

2023 No. 246

PUBLIC SERVICE PENSIONS

NATIONAL HEALTH SERVICE

The National Health Service Pension Schemes (Remediable Service) (Scotland) Regulations 2023

Made - - - -at 11.32 a.m. on 5th September 2023

Laid before the Scottish Parliament at 4.30 p.m. on 5th September 2023

Coming into force - - - - 1st October 2023

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 10 and 12 of the Superannuation Act 1972^(a) (“the 1972 Act”), sections 1(1) and (2)(e), 2(1) (together with paragraph 5(b) of Schedule 2) and 3(1) and (2)(c) of the Public Service Pensions Act 2013^(b) (“the 2013 Act”), and sections 5(1) and (5), 6(1), 7(3), 8, 10(1) and (4), 11(1) and (5), 12(1) and (3), 18, 19(1), (4) and (5), 20, 21, 23(1), 24(1), 25(1) and (4), 26(1) and (2)(a), 29(1), (7) and (8), 31(2) and (3), 37(2) and 108(1) of the Public Service Pensions and Judicial Offices Act 2022^(c) (“PSPJOA 2022”).

In accordance with section 10(1) of the 1972 Act and section 3(5) of the 2013 Act, these Regulations are made with the consent of the Treasury.

In accordance with section 10(4) and section 21(1) of the 2013 Act, the Scottish Ministers have consulted with the representatives of such persons as appear to the Scottish Ministers likely to be affected by these Regulations.

In accordance with section 27(1) of PSPJOA 2022, the powers conferred by sections 18 to 22, 23(1) and (2) and 24 to 26 of that Act are exercised in accordance with Treasury directions^(d).

(a) 1972 c. 11.

(b) 2013 c. 25. Section 3(1) was amended by section 94(2) of the Public Service Pensions and Judicial Offices Act 2022 and section 3(2)(c) was inserted by section 94(3) of that Act.

(c) 2022 c. 7.

(d) The Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022 which came into force on 19th December 2022. A copy may be obtained from the hyperlink <https://www.gov.uk/government/publications/public-service-pensions-and-judicial-offices-act-2022-treasury-directions> or from His Majesty’s Treasury by writing to His Majesty’s Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

PART 1

General provisions

Citation, commencement and extent

1.—(1) These Regulations may be cited as the National Health Service Pension Schemes (Remediable Service) (Scotland) Regulations 2023.

(2) These Regulations come into force on 1 October 2023.

(3) These Regulations extend to Scotland.

Interpretation

2.—(1) In these Regulations—

“PSPJOA 2022” means the Public Service Pensions and Judicial Offices Act 2022(a);

“2004 Act” means the Finance Act 2004(b);

“2011 Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 2011(c);

“1995 Section” means the section of the National Health Service Superannuation scheme for Scotland set out in the 2011 Regulations;

“2008 Section” means the section of the National Health Service Superannuation scheme for Scotland set out in the 2013 Regulations;

“2013 Regulations” means the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013(d);

“2015 Regulations” means the National Health Service Pension Scheme (Scotland) Regulations 2015(e);

“2015 Transitional Regulations” means the National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015(f);

“2015 scheme” means the National Health Service Pension scheme for Scotland set out in the 2015 Regulations;

“2015 scheme contributions” means contributions under regulation 37 of the 2015 Regulations (members’ contributions; supplementary; medical practitioners and non-GP providers);

“2022 Directions” means the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022(g);

“active or deferred remedy member” means a member who—

(a) on 30 September 2023 was an active member or deferred member in respect of remediable service in the legacy scheme or the 2015 scheme, and

(b) is not a pensioner remedy member;

“designated person” has the meaning given in regulation 7(2);

“end of the deferred choice election period” means—

(a) 2022 c. 7.

(b) 2004 c. 12.

(c) S.S.I. 2011/117.

(d) S.S.I. 2013/174.

(e) S.S.I. 2015/94.

(f) S.S.I. 2015/95.

(g) These Directions came into force on 19 December 2022. A copy may be obtained from the hyperlink <https://www.gov.uk/government/publications/public-service-pensions-and-judicial-offices-act-2022-treasury-directions> or from His Majesty’s Treasury by writing to His Majesty’s Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

- (a) the end of the period of three months beginning with the day on which a remediable service statement is provided to the active or deferred remedy member or the designated person in accordance with regulation 6, or
- (b) such earlier or later time as the scheme manager considers reasonable in all the circumstances of the case,
which also meets the requirements of regulation 12(8);

“end of the immediate choice election period” means—

- (a) the end of the period of one year beginning with the day on which a remediable service statement is provided to the remedy member or the designated person in accordance with regulation 6, or
- (b) such—
 - (i) later time as the scheme manager considers reasonable in all the circumstances of the case; or
 - (ii) earlier time as agreed by the scheme manager with the remedy member or designated person;

“immediate detriment remedy member” means a remedy member who has obtained an immediate detriment remedy in relation to the member’s remediable service;

“legacy scheme” means the National Health Service Superannuation scheme for Scotland comprising both the 1995 Section and the 2008 Section;

“legacy scheme contributions” means contributions under paragraph 14(a) of schedule 1 of the 2011 Regulations (medical and dental practitioners: contributions (to the 1995 Section)) or regulation 3.C.2 of the 2013 Regulations (members’ contribution rate) (whichever is relevant);

“lump sum benefit” means any benefit payable under the legacy scheme or the 2015 scheme by way of a lump sum;

“pension benefit” means any benefit payable under the legacy scheme or the 2015 scheme otherwise than by a lump sum;

“pensioner remedy member” means a member who on 30 September 2023 was entitled to a retirement pension in respect of—

- (a) remediable service in the legacy scheme or the 2015 scheme, or
- (b) pensionable service in the legacy scheme, where—
 - (i) the member became entitled to the retirement pension on or after 1 April 2015, and
 - (ii) on 30 September 2023, the member was an active or deferred member in respect of remediable service in the 2015 scheme;

“relevant scheme year” means one of the seven scheme years beginning with 1 April 2015 to 31 March 2016 and ending with 1 April 2021 to 31 March 2022;

“remedy member” means a member who has pensionable service in the legacy scheme or the 2015 scheme that is remediable service**(b)**;

“scheme administrator” means the Scottish Ministers;

“scheme manager” means the Scottish Ministers or, where the Scottish Ministers have made arrangements for any of the functions and responsibilities as scheme manager under the 2015 Regulations to be performed on the Scottish Ministers’ behalf by another person pursuant to regulation 3(3) of those Regulations, that other person.

(2) In these Regulations, “in writing” includes by electronic communication where such communication is approved by the scheme manager from time to time and “electronic

(a) Paragraph 14 was substituted by S.S.I. 2009/19 and subsequently amended by S.S.I. 2010/369, S.S.I. 2011/117, S.S.I. 2011/364, S.S.I. 2012/69, S.S.I. 2013/168, S.S.I. 2014/43, S.S.I. 2014/154, S.S.I. 2016/98, S.S.I. 2017/27, S.S.I. 2019/46, S.S.I. 2020/30 and S.S.I. 2021/102.

(b) For the meaning of “remediable service”, see section 1 of PSPJOA 2022.

communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000(a).

(3) For the purposes of these Regulations, a reference in PSPJOA 2022 to section 2(1) of that Act coming into force is to be understood as a reference to that section coming into force in relation to members of the legacy scheme and the 2015 scheme.

(4) A term used in these Regulations which—

(a) is defined in, or for the purposes of, a provision in Chapter 1 of Part 1 of PSPJOA 2022, and

(b) is not defined differently in these Regulations,

has the meaning given in, or for the purposes of, that provision.

PART 2

Remediable service

Pension contributions of medical practitioners and non-GP providers: immediate choice pensioner and deceased members

3.—(1) This regulation applies in relation to a relevant member (“M”) who has remediable service in the legacy scheme that is pensionable service under that scheme whether or not by virtue of section 2(1) of PSPJOA 2022 (remediable service treated as pensionable under chapter 1 legacy schemes) (“M’s remediable service”) in the circumstances described in paragraph (2).

(2) The circumstances are that, at the operative time—

(a) the paid contributions amount in relation to M exceeds the adjusted contributions amount in relation to M, or

(b) the paid contributions amount in relation to M is less than the adjusted contributions amount in relation to M.

(3) In the circumstances described in paragraph (2)(a), the scheme manager must pay an amount of compensation equal to the difference to the appropriate person in accordance with paragraph (4).

(4) The amount of compensation paid to the appropriate person must be reduced by tax relief amounts calculated in accordance with paragraphs (5) and (8) and, if relevant, (11) and (12) of direction 4 of the 2022 Directions (powers to reduce or waive liabilities) .

(5) In the circumstances described in paragraph (2)(b), the appropriate person must pay contributions equal to the difference to the scheme in accordance with paragraph (6).

(6) The contributions owed to the scheme by the appropriate person must be reduced by tax relief amounts calculated in accordance with paragraphs (5) and (8) and, if relevant (11) and (12) of direction 4 of the 2022 Directions.

