, the member is not entitled to a refund of contributions. If the member elects for legacy scheme benefits for AP contributions paid after 1 April 2022, AP contributions paid after the member's Normal Pension Age will be refunded to the member.

- 2.7 For immediate choice members who retired before 1 October 2023, if the member elects for legacy benefits for their AP contributions, the member will be eligible to receive compensation in respect of contributions paid over the Normal Pension Age of the relevant legacy scheme.
- 2.8 Records of the member's original 2015 scheme AP should be retained, to facilitate any future 2015 scheme election for contributions paid over the remedy period.

## Specific considerations

- 2.9 AP limits do apply in accordance with Regulation 15 of the Remediable Service Regulations.
- 2.10 The aim of remedy is to put members in the position they would have been had the discrimination not occurred. However, where an AP contract of the same length is not available, it is necessary to consider what is intended by remedying the discrimination. Consider an example member commencing 2015 Scheme AP contract from April 2015 at age 49 for a period of 15 years. On remedy, the member is rolled back into the 1995 Section. The member has a legacy Normal Pension Age of 60, so the maximum AP period is limited to 10 years. The member therefore cannot obtain an AP arrangement of the same length. The agreed approach for these cases is to offer such a member the legacy AP based on the maximum period they could have purchased in legacy AP.

## Information required

- 2.11 This calculation will require the following information:
- Election date
  - Relevant legacy scheme
  - Member's age (last birthday) at contract election date
  - Member's Normal Pension Age in the relevant legacy scheme (although see 1.8, 2.6 and 2.7) and in the 2015 scheme
  - Factors to determine the cost of £250 of AP in the 2015 scheme and legacy scheme at the contract election date, reflecting the chosen form of payment (e.g. lump sum or regular contributions) and benefit (e.g. personal or personal and dependant) and the period of contributions as at the contract election date



### 3. Calculation of equivalent 2015 scheme AP for legacy scheme AP

- 3.1 There are two approaches for determining the 2015 scheme AP on election, depending on whether the remediable legacy scheme AP was established following a rollback of 2015 scheme AP or not.

#### 3A: AP in legacy scheme was a result of rollback of 2015 scheme AP

##### Method

- 3.2 Where the remediable legacy scheme AP arose as a result of a rollback of remediable 2015 scheme AP, the 2015 scheme AP on election should be the originally purchased 2015 scheme AP. The conversion of the legacy scheme additional pension to 2015 scheme additional pension only applies to additional pension contributions paid during the remedy period.

##### Calculation where legacy scheme AP arose from a rollback of 2015 scheme AP

**2015 scheme AP = Originally purchased 2015 scheme AP**

##### Specific considerations

- 3.3 This approach should not be taken where compensation is paid or has been agreed to be paid to the member in respect of the contributions the member had paid for the 2015 scheme remediable MVC.

#### 3B: Original AP was purchased in the legacy scheme

##### Method

- 3.4 This section applies where the remediable legacy scheme AP was originally purchased as AP in the legacy scheme. This calculation should be repeated if a member has multiple MVC contracts.

SPPA has determined that the equivalent legacy scheme AP should be calculated by applying a ratio of appropriate factors to the remediable legacy scheme AP, as shown below. The conversion of legacy scheme additional pension to 2015 scheme additional pension only applies to additional pension contributions paid over the remedy period.

**2015 scheme AP = Legacy scheme AP ×  $\frac{\text{Cost of £250 of AP in legacy scheme}}{\text{Cost of £250 of AP in 2015 scheme}}$**

- 3.5 The factors to calculate the 2015 scheme AP should be the factors which were effective at the contract election date, using the same variables as were originally used in calculating the 2015 scheme AP contributions, and should be based on the member's

age at the contract election date, the contract length if applicable and dependant provision. This means that the calculation does not allow for any updated factors introduced after the contract election date, which is an approximation to simplify the calculation

Where the relevant legacy scheme has a normal pension age of 60, the normal pension age applied should be age 60, and where the relevant legacy scheme has a normal pension age of 65, the normal pension age applied should be age 65.

## Specific considerations

- 3.6 This calculation only applies where the original MVC was in respect of an AP in the legacy scheme. Where the original MVC was in respect of an AP in the 2015 scheme that was rolled back to the legacy scheme, this is covered in the section 3A: AP in legacy scheme was a result of rollback of 2015 scheme AP above.
- 3.7 The conversion of legacy scheme AP to 2015 scheme AP only applies if the member has not already claimed their AP benefits in the legacy scheme.
- 3.8 The conversion of legacy scheme additional pension scheme benefits only applies to additional pension contributions paid in the remedy period. Where members have AP that continues beyond the remedy period, the remedial action relates only to the remedy period. Therefore, it is necessary to determine the AP that relates to the remedy period. This means that the legacy AP in the above formula should reflect the AP secured over the remedy period only and the equivalent 2015 scheme AP in the formula will therefore reflect the corresponding 2015 scheme AP over the remedy period. The method for AP calculations where contributions cease or lapse should be used to determine the portion of the AP purchase that relates to the remedy period.
- 3.9 The scheme administrator will need to consider AP limits, as appropriate.

