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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Public Service Pensions Act 2013 (c. 25) (“PSPA 2013”) makes provision, and confers powers to make further provision (in the form of “scheme regulations” as defined in section 1 of PSPA 2013), about the establishment of public service pension schemes. There are two National Health Service Pension Schemes: a scheme divided into two Sections known as the 1995 Section, established by the National Health Service Superannuation Scheme (Scotland) Regulations 2011 (SSI 2011/117) (“the 2011 Regulations”), and the 2008 Section, established by the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013 (SSI 2013/174) (“the 2013 Regulations”) (together “the legacy scheme”), and the scheme established by the National Health Service Pension Scheme (Scotland) Regulations 2015 (SSI 2015/94) (“the 2015 scheme”). The National Health Pension Scheme (Scotland) Amendment Regulations 2022 (SSI 2022/100) (“the 2015 Transitional Regulations”) provided for the treatment and payment of legacy scheme benefits to certain members of the 2015 scheme. Transitional protection of this kind provided when reformed public service pensions were introduced in 2015 were found to discriminate against public service pension scheme members on the basis of age.

The Public Service Pensions and Judicial Offices Act 2022 (c. 7) (“PSPJOA 2022”), at chapter 1, makes provision and confers powers for scheme regulations under PSPA 2013 to make further provision in relation to specified service (“remediable service” as defined in section 1 of PSPJOA 2022) of members who benefited from transitional protection and of members who did not so benefit only by reason of their age. Section 27 of PSPJOA 2022 requires certain powers to make scheme regulations to be exercised in accordance with Treasury directions.

These Regulations are scheme regulations under PSPA 2013 and in accordance with PSPJOA 2022 in relation to a member’s remediable service in the legacy scheme and the 2015 scheme. They are, to the extent required by section 27 of PSPJOA 2022, made in accordance with Treasury directions under that section (in the form of the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022 (the “2022 Directions”). These Regulations have retrospective effect, which is authorised by section 3(3)(b) of PSPA 2013.

Part 2 makes provision in relation to medical practitioners and non-GP providers and the provision of remediable service statements. Regulations 3 to 5 provide for the refund or recovery of any overpayment or underpayment of contributions in relation to such members. Regulations 3 and 5 also provide in relation to such members who are active or deferred members the option of waiving a return of contributions until their election to receive 2015 scheme benefits (“deferred choice election”) has been made under regulation 12. Regulation 6 requires the scheme manager to provide a remediable service statement to each remedy member or designated person (see explanation of regulation 7) who has not made an election to receive 2015 scheme benefits.

Part 3 makes provision about the principal decisions that may be made in relation to a member’s remediable service. Regulation 7 provides for the person, referred to as the designated person, who may make an election in relation to the remediable service of a deceased or incapable member. Regulation 8 provides for when and how an election may be made for service in respect of which a member opted out of the legacy scheme or the 2015 scheme during the remedy period to be reinstated and treated as remediable service. Regulation 9 provides for when and how an election may be made, or deemed to have been made, for service in respect of a pensioner or a deceased or incapable member to be treated as pensionable service under the the 2015 scheme and regulation 10 provides for the benefits that must be corrected after an immediate choice election has been made. Regulation

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11 provides for the protection of the pension of a child beneficiary not living in the same household as an adult survivor of a remedy member. Regulation 12 provides for when and how an election may be made, or deemed to have been made, for service in respect of an active or deferred remedy member or a deceased or incapable member to be treated as pensionable service under the the 2015 scheme (a “deferred choice election”) and regulation 13 provides for the adjustment of a resulting underpayment or overpayment of benefits.

Part 4 makes provision about additional pension and early retirement reduction buy-out contributions. Regulation 15 makes provision for the treatment of additional pension payable in respect of a remedy member who was not fully protected when their pensionable service was moved to the 2015 scheme and whose pension account was credited with additional pension or who paid contributions in respect of an additional pension election. Regulation 16 makes provision in respect of contributions so treated and paid after 31 March 2022. Regulation 17 provides for the treatment of a corresponding option exercised in accordance with regulation 15 on the making of a deferred choice election. Regulation 18 makes provision for the treatment of buy-out contributions in the remedy period where the member was an active or deferred member of the 2015 scheme on 30 September 2023. Regulation 19 makes provision for the treatment of such a member’s legacy scheme additional contributions where a deferred choice election is made, or treated as having been made, in respect of their remediable service. Regulation 20 makes provision for the treatment of additional pension in respect of pensioners and deceased members of the legacy scheme. Regulation 21 makes provision for the treatment of additional pension payable in respect of a member who was an active or deferred member of the 2015 scheme, or deceased, on 30 September 2023. Regulation 22 makes provision for the treatment of buy-out contributions in the remedy period where the member was a pensioner or deceased member of the 2015 scheme on 30 September 2023. Regulation 23 provides for when and how a remedy member may enter into an arrangement to pay voluntary contributions for additional pension under the legacy scheme. Regulation 24 provides for when and how a remedy member may revoke their cancellation of their arrangement to pay for additional years or of their option to purchase additional pension.