(7) In this regulation—

“adjusted contribution amount” means—

(a) if a person has made an election under regulation 12 in relation to M’s remediable service, the aggregate of the contributions M would have paid in respect of M’s remediable service in the relevant scheme years if M had been required to pay 2015 scheme contributions in respect of that service,

(b) otherwise, the aggregate of M’s legacy scheme contributions in respect of M’s remediable service in the relevant scheme years;

“appropriate person” means—

(a) 2000 c. 7. That definition was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

- (c) M, or
 - (d) if M is deceased, M's personal representative;
- “operative time” means—
- (a) if an election under regulation 12 is made in relation to M's remediable service, the time the election is made,
 - (b) otherwise—
 - (i) the end of the immediate choice election period in relation to M, or
 - (ii) if M is an immediate detriment remedy member, 1 October 2023;

“paid contributions amount” means the aggregate of—

- (a) the legacy scheme contributions, or
- (b) the 2015 scheme contributions,

paid by M in relation to M's remediable service in the relevant scheme years.

“relevant member” means a member who is—

- (a) a pensioner member, or
- (b) a member who died on or before 30 September 2023 and

paid or would have paid contributions in respect of any scheme year falling within the period of M's remediable service in respect of M's certified or final pensionable earnings uprated in accordance with—

- (i) paragraph 14 of schedule 1 of the 2011 Regulations;
- (ii) regulation 3.C.2 of the 2014 Regulations; or
- (iii) regulation 37(3)(a) of the 2015 Regulations.

(8) Where this regulation applies, section 15 of PSPJOA 2022 (pension contributions: pensioner and deceased members) does not apply and the references to that section in section 18(2) and (5) of that Act (powers to reduce or waive liabilities) are to be read as references to this regulation.

Pension contributions of medical practitioners and non-GP providers: active and deferred members (immediate correction)

4.—(1) This regulation applies in relation to a relevant member (“M”) who has remediable service in the legacy scheme that is pensionable service under that scheme by virtue of section 2(1) of PSPJOA 2022 (“M's remediable service”) in the circumstances described in paragraph (2).

(2) The circumstances are that the paid contributions amount in relation to M exceeds the adjusted contributions amount in relation to M.

(3) In the circumstances described in paragraph (2) the scheme manager must pay an amount of compensation equal to the difference to the appropriate person in accordance with paragraph (4).

(4) The amount of compensation paid to the appropriate person must be reduced by tax relief amounts calculated in accordance with paragraphs (5) and (8) and if relevant, (11) and (12) of direction 4 of the 2022 Directions (powers to reduce or waive liabilities).

(5) M may waive M's right to the compensation payment otherwise due under this regulation in accordance with the 2022 Directions, but, if M or the designated person does not make an election under regulation 12 (deferred choice election for 2015 scheme benefits: active, deferred and deceased members) before the end of the deferred choice election period—

- (a) that waiver is void, and
- (b) on the payment of M's 1995 Section or 2008 Section benefits in respect of M's remediable service, compensation again becomes payable under this regulation.

(6) For the purpose of paragraph (5), a waiver must be given to the scheme manager by notice in writing in such form as the scheme manager determines.

(7) The scheme manager must send a notice in writing to the member of the member's right to claim an amount of compensation under this regulation or to waive M's right to compensation in accordance with paragraph (5).

(8) The notice must be sent to the member before 1 October 2024 or such later time as the scheme manager considers reasonable in all the circumstances of the case.

(9) In this regulation—

“adjusted contributions amount” means the aggregate of the contributions M would have paid in respect of M's remediable service in the relevant scheme years if M had been required to pay contributions in accordance with (whichever is relevant)—

- (a) paragraph 4 of schedule 1 of the 2011 Regulations (medical and dental practitioners: contributions to this Section of the scheme), or
- (b) regulation 3.C.2 of the 2011 Regulations (Members' contribution rate);

“appropriate person” means—

- (a) M, or
- (b) if M is deceased, M's personal representative;

“paid contributions amount” means the aggregate of the 2015 scheme contributions paid by M in the relevant scheme years in respect of M's remediable service;

“relevant member” means a member who—

- (a) is an active or deferred remedy member, and
- (b) paid contributions in respect of M's certified or final pensionable earnings uprated according to the formula in regulation 37 of the 2015 Regulations in respect of any scheme year falling within the period of M's remediable service.

(10) Where this regulation applies, section 16 of PSPJOA 2022 (pension contributions: active and deferred members (immediate correction)) does not apply and the references to that section in section 18(2) and (5) of that Act (powers to reduce or waive liabilities) are to be read as references to this regulation.

Pension contributions of medical practitioners and non-GP providers: deferred choice active and deferred members

5.—(1) This regulation applies in relation to a relevant member (“M”) who has remediable service in the legacy scheme that is pensionable service under that scheme by virtue of section 2(1) of PSPJOA 2022 (“M's remediable service”) in the circumstances described in paragraph (2).

(2) The circumstances are that the paid contributions amount in relation to M is less than the adjusted contributions amount in relation to M.

(3) In the circumstances described in paragraph (2), the appropriate person must pay an amount equal to the difference to the scheme in accordance with paragraph (5).

(4) Paragraph (3) does not apply where M has waived M's right to the compensation payment otherwise due under regulation 3 (see regulation 3(4)) unless that waiver is void.

(5) The contributions owed to the scheme by the appropriate person must be reduced by tax relief amounts calculated in accordance with paragraphs (5) and (8) and if relevant, (11) and (12) of direction 4 of the 2022 Directions (powers to reduce or waive liabilities).

(6) In this regulation—

“adjusted contributions amount” means—

- (a) if a person has made an election under regulation 12 in relation to M's remediable service, the aggregate of the contributions M would have paid in respect of M's remediable service in the relevant scheme years if M had been required to pay 2015 scheme contributions in respect of that service;
- (b) otherwise, the aggregate of M's legacy scheme contributions in respect of M's remediable service in the relevant scheme years;

“appropriate person” means—

- (a) M, or
- (b) if M is deceased, M’s personal representatives;

“operative time” means—

- (a) if an election under regulation 12 is made in relation to M’s remediable service, the time the election is made;
- (b) otherwise, the end of the deferred choice election period in relation to M;

“paid contributions amount” means—

- (a) the aggregate of the legacy scheme contributions, or
 - (b) the aggregate of the 2015 scheme contributions,
- paid by M in relation to M’s remediable service in the relevant scheme years;

“relevant member” means a member who—

- (a) is an active or deferred remedy member, and
- (b) paid or would have paid contribution in respect of any scheme year falling within the period of M’s remediable service in respect of M’s certified or final pensionable earnings in accordance with—
 - (i) paragraph 14 of schedule 1 of the 2011 regulations;
 - (ii) regulation 3.C.2 of the 2013 Regulations; or
 - (iii) regulation 37(3)(a) of the 2015 regulations.

(7) Where this regulation applies, section 17 of PSPJOA 2022 (pension contributions: active and deferred members (deferred correction)) does not apply and the references to that section in section 18(2) and (5) of that Act (powers to reduce or waive liabilities) are to be read as references to this regulation.

Remediable service statements

6.—(1) The scheme manager must provide a remediable service statement in accordance with section 29 of PSPJOA 2022(a), direction 20 of the 2022 Directions and this regulation to each remedy member or (as the case may be) designated person (see regulation 7) who has not made an election in respect of that service pursuant to—

- (a) regulation 9, or
- (b) regulation 12.

(2) The scheme manager must provide the statement to each such remedy member or designated person on or before the relevant date(b).

(3) The scheme manager must provide a further remediable service statement—

- (a) where the remedy member has remediable service in an employment or office in relation to which the member is for the time being an active member, at least once in each year ending with the anniversary of the relevant date;
- (b) where the remedy member has remediable service in an employment or office in relation to which the member is for the time being a deferred member, on request and within three months beginning with the day of that request.

(a) For the meaning of “remediable service” mentioned in section 29(4) and (8)(a) and (b), see section 1 of that Act.
(b) For the meaning of “the relevant date”, see section 29(10) of PSPJOA 2022.

PART 3

Elections

Eligibility to make an election: designated persons

7.—(1) This regulation applies where for the purposes of regulation 8, 9 or 12 a designated person is to make an election on behalf of a remedy member.

(2) Where this regulation applies, the designated person is—

- (a) in the circumstances described in regulation 8(2)(b)(ii), 9(2)(b)(i) or 12(2)(b)(i)—
 - (i) a person who is capable and—
 - (aa) entitled to a surviving partner pension in relation to that member under Part G of the 2011 Regulations;
 - (bb) entitled to a surviving adult dependant pension in relation to that member under regulation 2.E.1 or 3.E.1 of the 2013 Regulations; or
 - (cc) entitled to a surviving adult dependant pension in relation to that member under regulation 112 of the 2015 Regulations; or
 - (ii) where there is no such person (capable or otherwise), a person who on the date of issue of a remediable service statement in relation to that member (see regulation 6) is aged 18 or over, capable and—
 - (aa) entitled as the sole dependent child of that member to pension benefits in relation to that member under Part H of the 2011 Regulations^(a) (dependent child allowance);
 - (bb) entitled as the sole dependent child of that member to pension benefits in relation to that member under Chapter 2.E of Part 2 (benefits for officers: death benefits) or Chapter 3.E of Part 3 (benefits for practitioners etc: death benefits) of the 2013 Regulations^(b); or
 - (cc) entitled as the sole eligible child of that member to pension benefits in relation to that member under Chapter 2 of Part 6 of the 2015 Regulations^(c) (child survivor);
 - (iii) otherwise, the scheme manager or a person appointed by the scheme manager;
- (b) in the circumstances described in regulation 8(2)(b)(ii), 9(2)(b)(ii), the personal representatives of the remedy member;
- (c) in the circumstances described in regulation 8(2)(b)(ii), 9(2)(b)(iii) or 12(2)(b)(ii), the scheme manager or a person appointed by the scheme manager.