## Information required for 3A and 3B

- 3.10 This calculation will require the following information:
- Relevant legacy scheme
  - Member's age (last birthday) at the contract election date
  - Member's Normal Pension Age in the relevant legacy scheme (see 1.8) and in the 2015 scheme
- Factors to determine the cost of £250 of AP in the 2015 scheme and legacy scheme at the contract election date, reflecting the chosen form of payment (e.g. lump sum or regular contributions) and benefit (e.g. personal or personal and dependant) and the period of contributions as at the contract election date

## 4. Calculation of equivalent legacy scheme AP for 2015 scheme MVCs for Early Retirement Reduction Buy-Out (ERRBO)

- 4.1 The following section sets out the calculation of the equivalent legacy scheme AP to be offered on account of remediable MVCs originally paid in respect of ERRBO contributions in the 2015 scheme.
- 4.2 The calculation of equivalent legacy scheme AP to be offered on account of remediable 2015 scheme AP is set out in section 2.

### Method

- 4.3 The equivalent legacy scheme AP should be calculated in line with the paragraphs set out below. This calculation should be repeated for each ERRBO contract, if members have multiple contracts.

#### Calculation of equivalent legacy scheme AP

$$\text{Legacy scheme AP} = \text{£250} \times \frac{\text{Total contributions actually paid to purchase 2015 ERRBO}}{\text{Total cost of £250 of legacy AP}}$$

- 4.4 The payment period for the cost of legacy AP in the above formula should be the number of years that the member paid ERRBO contributions during the remedy period, rounded down to the complete year. The total contributions actually paid to purchase 2015 scheme ERRBO should be those paid over the remedy period. The 'Total cost of £250 of legacy AP' in the above calculation should be the sum of the monthly AP contribution factors from the legacy scheme for the period that the ERRBO contributions were paid. Members should be given the choice of personal only or personal and dependants AP benefits. The AP factors should be those which were effective throughout the period that the ERRBO contributions were paid based on the member's age at the commencement date of the remediable MVCs originally paid in respect of ERRBO contributions.
- 4.5 Conversion of ERRBO into equivalent additional pension benefits only applies to contributions paid during the period the member is eligible for remedy.
- 4.6 Where the relevant legacy scheme has a normal pension age of 60, the normal pension age applied should be age 60, and where the relevant legacy scheme has a normal pension age of 65, the normal pension age applied should be age 65.
- 4.7 In the legacy scheme different tables apply depending on the original election date of the contract for indexation purposes. Please refer to the factor tables for elections made after 31 March 2011 (Remediable MVC contracts must have been started after this date). The original election date should also be used when determining the appropriate factor sets to use. The legacy scheme guidance and factor sets are detailed in paragraph 1.11.
- 4.8 The calculation should be repeated for every scheme year during the remedy period in which remediable MVCs were paid and for each scheme year the factor set applicable for that year should be used (but the factors should reflect the members age at the start of each relevant scheme year and a payment term of 1 year). Each contract should be

calculated separately. The effective date for each year's equivalent legacy scheme AP will then be the start of the scheme year in question. The converted AP in each scheme year should be adjusted thereafter in line with the Scheme's rules for AP, for example to allow for revaluation.

- 4.9 It may be possible, and administratively simpler, to revalue the converted AP in each scheme year for each contract to a single point (e.g. 1 April 2022) when communicating to members and recording on an administration system. However, this is for SPPA to consider their preferred approach.
- 4.10 Records of the member's original reformed scheme MVCs for ERRBO should be retained, to facilitate any future reform scheme election.

## Specific considerations

- 4.11 Where an immediate choice election is made and an actuarial increase or reduction applies, the member has a choice of a refund or benefits of equivalent value to the ERRBO contributions. If a refund is chosen, the member will receive a refund in respect of the member ERRBO contributions but benefits of equivalent value would apply to any employer ERRBO contributions. Where an immediate choice election has not been made, the member or designated person has the choice of a refund or benefits of equivalent value to the ERRBO contributions.
- 4.12 Where compensation is paid or has been agreed to be paid to the member in respect of the contributions the member had paid for the 2015 scheme remediable MVC, those contributions should be excluded from the calculations.
- 4.13 Consideration of the potential impact on member's Pension Input Amounts for assessment against the Annual Allowance is required in each tax year where ERRBO election contributions are converted to AP. Annual allowance considerations are not covered in this note.
- 4.14 The scheme administrator will need to consider additional pension limits, as appropriate.

## Information required

- 4.15 This calculation will require the following information:
- Relevant legacy scheme
  - Member's age (last birthday) at start of each relevant scheme year
  - Member's Normal Pension Age in the relevant legacy scheme (see 1.8 and 4.6)
  - Total remediable MVCs paid by the member in respect of contract for each relevant scheme year
  - Factors to determine the cost of £250 of AP in the legacy scheme for each relevant scheme year

## 5. Calculation of equivalent 2015 scheme ERRBO for legacy scheme AP (which arose as a choice to forego compensation)

### Method

- 5.1 All members who paid ERRBO contributions are entitled to be paid a compensation payment equal to the ERRBO contributions the member paid during the remedy period. The member may choose to forego compensation and instead become entitled to a benefit from the legacy scheme of an equivalent value.
- 5.2 On deferred choice, if the member subsequently elects for 2015 scheme benefits, the 2015 scheme ERRBO should be the originally purchased 2015 scheme ERRBO.

**Calculation where legacy scheme AP arose from a rollback of 2015 scheme ERRBO**

**2015 scheme ERRBO = *Originally purchased 2015 scheme ERRBO***

### Specific considerations

- 5.3 This approach should not be taken where compensation is paid or has been agreed to be paid to the member in respect of the contributions the member had paid for the 2015 scheme ERRBO contributions.