Part 5 makes provision about cases in which the pension rights secured by virtue of a member’s remediable service have been shared under a pension sharing order or are at issue in proceedings relating to the member’s legal dissolution. Regulations in this Part make provision about a member’s pension debit or a former spouse or civil partner’s pension credit where they are subject to a pension debit or a pension credit under section 29 of the Welfare Reform and Pensions Act 1999 (c. 30) on or after 1 April 2015, to reflect a retrospective change in the entitlement relating to the member’s remediable service shareable rights. They provide, in particular, for the calculation or, where appropriate, recalculation of a valuation of pension benefits under regulation 3 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048), in relation to the member’s remediable service shareable rights.

Part 6 makes provision about pension rights transferred into and out of the National Health Pension Schemes during the period of a member’s remediable service. Regulations 37 to 48 make provision about transfers in and out of the legacy scheme or the 2015 scheme, including (in regulation 42) transfers between UK Health Service schemes, on a cash equivalent basis. These regulations make provision about the calculation (and, where appropriate, the recalculation) of the value of a transfer payment (in relation to the 1995 Section) or of a transfer value payment (in relation to the 2008 Section) and the making and accepting of payments in relation to the transfer value of rights secured by virtue of remediable service. Regulations 49 to 52 make similar provision in relation to transfers in and out of the legacy scheme or the 2015 scheme on the terms of the Public Sector Transfer Club. Regulation 43 requires the scheme manager to provide a remediable service statement in accordance with specified provisions in direction 6 of the 2022 Directions to a person who has transferred out rights in respect of remediable service. Regulation 54 provides that the transfer of any rights secured by virtue of remediable service into the 2015 scheme are to be treated as having been transferred into the relevant Section of the legacy scheme. Regulation 55 provides for the variation of the value of transferred in remediable rights so that they are of an equivalent value to the value the member would

have secured if they had originally transferred to that Section of the legacy scheme. Regulation 56 makes provision for any pension benefits paid in respect of a member's transferred in remediable rights to be treated as being paid and always having been paid from the relevant Section of the legacy scheme.

Part 7 makes provision about certain lifetime allowance and annual allowance charges where there is a relevant rectification provision in accordance with, and as defined in, regulation 2 of the Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 (S.I. 2023/113) ("the 2023 Tax Regulations"). Regulation 58 requires the scheme manager to pay a lifetime allowance charge, attributable to a relevant rectification provision, where a scheme manager of a private sector scheme makes a successful application under section 267 of the Finance Act 2004 (c.12) ("FA 2004"), and the scheme manager becomes liable, jointly and severally with the member, in accordance to regulation 36 of the 2023 Tax Regulations. Regulation 59 requires the scheme manager to accept a scheme pays notice in accordance with specified provisions in direction 7 of the 2022 Directions where a member is unable to give an effective notice to the scheme administrator under section 237B(3) of FA 2004 in relation to a relevant tax year because the time limit in section 237BA of FA 2004 has passed.

Part 8 makes provision permitting the scheme manager to pay amounts to members or the personal representatives of deceased members as compensation for compensatable losses that meet one of the conditions set out in section 23 of PSPJOA 2022. Regulation 60 requires that this compensation be paid in accordance with direction 8 of the 2022 Directions and sets out the process for applying for compensation. Regulation 61 makes provision for the payment of indirect compensation where a member has incurred a tax loss as defined in section 23(9) of PSPJOA 2022 which resulted in a reduction of that member's benefits.

Part 9 makes provision about the application of interest to amounts owed to or from a member and the process for the payment of amounts owed by a scheme to a member or vice versa as a consequence of the remedy. Regulation 63 provides for the calculation of interest in accordance with the 2022 Directions. Regulation 64 makes provision to ensure that where interest applies to a payment associated with the remedy the other legacy scheme regulations specified that also provide for the payment of interest on late benefits payments do not also apply. Regulation 65 provides for the netting off of overpayments and underpayments created by the remedy and of any interest owed on them in accordance with direction 19 of the 2022 Directions. Regulations 66 and 67 set out, respectively, the payment processes where a person owes a net amount to the legacy scheme and vice versa.

Part 10 permits, and sets out the process for, legacy scheme members who had service in the 1995 Section and who elected to move their previous accrual in that Section to the 2008 Section before they joined the 2015 scheme to revoke that election with the effect that the member's pensionable service under the 2011 Regulations is treated as if it were never such service under the 2013 Regulations.

Part 11 makes provision in respect of certain retirement categories supplementing or varying the effect the remedy would otherwise have in relation to benefits already in payment including those paid on the grounds of premature retirement in the interests of efficiency (regulation 70), redundancy (regulation 71), partial retirement (regulations 72 and 73) and ill-health (regulations 74 and 75).

Part 12 and the schedule provide for consequential amendments to the 2011 Regulations, the 2013 Regulations and the 2015 Transitional Regulations. The effect of the amendments to the 1995 Regulations and the 2013 Regulations in, respectively, paragraphs 1 and 2 of the schedule is to make it clear that nothing in earlier amendments to those Regulations, as specified, prevents a member's remediable service between 1 April 2015 and 31 March 2022 being treated as pensionable service in the member's Section of the legacy scheme under PSPJOA 2022. Paragraph 3 of the schedule amends regulation 27 of the 2015 Transitional Regulations to extend its scope so that it also applies to members who applied for ill-health retirement under the 2015 Regulations during their remediable service and whose application was accepted or rejected after the end of their remediable service on 31 March 2022.

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An impact assessment has not been completed for these Regulations as no, or no significant, impact on the private or voluntary sectors is foreseen.