(3) For the purposes of paragraph (2)—

- (a) a person is capable unless, in the opinion of the scheme manager, that person is, by reason of illness, mental disorder or otherwise, unable to look after their own affairs;
- (b) the person appointed by the scheme manager (see paragraph (2)(a)(iii) and (c)) may include, in particular—
 - (i) the personal representatives of the remedy member;
 - (ii) the parent or guardian of a dependent or eligible child; or
 - (iii) a dependent or eligible child.

(a) Part H was amended by S.S.I. 2011/117 and 364, 2018/124 and 102.

(b) Chapter 2.E of Part 2 was amended by S.S.I. 2010/22 and 369, 2011/364, 2013/174 and 2021/102. Chapter 3.E of Part 3 was amended by S.S.I. 2010/22 and 369, 2011/364, 2013/174 and 2021/102.

(c) Chapter 2 was amended by S.S.I. 2017/28 and 433 and 2021/102.

Election for retrospective provision to apply to opted-out service

8.—(1) A person mentioned in paragraph (2) may make an election in relation to relevant opted-out service^(a) of a remedy member (“opted-out service election”) in accordance with this regulation.

(2) That person is—

- (a) a remedy member (“M”) who has a period or periods of employment or office that would have been pensionable and remediable service in the legacy scheme or the 2015 scheme had M not opted out of that scheme for that period, or those periods (“relevant opted-out service”); or
- (b) a designated person or such a person as would be a designated person were the relevant opted-out service considered remediable service (see regulation 7) where—
 - (i) M is deceased and was not at the time of their death entitled to a retirement pension in respect of pensionable service in the legacy scheme or the 2015 scheme;
 - (ii) M is deceased and was at the time of their death entitled to such a retirement pension; or
 - (iii) M is, in the opinion of the scheme manager, by reason of illness, mental disorder or otherwise unable to look after their own affairs.

(3) An opted-out service election may only be made if an application by or on behalf of M is made in a form and within a period determined, and accompanied by such information as is required, by the scheme manager.

(4) The scheme manager—

- (a) may refuse the application if the condition in paragraph (5) is not met;
- (b) must, within six months of receiving the application, send to the person who made the application notice about its outcome;
- (c) must, if the scheme manager accepts the application, include with that notice a remediable service statement in accordance with regulation 6.

(5) The condition referred to in paragraph (4)(a) is that the scheme manager is satisfied that it is more than likely than not that, but for an actual or anticipated relevant breach of a non-discrimination rule, M would not have made the decision to opt out of the legacy scheme or the 2015 scheme between 1 April 2015 and 31 March 2022 (those dates included).

(6) The scheme manager must determine that the condition in paragraph (5) has been met where M informed the scheme manager at any time between 1 October 2014 and 31 March 2022 (those dates included) of the decision by virtue of which M’s service became relevant opted-out service.

(7) Where the scheme manager has accepted an application made under paragraph (3), the person mentioned in paragraph (2) may make an opted-out service election which must be—

- (a) made after a remediable service statement has been provided in accordance with paragraph (4)(c);
- (b) made before the end of the applicable election period; and
- (c) in a form determined, and accompanied by such information as is required, by the scheme manager.

Immediate choice election for 2015 scheme benefits: pensioner and deceased members

9.—(1) A person mentioned in paragraph (2) may make an election for the benefits paid to or in respect of a remedy member with regard to that member’s remediable service to be determined as if the service to which those benefits relate were pensionable service for the purposes of the 2015 Regulations (“an immediate choice election”).

(2) That person is—

(a) For the meaning of “opted-out service”, see section 36 of PSPJOA 2022.

- (a) a pensioner remedy member, or
 - (b) a designated person (see regulation 7 where)—
 - (i) the remedy member died on or before 30 September 2023 and was not at the time of their death entitled to a retirement pension in respect of their remediable service;
 - (ii) the remedy member died on or before that date and was at the time of their death entitled to a retirement pension in respect of their remediable service; or
 - (iii) the pensioner remedy member is, in the opinion of the scheme manager, by reason of illness, mental disorder or otherwise unable to look after their own affairs.
- (3) For the purposes of this regulation, an immediate choice election must—
- (a) contain such information as the scheme manager requires;
 - (b) be made by the pensioner remedy member or designated person in writing in such form as the scheme manager determines; and
 - (c) be received by the scheme manager before the end of the immediate choice election period.
- (4) Where the scheme manager accepts an immediate choice election made by a pensioner remedy member or designated person in accordance with this regulation or treats such an election as having been made in accordance with paragraph (5) that election is—
- (a) treated as having effect—
 - (i) immediately before the member became a pensioner remedy member in respect of the member’s remediable service, or
 - (ii) immediately before the remedy member’s death if the member died before becoming a pensioner remedy member; and
 - (b) irrevocable.
- (5) From the date on which the election is treated as having effect, the benefits due in respect of the remedy member’s remediable service, in place of the benefits being paid for that service, are such benefits as the scheme manager determines must be paid to or in respect of that member, after having regard to all the circumstances of the case and treating that service as if for all purposes it were pensionable service in the 2015 scheme.
- (6) The scheme manager may treat an immediate choice election as having been made under this regulation immediately before the end of the immediate choice election period if paragraph (7) applies.
- (7) This paragraph applies if the scheme manager—
- (a) does not receive an immediate choice election before the end of the immediate choice election period, and
 - (b) determines, after having regard to all the circumstances of the case and the advice of the scheme actuary, that it would be more beneficial if the benefits to be paid to or in respect of the remedy member’s remediable service are determined under the 2015 Regulations.

Pension benefits and lump sum benefits: immediate choice election: pensioner and deceased members

10.—(1) This regulation applies in relation to a relevant member (“M”) who has remediable service in the legacy scheme that is pensionable service under that scheme whether or not by virtue of section 2(1) of PSPJOA 2022 (“M’s remediable service”).

(2) But this regulation does not apply where paragraph 3 of schedule 1 of these Regulations applies.

(3) Where, at the operative time—

- (a) the aggregate of the pension benefits that (after taking into account the effect, if any, of section 3(2) of PSPJOA 2022 (benefits already paid)) have been paid under the scheme to

any person (“the beneficiary”) in respect of, or associated with, M’s remediable service exceeds

- (b) the aggregate of the pension benefits to which the beneficiary is entitled under the scheme in respect of, or associated with, the service after taking into account the effect, if any, of—
 - (i) section 2(1) of PSPJOA 2022 and regulation 9 of these Regulations in relation to the pension benefits to which the beneficiary is entitled in respect of the service, and
 - (ii) Parts 4 (voluntary contributions) and 6 (transfers) of these Regulations in relation to the pension benefits to which the beneficiary is entitled that are associated with the service,

the appropriate person must pay an amount equal to the difference to the scheme.

(4) Where, at the operative time—

- (a) the amount mentioned in paragraph (3)(a) is less than
- (b) the amount mentioned in paragraph (3)(b),

the scheme manager must pay an amount equal to the difference to the relevant person.

(5) Where, at the operative time—

- (a) the aggregate of the lump sum benefits that (after taking into account the effect, if any, of section 3(2)) have been paid under the scheme to any person (“the beneficiary”) in respect of, or associated with, M’s remediable service exceeds
- (b) the aggregate of the lump sum benefits to which the beneficiary is entitled under the scheme in respect of, or associated with, the service after taking into account the effect, if any, of—
 - (i) section 2(1) of PSPJOA 2022 and regulation 9 of these Regulations in relation to the lump sum benefits to which the beneficiary is entitled in respect of the service, and
 - (ii) Parts 4 (voluntary contributions) and 6 (transfers) of these Regulations in relation to the lump sum benefits to which the beneficiary is entitled that are associated with the service,

the relevant person must pay an amount equal to the difference to the scheme.

(6) Where, at the operative time—

- (a) the amount mentioned in paragraph (5)(a) is less than
- (b) the amount mentioned in paragraph (5)(b),

the scheme manager must pay an amount equal to the difference to the appropriate person.

(7) For the purposes of paragraphs (3) and (5), pension benefits and lump sum benefits are associated with M’s remediable service if those benefits are, or are derived from, one or more of the following—

- (a) additional pension payable to or in respect of M where one or more of the circumstances described in regulation 20(1)(c) (treatment of additional contributions: pensioners and deceased members of the legacy scheme) apply in relation to that pension;
- (b) additional pension payable to or in respect of M where one or both of the circumstances described in regulation 21(1)(c) (voluntary contributions: members of the 2015 scheme) apply in relation to that pension;
- (c) buy-out contributions paid by or in respect of M where the circumstance described in regulation 22(1)(c) (treatment of buy-out contributions made under 2015 regulation 47: pensioners and deceased members of the 2015 scheme) applies in relation to those contributions; and
- (d) the acceptance by the scheme manager of a transfer payment or transfer value payment under or in accordance with one or more of—

- (i) the circumstances described in regulation 38(2)(b) (treatment of transfer and transfer value payments made to the 1995 Section or the 2008 Section that are not made under public sector transfer arrangements);
- (ii) the circumstances described in regulation 41(1)(c)(iii) (transfer and transfer value payments made to the 2015 scheme that are not made under public sector transfer arrangements: treatment as if accepted under the legacy scheme: pensioner and deceased members);
- (iii) regulation 53(1) (application and interpretation of regulations 54 to 56: remediable transfer value payments and remediable club transfer value payments).

(8) In this regulation—

“operative time” means if an immediate choice election by virtue of regulation 9 is made in relation to M’s remediable service, the time when the election is made, otherwise, the end of the immediate choice election period in relation to M;

“relevant member” means a member who is—

- (a) a pensioner remedy member, or
- (b) a member who died on or before 30 September 2023;

“appropriate person” means—

- (a) in paragraph (3), the beneficiary referred to in that paragraph or, if the beneficiary is deceased, that beneficiary’s personal representative;
- (b) in paragraph (6), the beneficiary referred to in that paragraph or, if the beneficiary is deceased, that beneficiary’s personal representative.

(9) Where this regulation applies, section 14 of PSPJOA 2022 (pension benefits and lump sum benefits: pensioner and deceased members) does not apply and the reference to that section in section 18(1) of that Act (powers to reduce or waive liabilities) is to be read as a reference to this regulation.

Continuation of pensions: immediate or deferred choice election: dependent and eligible children of a remedy member

11.—(1) This regulation applies in relation to a relevant child of a remedy member where

- (a) a designated person is eligible to make an election on behalf of the member—
 - (i) under regulation 9(1) (see regulation 9(2)(b)), or
 - (ii) under regulation 12(1) (see regulation 12(2)(b)), and
- (b) on the relevant date, that child is not living in the same household as that designated person.

(2) Paragraph (4) applies if the scheme manager determines that as a result of the acceptance of such an election made by the designated person, the pension being paid to or in respect of a relevant child will reduce.

(3) Paragraph (5) applies if the scheme manager determines that as a result of a designated person not making such an election—

- (a) before the end of the immediate choice election period, where paragraph (1)(a)(i) applies, or
- (b) before the end of the deferred choice election period, where paragraph (1)(a)(ii) applies,

the pension being paid to or in respect of a relevant child will reduce.

(4) Where this paragraph applies (see paragraph (2)), the scheme manager may treat the election as if it applied only to pension benefits in respect of remediable service other than the pension being paid for that service to or in respect of a relevant child.

(5) Where this paragraph applies (see paragraph (3)), the scheme manager may treat the pension being paid for remediable service to or in respect of a relevant child as if the election had been made in respect of that service.

(6) In this regulation—

“relevant child” means a child who on 30 September 2023 was—

- (a) entitled as a dependent child of a remedy member to pension benefits in relation to that member under Part H of the 2011 Regulations (dependent child allowance);
- (b) entitled as a dependent child of a remedy member to pension benefits in relation to that member under Chapter 2.E or Chapter 3.E of the 2013 Regulations (death benefits); or
- (c) entitled as an eligible child of a remedy member to pension benefits in relation to that member under Chapter 2 of Part 6 of the 2015 Regulations (survivor benefits: child survivor);

“relevant date” means—

- (a) where paragraph (1)(a)(i) applies—
 - (i) the day on which the scheme manager accepts an immediate choice election in accordance with regulation 9 made by the designated person mentioned in regulation 9(2)(b), or
 - (ii) if that designated person does not make such an election, the end of the immediate choice election period, or
- (b) where paragraph (1)(a)(ii) applies—
 - (i) the day on which the scheme manager accepts a deferred choice election made in accordance with regulation 12 by the designated person mentioned in regulation 12(2)(b),
 - (ii) if that designated person does not make such an election, the end of the deferred choice election period.

Deferred choice election for 2015 scheme benefits: active, deferred and deceased members

12.—(1) A person mentioned in paragraph (2) may make an election for the benefits paid to or in respect of a remedy member with regard to that member’s remediable service to be determined as if the service to which those benefits relate were pensionable service under the 2015 Regulations (“a deferred choice election”).

(2) That person is—

- (a) an active or deferred remedy member, or
- (b) a designated person (see regulation 7) where—
 - (i) the remedy member died on or after 1 October 2023 and was not at the time of their death entitled to a retirement pension in respect of their remediable service;
 - (ii) the remedy member died on or after that date and was at the time of their death entitled to a retirement pension in respect of their remediable service; or
 - (iii) the active or deferred remedy member is, in the opinion of the scheme manager, by reason of illness, mental disorder or otherwise, unable to look after their own affairs.

(3) For the purposes of this regulation, a deferred choice election must—

- (a) contain such information as the scheme manager requires;
- (b) be made by an active or deferred remedy member or a designated person in writing in such form as the scheme manager determines; and
- (c) be received by the scheme manager before the end of the deferred choice election period.

(4) Where the scheme manager accepts a deferred choice election made by an active or deferred remedy member or a designated person in accordance with this regulation or treats such an election as having been made in accordance with paragraph (6), that election is—

- (a) treated as having effect—
 - (i) immediately before the active or deferred remedy member becomes a pensioner member in respect of their remediable service, or

- (ii) immediately before the active or deferred remedy member's death; and
- (b) irrevocable.

(5) From the date on which the election is treated as having effect, the benefits due in respect of the active or deferred remedy member's remediable service are such benefits as the scheme manager determines should be paid to or in respect of that member, after having regard to all the circumstances of the case and treating that service as if for all purposes it were pensionable service in the 2015 scheme.

(6) The scheme manager may treat a deferred choice election as having been made under this regulation immediately before the end of the deferred choice election period if paragraph (7) applies.

(7) This paragraph applies if the scheme manager—

- (a) does not receive a deferred choice election before the end of the deferred choice election period, and
- (b) determines, after having regard to all the circumstances of the case and the advice of the scheme actuary, that it would be more beneficial if the benefits to be paid to or in respect of the remedy member's remediable service are determined in accordance with the provisions of the 2015 Regulations.

(8) The end of the deferred choice election period must not be more than one year before the day on which it is reasonably expected that, if a deferred choice election were made, benefits under the 2015 scheme would become payable to or in respect of the active or deferred remedy member.

Pension benefits and lump sum benefits: deferred choice election: pensioner and deceased members

13.—(1) This regulation applies in relation to a relevant member ("M") who has remediable service in the legacy scheme that is pensionable service under that scheme whether or not by virtue of section 2(1) of PSPJOA 2022 ("M's remediable service").

(2) Where, at the operative time—

- (a) the aggregate of the pension benefits that (after taking into account the effect, if any, of section 3(2) of PSPJOA 2022 (benefits already paid)) have been paid under the scheme to any person ("the beneficiary") in respect of, or associated with, M's remediable service exceeds
- (b) the aggregate of the pension benefits to which the beneficiary is entitled under the scheme in respect of, or associated with, the service after taking into account the effect, if any, of—
 - (i) section 2(1) of PSPJOA 2022 and regulation 12 of these Regulations in relation to the pension benefits to which the beneficiary is entitled in respect of the service, and
 - (ii) Parts 4 (voluntary contributions) and 6 (transfers) of these Regulations in relation to the pension benefits to which the beneficiary is entitled that are associated with the service,

the appropriate person must pay an amount equal to the difference to the scheme.

(3) Where, at the operative time—

- (a) the amount mentioned in paragraph (2)(a) is less than
- (b) the amount mentioned in paragraph (2)(b),

the scheme manager must pay an amount equal to the difference to the appropriate person.

(4) Where, at the operative time—

- (a) the aggregate of the lump sum benefits that (after taking into account the effect, if any, of section 3(2) of PSPJOA 2022) have been paid under the scheme to any person ("the beneficiary") in respect of, or associated with, M's remediable service exceeds

- (b) the aggregate of the lump sum benefits to which the beneficiary is entitled under the scheme in respect of, or associated with, the service after taking into account the effect, if any, of—
 - (i) section 2(1) of that Act and regulation 12 of these Regulations in relation to the lump sum benefits to which the beneficiary is entitled in respect of the service, and
 - (ii) Parts 4 (voluntary contributions) and 6 (transfers) of these Regulations in relation to the lump sum benefits to which the beneficiary is entitled that are associated with the service,

the appropriate person must pay an amount equal to the difference to the scheme.

(5) Where, at the operative time—

- (a) the amount mentioned in paragraph (4)(a) is less than
- (b) the amount mentioned in paragraph (4)(b),

the scheme manager must pay an amount equal to the difference to the relevant person.

(6) For the purposes of paragraphs (2) and (4), pension benefits and lump sum benefits are associated with M’s remediable service if those benefits are, or are derived from, one or more of the following—

- (a) additional pension payable to or in respect of M where one or more of the circumstances described in regulation 19(1)(c) (treatment of additional contributions: active and deferred members of the legacy scheme) apply in relation to that pension;
- (b) additional pension payable to or in respect of M where one or both of the circumstances described in paragraph (2) of regulation 17 (treatment of a corresponding option exercised in accordance with regulation 15 on the making of a deferred choice election for 2015 scheme benefits under regulation 12) apply in relation to that pension;
- (c) buy-out contributions paid by or in respect of M where the circumstance described in regulation 18(1)(c) (treatment of buy-out contributions made under 2015 regulation 47: active and deferred members of the 2015 scheme) applies in relation to those contributions; and
- (d) the acceptance by the scheme manager of a transfer payment or transfer value payment under or in accordance with one or more of—
 - (i) the circumstances described in regulation 38(2)(b) (treatment of transfer and transfer value payments made to the 1995 Section or the 2008 Section that are not made under Public Sector Transfer Arrangements);
 - (ii) the circumstances described in regulation 39(1)(c) (transfer value payments made to the 2015 scheme that are not made under Public Sector Transfer Arrangements: treatment as transfer payments under the 1995 Section or transfer value payments under the 2008 Section: active and deferred members); or
 - (iii) the circumstances described in regulation 40(1) (transfer value payments treated in accordance with regulation 39: variation of the member’s rights on the making of a deferred choice election);
 - (iv) regulation 53(1) (application of regulations 54 to 56: remediable transfer value payments and remediable club transfer value payments).

(7) In this regulation—

“operative time” means if a deferred choice election by virtue of regulation 12 is made in relation to M’s remediable service, the time when the election is made; otherwise the end of the deferred choice election period in relation to M;

“relevant member” means an active or deferred remedy member or a remedy member who died on or after 1 October 2023;

“appropriate person” means—

- (a) in paragraphs (2) and (3), the beneficiary referred to in paragraph (2) or, if the beneficiary is deceased, that beneficiary’s personal representatives;

- (b) in paragraph (4), the beneficiary referred to in that paragraph or, if the beneficiary is deceased, that beneficiary's personal representative.

PART 4

Voluntary contributions

Interpretation of Part 4

14.—(1) In this Part—

“2011 regulation Q8” means regulation Q8 of the 1995 Section(a) (option to pay additional periodical contributions to purchase additional pension);

“2011 regulation Q10” means regulation Q10 of the 1995 Section (member's option to pay lump sum contributions to purchase additional pension);

“2011 regulation Q11” means regulation Q11 of the 1995 Section (payment of additional lump sum contributions by employing authority);

“2013 regulation 2.C.8” means regulation 2.C.8 of the 2008 Section(b) (member's option to pay additional periodical contributions to purchase additional pension);

“2013 regulation 2.C.10” means regulation 2.C.10 of the 2008 Section (member's option to pay lump sum contribution to purchase additional pension);

“2013 regulation 2.C.11” means regulation 2.C.11 of the 2008 Section (payment of additional lump sum contributions by employing authority);

“2013 regulation 3.C.6” means regulation 3.C.6 of the 2008 Section(c) (member's option to pay additional periodical contributions to purchase additional pension);

“2013 regulation 3.C.8” means regulation 3.C.8 of the 2008 Section (member's option to pay lump sum contribution to purchase additional pension);

“2013 regulation 3.C.9” means regulation 3.C.9 of the 2008 Section (payment of additional lump sum contributions by employing authority);

“2015 regulation 47” means regulation 47 of the 2015 Regulations (payment of buy-out contributions);

“2015 regulation 58” means regulation 58 of the 2015 Regulations (accepting an additional pension election);

“2015 regulation 61” means regulation 61 of the 2015 Regulations (lump sum contributions: payment of contributions and credit of additional pension);

“2015 regulation 63” means regulation 63 of the 2015 Regulations (periodic contributions);

“2015 transitional regulation 25” means regulation 25 of the 2015 Transitional Regulations(d) (decoupling of benefits derived from additional contributions);

“actuarial increase” means a late payment actuarial increase under paragraph 2 of schedule 11 of the 2015 Regulations (calculation of pension: late payment of pension with actuarial increase) where the calculation of that increase must take account of any buy-out election in accordance with sub-paragraph (4) of that paragraph;

“actuarial reduction” has the meaning given in paragraph 9 of schedule 7 of the 2015 Regulations (pension accounts);

“relevant contributions” means contributions that were paid by the remedy member—

(a) Regulations Q8, Q10 and Q11 of the 1995 Section were inserted by S.S.I. 2011/117.

(b) The National Health Service Pension Scheme (Scotland) Regulations 2008 (S.S.I. 2008/224) were amended by S.S.I. 2009/19, S.S.I. 2009/208, S.S.I. 2010/22, S.S.I. 2010/53, S.S.I. 2010/369, S.I. 2010/234, S.S.I. 2011/364, S.S.I. 2012/69, S.S.I. 2013/70, S.S.I. 2013/109 and S.S.I. 2013/168.

(c) Regulations 3.C.6, 3.C.8 and 3.C.9 of the 2013 Regulations were modified by S.S.I. 2015/95.

(d) Regulation 25 of the 2015 Transitional Regulations was amended by S.S.I. 2022/100 and S.S.I. 2022/327.

- (a) on or after the member's 60th birthday if the member's contributions are to be treated as if they had been paid under a corresponding option exercised under the 2011 Regulations, or
 - (b) on or after the member's 65th birthday if the member's contributions are to be treated as if they had been paid under a corresponding option exercised under the 2013 Regulations;
- “remedy period” means the period from 1 April 2015 to 31 March 2022 (including those dates).

Elections to pay contributions for additional pension: where they must be treated as if paid under a corresponding option exercised under the 2011 Regulations or the 2013 Regulations

15.—(1) This regulation applies to a remedy member, other than a pensioner remedy member, who has pensionable service in the legacy scheme by virtue of section 2(1) of PSPJOA 2022 and was an active or deferred member of the 2015 scheme on 30 September 2023 in respect of that service where, during the remedy period, one or both of the following occurred—

- (a) the member's additional pension account was credited with an amount of additional pension in accordance with 2015 regulation 61;
- (b) the member paid contributions in accordance with 2015 regulation 63.

(2) Where this regulation applies—

- (a) all the remedy member's rights secured by the credit or payment of contributions mentioned in paragraph (1) are extinguished, and
- (b) those contributions are to be treated as if they had been paid in the relevant scheme year in which they were paid under a corresponding option exercised under the 2011 Regulations or the 2013 Regulations,

but as an alternative to (a) and (b) above, the scheme manager, on the application of the remedy member may make a compensation payment to the remedy member equal to the value of the contributions received under 2015 regulation 63.

(3) In paragraph (2)(b), “corresponding option” means—

- (a) where pursuant to section 2(1) of PSPJOA 2022, the remedy member's remediable service is treated as being pensionable service under the 2011 Regulations—
 - (i) an option under 2011 regulation Q8 if the member paid contributions in accordance with 2015 regulation 63;
 - (ii) an option under 2011 regulation Q10 if the member paid the lump sum contribution referred to in 2015 regulation 61; or
 - (iii) an option under 2011 regulation Q11 if the member's employing authority paid the lump sum contribution referred to in 2015 regulation 61; or
- (b) where pursuant to section 2(1) of PSPJOA 2022, the remedy member's remediable service is treated as being pensionable service under the 2013 Regulations—
 - (i) an option under 2011 regulation 2.C.8 or 2011 regulation 3.C.6 if the member paid contributions in accordance with 2015 regulation 63;
 - (ii) an option under 2013 regulation 2.C.10 or 2013 regulation 3.C.8 if the member paid the lump sum contribution referred to in 2015 regulation 61; or
 - (iii) an option under 2011 regulation 2.C.11 or 2011 regulation 3.C.9 if the member's employing authority paid the lump sum contribution referred to in 2015 regulation 61.

(4) For the purposes of this regulation, the reference to “£5,000” in paragraph (7) of 2011 regulation Q8, 2013 regulation 2.C.8 and 2013 regulation 3.C.6 is to be read as if it were a reference to “£12,079”.

(5) Paragraph (6) applies where the member's contributions are treated as if they had been paid under a corresponding option in accordance with paragraph (2)(b).

(6) Where this paragraph applies, the scheme manager must, after having regard to the advice of the scheme actuary, take those contributions into account when making one or both of the determinations mentioned in paragraph (7).

(7) For the purposes of paragraph (6), the determinations are—

- (a) whether the scheme manager is prohibited from accepting an election from a member under regulation 54 of the 2015 Regulations (election to pay contributions for additional pension) in so far as the effect of accepting it would be to provide the member with one or more pensions which exceeds, or in aggregate exceed, the overall limit that applies to such provision under regulation 60 of those Regulations (overall limit on extra pension) for providing additional pensions, and
- (b) whether the scheme manager is prohibited from accepting an election from a member under regulation 42(1) of the 2015 Regulations (eligibility to make buy-out election) because the value of the actuarial reduction bought out exceeds the greater of the first and second amounts in regulation 45(3) of those Regulations (overall limit on extra pension).

Treatment of contributions paid after 31 March 2022 under a corresponding option exercised in accordance with regulation 15(2)(b)

16.—(1) This regulation applies to a remedy member to whom regulation 15(1) applies during the remedy period, the member paid contributions in respect of an additional pension election in accordance with 2015 regulation 63 (see regulation 15(1)(b)) and those contributions are treated as having been paid under a corresponding option exercised under the 2011 Regulations or the 2013 Regulations in accordance with regulation 15(2)(b).

(2) Where this regulation applies, regulation 23 of the 2015 Transitional Regulations (existing additional pension contracts) and paragraph (3) of this regulation apply to the remedy member in respect of that corresponding option unless the member makes an election in accordance with paragraph (5) of this regulation.

(3) The scheme manager must pay to a remedy member an amount of compensation calculated in accordance with paragraph (4) in respect of any relevant contributions.

(4) The amount of compensation must be equal to the relevant contributions paid by the member reduced by tax relief amounts calculated in accordance with paragraphs (5) to (8) and, if relevant (11) and (12) of direction 5 of the 2022 Directions (voluntary contributions).

(5) A remedy member may make an election to cancel the corresponding option with effect from (and including) 1 April 2022 which must—

- (a) be made by the member by notice in writing;
- (b) be received by the scheme manager within a period of three months beginning with the day after the scheme manager provides the notice referred to in paragraphs (6) and (7); and
- (c) contain such information as the scheme manager requires.

(6) The scheme manager must send a notice in writing to the remedy member of the member's right to make such an election.

(7) The notice must be sent to the member before 1 July 2024 or such later date as the scheme manager considers reasonable in all the circumstances of the case and must specify—

- (a) the annual amount of additional pension for which the remedy member is paying additional contributions determined by the scheme manager in respect of the corresponding option that applies to the member under regulation 15(2)(b);
- (b) the annual amount of additional pension for which the remedy member will be paying contributions under the 2015 Regulations if the member makes an election under this regulation; and
- (c) the date by which an election under this regulation must be received by the scheme manager.

(8) Where the scheme manager accepts such an election—

- (a) the remedy member must be treated as if the scheme manager had accepted a new election to pay contributions under 2015 regulation 58 in respect of such contributions made by the member after 31 March 2022; and
- (b) the scheme manager must determine the amount of the annual rate of additional pension being purchased in respect of that election by reference to the actuarial tables that applied for that purpose on the day the member's election to pay contributions in accordance with 2015 regulation 63 (see regulation 16(1)(b)) was accepted under 2015 regulation 58.

Treatment of a corresponding option exercised in accordance with regulation 15 on the making of a deferred choice election for 2015 scheme benefits under regulation 12

17.—(1) This regulation applies to a relevant remedy member who—

(a) has elected to cancel their corresponding option exercised under—

- (i) 2011 regulation Q8,
- (ii) 2013 regulation 2.C.8, or
- (iii) 2013 regulation 3.C.6,

with effect from (and including) 1 April 2022 in accordance with regulation 16(5) of these Regulations; or

(b) is treated as if contributions made by the member or, on the member's behalf, by the member's employing authority by lump sum had, for all purposes, been made pursuant to a corresponding option exercised under—

- (i) 2011 regulation Q10 or 2011 regulation Q11,
- (ii) 2013 regulation 2.C.10 or 2013 regulation 2.C.11, or
- (iii) 2013 regulation 3.C.8 or 2013 regulation 3.C.9.

(2) Where this regulation applies, if the member makes a deferred choice election for 2015 scheme benefits under regulation 12—

(a) paragraph (3)(a) applies in respect of the member's rights to additional pension secured by the payment of additional contributions made on or before 31 March 2022 under a corresponding option exercised under—

- (i) 2011 regulation Q10 or 2011 regulation Q11,
- (ii) 2013 regulation 2.C.10 or 2013 regulation 2.C.11, or
- (iii) 2013 regulation 3.C.8 or 2013 regulation 3.C.9.

(3) The scheme manager must, after having regard to the advice of the scheme actuary, vary the member's rights to the additional pension purchased under the corresponding options referred to in paragraph (2) so that those rights are of an equivalent value to the additional pension rights the member would have secured if the contributions had been made in the relevant scheme year in which they were paid—

- (a) in respect of an election under 2015 regulation 63, where paragraph (2)(a) applies to the member, and
- (b) in respect of an election under 2015 regulation 61, where paragraph (1)(b) applies to the member.

(4) In this regulation, "relevant remedy member" means a remedy member other than one to whom payment of part of a pension has been made pursuant to paragraph (2) of 2015 transitional regulation 25 in respect of additional pension resulting from an option under 2011 regulation Q8 or 2011 regulation Q10.

Treatment of buy-out contributions made under 2015 regulation 47: active and deferred members of the 2015 scheme

18.—(1) This regulation applies to a remedy member—

- (a) who has pensionable service in the legacy scheme by virtue of section 2(1) of PSPJOA 2022;
 - (b) who, on 30 September 2023, was an active or deferred member of the 2015 scheme in respect of that service but was not a pensioner remedy member; and
 - (c) who paid buy-out contributions in accordance with 2015 regulation 47 during the remedy period (including where any such contributions were paid by the member’s employing authority in place of the member during that period under paragraph (3) of that regulation (“employer buy-out contributions”)).
- (2) Where this regulation applies—
- (a) all the member’s rights secured by the payment of buy-out contributions mentioned in paragraph (1)(c) are extinguished;
 - (b) in respect of any buy-out contributions paid during the remedy period by a member (excluding employer buy-out contributions), the member is entitled to an amount of compensation determined in accordance with paragraph (13) unless the member waives the member’s right to compensation in accordance with paragraph (3); and
 - (c) paragraph (9) applies in relation to employer buy-out contributions made in respect of a member who makes an election under regulation 12 (deferred choice election for 2015 scheme benefits: active, deferred and deceased members).
- (3) A member may give the scheme manager a notice in writing that the member waives the member’s right to compensation under this regulation (“compensation waiver”).
- (4) A compensation waiver ceases to have effect when the member becomes eligible to make an election under regulation 12 (deferred choice election for 2015 scheme benefits: active, deferred and deceased members), and—
- (a) paragraph (5) applies to a member who does not make an election under regulation 12 before the end of the deferred choice election period;
 - (b) paragraph (6) applies to a member who does make such an election, where the scheme manager determines that, as a consequence of treating the member’s remediable service as if for all purposes it were pensionable service in the 2015 scheme in accordance with regulation 12(5) neither an actuarial reduction nor an actuarial increase will be applied to the annual rate of pension due in respect of that service;
 - (c) paragraph (7) applies to a member who does make such an election, where the scheme manager determines that, as a consequence of treating the member’s remediable service as if for all purposes it were pensionable service in the 2015 scheme in accordance with regulation 12(5), an actuarial reduction or an actuarial increase will be applied to the annual rate of pension due in respect of that service.
- (5) On the payment of the member’s 1995 Section or 2008 Section benefits in respect of the member’s remediable service, the member must claim by notice in writing—
- (a) the compensation due under this regulation, or
 - (b) rights that are of an equivalent value to the additional pension rights the member would have secured if the contributions referred to in paragraph (1)(c) had been made in the relevant scheme year in which they were paid under—
 - (i) an option under 2011 regulation Q8 on the payment of the member’s 1995 Section benefits in respect of the member’s remediable service, or
 - (ii) an option under 2013 regulation 2.C.2 or 2013 regulation 3.C.6 on the payment of the member’s benefits under the 2008 Section in respect of the member’s remediable service.
- (6) On the payment of the member’s 1995 Section or 2008 Section benefits in respect of the member’s remediable service, compensation again becomes payable under this regulation
- (7) At the same time as the member makes the election, the member must claim by notice in writing—
- (a) the compensation due under this regulation, or

- (b) rights under the 1995 Section or the 2008 Section (whichever is relevant) that, after having regard to the advice of the scheme actuary, the scheme manager has determined are of an equivalent value to the member's rights that were extinguished under paragraph (2)(a).

(8) Where the scheme manager determines that, as a consequence of treating the member's remediable service as if for all purposes it were pensionable service in the 2015 scheme in accordance with regulation 12(5), an actuarial reduction or an actuarial increase will be applied to the annual rate of pension due in respect of that service, the member is entitled to the rights set out in paragraph (9) in respect of employer buy-out contributions.

(9) Where this paragraph applies, the member is entitled to rights under the 1995 Section or the 2008 Section (whichever is relevant) that, after having regard to the advice of the scheme actuary, the scheme manager has determined are of an equivalent value to the member's rights that were extinguished under paragraph (2)(a) in so far as those rights relate to employer buy-out contributions.

(10) The scheme manager must—

- (a) send a notice in writing to the remedy member of the member's right to claim an amount of compensation under this regulation or to give the scheme manager a compensation waiver in accordance with paragraph (3), or
- (b) if the member is deceased, pay to the member's personal representatives an amount of compensation determined in accordance with paragraph (13).

(11) The notice must be sent to the member before 31 March 2024 or such later date as the scheme manager considers reasonable in all the circumstances of the case and must specify—

- (a) the amount of compensation the member is entitled to claim under this regulation;
- (b) the dates by which the member's claim for compensation in accordance with paragraph (7)(a) (if made) and compensation waiver in accordance with paragraph (3) (if given) must be received by the scheme manager;
- (c) the member's options under paragraphs (5), (6) and (7) if the member gives the scheme manager a compensation waiver in accordance with paragraph (3).

(12) The following must be provided in such form and must include such information as the scheme manager requires—

- (a) a compensation waiver in accordance with paragraph (3);
- (b) a claim for compensation in accordance with paragraph (7)(a);
- (c) a claim for rights in accordance with paragraph (5)(b) or (7)(b).

(13) For the purposes of paragraphs (2)(b) and (10)(b), the amount of compensation must be equal to the buy-out contributions paid during the remedy period by the member reduced by tax relief amounts calculated in accordance with paragraph (5) to (9) and, if relevant, (11) to (12) of direction 5 of the 2022 Directions.

Treatment of additional contributions: active and deferred members (in respect of remediable service) of the legacy scheme

19.—(1) This regulation applies to the additional pension payable to or in respect of a remedy member—

- (a) who on 30 September 2023 was an active or deferred member in respect of remediable service in the legacy scheme;
- (b) who is not a member to whom payment of part of a pension has been made pursuant to paragraph (2) of 2015 transitional regulation 25 (decoupling of benefits derived from additional contributions) in respect of additional pension resulting from an option under 2011 regulation Q8 or 2011 regulation Q10;
- (c) where, during the remedy period one or more of the following occurred—

- (i) the contribution option period began in relation to the member's option to pay additional periodical contributions under 2011 regulation Q8, 2013 regulation 2.C.8 or 2013 regulation 3.C.6;
- (ii) the member's employing authority paid to the Scottish Ministers the single lump sum contribution in relation to the member's option under 2011 regulation Q10, 2013 regulation 2.C.10 or 2013 regulation 3.C.8;
- (iii) the member's employing authority paid to the Scottish Ministers the single lump sum contribution in relation to that authority's option under 2011 regulation Q11, 2013 regulation 2.C.11 or 2013 regulation 3.C.9 in respect of the member; and
- (d) in respect of whom a deferred choice election has been accepted by the scheme manager or treated by the scheme manager as having been made in accordance with regulation 12 (deferred choice election for 2015 scheme benefits: active, deferred and deceased members).

(2) Where this regulation applies and the scheme manager determines that the benefits to be paid to or in respect of the remedy member for the member's remediable service are to be determined in accordance with the 2015 Regulations, the scheme manager must, after having regard to the advice of the scheme actuary, vary the member's rights to the additional pension purchased in respect of the options referred to in paragraph (1)(c) so that those rights are of an equivalent value to the additional pension rights the member would have secured if the contributions had been made in the relevant scheme year in which they were paid—

- (a) in respect of an election under 2015 regulation 57, where paragraph (1)(c)(i) applies to or in respect of the member, and
- (b) in respect of an election under 2015 regulation 60, where paragraph (1)(c)(ii) or (iii) applies to or in respect of the member.

Treatment of additional contributions: pensioners and deceased members of the legacy scheme

20.—(1) This regulation applies to the additional pension payable to or in respect of a remedy member—

- (a) who on 30 September 2023—
 - (i) was a pensioner member with regard to benefits paid in respect of remediable service in the legacy scheme; or
 - (ii) was deceased;
- (b) who is not a member to whom payment of part of a pension has been made pursuant to paragraph (2) of 2015 transitional regulation 25 in respect of additional pension resulting from an option under 2011 regulation Q8 or 2011 regulation Q10;
- (c) where, during the remedy period one or more of the following occurred—
 - (i) the contribution option period began in relation to the member's option to pay additional periodical contributions under 2011 regulation Q8, 2013 regulation 2.C.8 or 2013 regulation 3.C.6;
 - (ii) the member's employing authority paid to the Scottish Ministers the single lump sum contribution in relation to the member's option under 2011 regulation Q10, 2013 regulation 2.C.10 or 2013 regulation 3.C.8;
 - (iii) the member's employing authority paid to the Scottish Ministers the single lump sum contribution in relation to that authority's option under 2011 regulation Q11, 2013 regulation 2.C.11 or 2013 regulation 3.C.9 in respect of the member; and
- (d) in respect of whom an immediate choice election has been accepted by the scheme manager or treated by the scheme manager as having been made in accordance with regulation 9 (immediate choice election for 2015 scheme benefits: pensioner and deceased members).

(2) Where this regulation applies and the scheme manager determines that the benefits to be paid to or in respect of the remedy member for the member's remediable service are to be determined in accordance with the 2015 Regulations, the scheme manager must, after having regard to the advice of the scheme actuary, vary the member's rights to the additional pension purchased in respect of the options referred to in paragraph (1)(c) so that those rights are of an equivalent value to the additional pension rights the member would have secured if the contributions had been made in the relevant scheme year in which they were paid—

- (a) in respect of an election under 2015 regulation 63, where paragraph (1)(c)(i) applies to or in respect of the member, and
- (b) in respect of an election under 2015 regulation 60, where paragraph (1)(c)(ii) or (iii) applies to or in respect of the member.

(3) In this regulation, "pensioner member" means a person entitled to a retirement pension, including a partial retirement pension under regulation 2.D.5(a) or 3.D.5 of the 2013 Regulations (Partial retirement (members aged at least 55)), where—

- (a) the person became entitled to that pension on or after 1 April 2015; and
- (b) at the same time as the person became entitled to that pension, the person also became entitled to the immediate payment of additional pension in accordance with regulation 2.D.5(5)(c) or 3.D.5(4)(c) of the 2013 Regulations.

Voluntary contributions: members of the 2015 scheme

21.—(1) This regulation applies to the additional pension payable to or in respect of a remedy member—

- (a) who has pensionable service in the legacy scheme by virtue of section 2(1) of PSPJOA 2022;
- (b) who on 30 September 2023—
 - (i) was a pensioner member with regard to benefits paid in respect of remediable service in the 2015 scheme;
 - (ii) was an active or deferred member in respect of remediable service in the 2015 scheme and was entitled to a retirement pension in respect of pensionable service in the legacy scheme to which the member became entitled on or after 1 April 2015; or
 - (iii) was deceased;
- (c) where, during the remedy period, one or both of the following occurred—
 - (i) the member's additional pension account was credited with an amount of additional pension in accordance with 2015 regulation 61;
 - (ii) the member paid contributions in respect of an additional pension election in accordance with 2015 regulation 63.

(2) Where this regulation applies—

- (a) all the remedy member's rights secured by the credit or payment of contributions mentioned in paragraph (1)(c) are extinguished;
- (b) as soon as reasonably practicable, the scheme manager must—
 - (i) treat the contributions (other than any relevant contributions) as if they had been paid in the relevant scheme year in which they were paid under a corresponding option exercised under the 2011 Regulations or the 2013 Regulations, and
 - (ii) pay to the remedy member or, if the member is deceased, to the member's personal representatives an amount of compensation calculated in accordance with paragraph (4) in respect of any relevant contributions; and

(a) Regulation 2.D.5 was amended by S.I 2009/381 and 2446. Regulation 3.D.5 was amended by S.I 2009/381 and 2446, 2014/413.

- (c) from (and including) 1 October 2023 until the date on which the scheme manager completes the steps set out in sub-paragraph (b), any additional pension paid to or in respect of the remedy member in relation to that credit or election must be paid from the relevant section of the legacy scheme; and
- (d) paragraph (3) applies to a remedy member in respect of whom an immediate choice election has been accepted by the scheme manager or treated by the scheme manager as having been made in accordance with regulation 9.

(3) The scheme manager must, after having regard to the advice of the scheme actuary, vary the member's rights to the additional pension purchased by contributions paid under the corresponding options referred to in paragraph (2)(b) so that those rights are of an equivalent value to the additional pension rights the member would have secured if the contributions had been made in the relevant scheme year in which they were paid—

- (a) in respect of an election under 2015 regulation 61, where paragraph (1)(c)(i) applies to or in respect of the member, and
- (b) in respect of an election under 2015 regulation 63, where paragraph (1)(c)(ii) applies to or in respect of the member.

(4) For the purposes of paragraph (2)(b)(ii), the amount of compensation must be equal to the relevant contributions paid by the member reduced by tax relief amounts calculated in accordance with paragraphs (5) to (9) and, if relevant, (11) to (12) of direction 5 of the 2022 Directions.

(5) In paragraph (2)(b), “corresponding option” means—

- (a) where pursuant to section 2(1) of PSPJOA 2022, the remedy member's remediable service is treated as being pensionable service under the 2011 Regulations—
 - (i) an option under 2011 regulation Q8 if the member paid contributions in accordance with 2015 regulation 63;
 - (ii) an option under 2011 regulation Q10 if the member paid the lump sum contribution referred to in 2015 regulation 61; or
 - (iii) an option under 2011 regulation Q11 if the member's employing authority paid the lump sum contribution referred to in 2015 regulation 61; or
- (b) where pursuant to section 2(1) of PSPJOA 2022, the remedy member's remediable service is treated as being pensionable service under the 2013 Regulations—
 - (i) an option under 2013 regulation 2.C.8 or 2013 regulation 3.C.6 if the member paid contributions in accordance with 2015 regulation 63;
 - (ii) an option under 2013 regulation 2.C.10 or 2013 regulation 3.C.8 if the member paid the lump sum contribution referred to in 2015 regulation 61; or
 - (iii) an option under 2013 regulation 2.C.11 or 2013 regulation 3.C.9 if the member's employing authority paid the lump sum contribution referred to in 2015 regulation 61.

(6) In this regulation—

“pensioner member” means a person entitled to a retirement pension including a partial retirement pension under regulation 84 of the 2015 Regulations (effect of the election) where at the same time as the person became entitled to that pension, the person also became entitled to the immediate payment of additional pension in accordance with regulation 84(2)(c) of the 2015 Regulations;

“relevant section of the legacy scheme” means—

- (a) the 1995 Section if, pursuant to section 2(1) of PSPJOA 2022, the remedy member's remediable service is treated as being pensionable service under the 2011 Regulations, or
- (b) the 2008 Section if, pursuant to section 2(1) of that Act, the remedy member's remediable service is treated as being pensionable service under the 2013 Regulations.

(7) For the purposes of this regulation, the reference to “£5,000” in paragraph (7) of 2011 regulation Q8, 2013 regulation 2.C.8 and 2013 regulation 3.C.6 is to be read as if it were a reference to “£12,079”.

Treatment of buy-out contributions made under 2015 regulation 47: pensioner and deceased members of the 2015 scheme

- 22.—(1) This regulation applies to a remedy member—
- (a) who has pensionable service in the legacy scheme by virtue of section 2(1) of PSPJOA 2022;
 - (b) who on 30 September 2023—
 - (i) was a pensioner member with regard to benefits paid in respect of remediable service in the 2015 scheme;
 - (ii) was an active or deferred member in respect of remediable service in the 2015 scheme and was entitled to a retirement pension in respect of pensionable service in the legacy scheme to which the member had become entitled on or after 1 April 2015; or
 - (iii) was deceased; and
 - (c) who paid buy-out contributions in accordance with 2015 regulation 47 during the remedy period (including where any such contributions were paid by the member’s employing authority in place of the member during that period under paragraph (3) of that regulation (“employer buy-out contributions”)).
- (2) Where this regulation applies—
- (a) all the member’s rights secured by the payment of buy-out contributions mentioned in paragraph (1)(c) are extinguished, and
 - (b) unless paragraph (3) or (4) applies to or in respect of that member, the scheme manager must pay to the member or, if the member is deceased, the member’s personal representative an amount of compensation determined in accordance with paragraph (9) in respect of any buy-out contributions paid during the remedy period by a member (excluding any employer buy-out contributions).
- (3) This paragraph applies to or in respect of a member if—
- (a) an immediate choice election has been accepted by the scheme manager or treated by the scheme manager as having been made in accordance with regulation 9;
 - (b) an annual pension to which an actuarial reduction or an actuarial increase was applied under the 2015 Regulations is being paid to the member or, if the member is deceased, was paid to the member before the member’s death; and
 - (c) the scheme manager accepts a claim made by a member or designated person in accordance with paragraph (4) for rights under the 1995 Section or the 2008 Section (whichever is relevant) that, after having regard to the advice of the scheme actuary, the scheme manager has determined are of an equivalent value to the member’s rights that were extinguished under paragraph (2)(a).
- (4) This paragraph applies to or in respect of a member where—
- (a) an immediate choice election has not been accepted by the scheme manager or treated by the scheme manager as having been made in accordance with regulation 9, and
 - (b) the scheme manager accepts a claim made by a member or designated person in accordance with paragraph (5) for rights that are of an equivalent value to the additional pension rights the member would have secured if the contributions referred to in paragraph (1)(c) had been made in the relevant scheme year in which they were paid under—
 - (i) an option under 2011 regulation Q6 on the payment of the member’s 1995 Section benefits in respect of the member’s remediable service, or
 - (ii) an option under 2013 regulation 2.C.8 or 2013 regulation 3.C.6 on the payment of the member’s benefits under the 2008 Section in respect of the member’s remediable service.

(5) For the purposes of paragraph (3)(c), the member or designated person must make the claim—

- (a) by notice in writing in such form and including such further information as the scheme manager requires;
- (b) at the same time as an election under regulation 9 is made.

(6) For the purposes of paragraph (4)(b), the member or designated person must make the claim—

- (a) by notice in writing, in such form and including such further information as the scheme manager requires;
- (b) before the end of the immediate choice election period in relation to the member.

(7) The scheme manager must send a notice in writing to the member or designated person—

- (a) of the amount of compensation to which the member is entitled under this regulation;
- (b) if paragraph (3) applies to or in respect of the member, of the member's or designated person's right to make a claim in accordance with paragraph (5); and
- (c) if paragraph (4) applies to or in respect of the member, of the member's or designated person's right to make a claim in accordance with paragraph (6).

(8) The scheme manager must send any notice referred to in paragraph (7) to the member or designated person when the scheme manager provides the first remediable service statement in respect of the member under regulation 6 (remediable service statements).

(9) For the purposes of paragraph (2)(b), the amount of compensation must be equal to the buy-out contributions paid during the remedy period by the member reduced by tax relief amounts calculated in accordance with paragraphs (5) to (9) and, if relevant, (11) to (12) of direction 5 of the 2022 Directions.

Remedial arrangements to pay voluntary contributions to secure legacy scheme additional pension

23.—(1) This regulation applies to a remedy member (“M”) who is not a deceased member.

(2) M may elect to enter into an arrangement (a “remedial arrangement”) to pay contributions for additional pension under the legacy scheme in accordance with this regulation and—

- (a) 2011 regulation Q8 or 2011 regulation Q10, or
- (b) 2013 regulation 2.C.8, 2013 regulation 2.C.10, 2013 regulation 3.C.6 or 2013 regulation 3.C.8.

(3) M may only enter into a remedial arrangement—

- (a) in respect of a period of M's remediable service;
- (b) if the scheme manager is satisfied that it is more likely than not that, but for an actual or anticipated relevant breach of a non-discrimination rule(a), M would, during that period have entered into the same or a similar arrangement;
- (c) before—
 - (i) the end of the period of one year beginning with the day on which a remediable service statement is first provided in respect of M, or
 - (ii) such later time as the scheme manager considers reasonable in all the circumstances;

(d) after making an application in accordance with paragraph (4).

(4) An application is made in accordance with this paragraph where—

- (a) it is in writing in such form as the scheme manager determines;

(a) See section 25(8) of PSPJOA 2022 for the meaning of “non-discrimination rule” and section 25(9) for the circumstances in which breach of a non-discrimination rule is “relevant”.

- (b) it is accompanied by any information the scheme manager reasonably requires to be provided for the purposes of—
 - (i) determining the matters mentioned in paragraph (3)(b);
 - (ii) complying with any requirement imposed by 2011 regulation Q12, 2013 regulation 2.C.12 or 2013 regulation 3.C.10 in connection with exercising an option to make contributions for additional pension; and
- (c) it is received by the scheme manager before—
 - (i) the end of the period of six months beginning with the day on which a remediable service statement is first provided in respect of M, or
 - (ii) at such later time as the scheme manager considers reasonable in all the circumstances of the case.

(5) The scheme manager may treat an application made in accordance with paragraph (4) as if it were a notice under paragraph (1) of 2011 regulation Q12, 2013 regulation 2.C.12 or 2013 regulation 3.C.10.

(6) Where M enters into a remedial arrangement, M owes to the scheme manager an amount equal to—

- (a) the aggregate of the voluntary contributions which M would have owed had M entered into the remedial arrangement at the time M would have entered into the same or a similar arrangement but for a relevant breach of a non-discrimination rule, less
- (b) tax relief amounts calculated in accordance with direction 12(2) to (7) of the 2022 Directions.

(7) Where a determination is made in accordance with direction 12(6) of the 2022 Directions, the following apply—

- (a) direction 12(8) (provision of explanation);
- (b) direction 12(9) and (10) (appeals).

(8) In this regulation—

“2011 regulation Q12” means regulation Q12 of the 2011 Regulations (exercise of options under regulations Q8, Q10 and Q11);

“2013 regulation 2.C.12” means regulation 2.C.12 of the 2013 Regulations (exercise of options under regulations 2.C.8, 2.C.10 and 2.C.11);

“2013 regulation 3.C.10” means regulation 3.C.19 of the 2013 Regulations (exercise of options under regulations 3.C.6, 3.C.8 and 3.C.9).

Revocation of cancellation of arrangement or option to secure legacy scheme additional service or additional pension

24.—(1) This regulation applies to a remedy member (“M”) who has cancelled—

- (a) an arrangement to pay for additional years of service by regular additional contributions under 2011 regulation Q5;
- (b) an option to purchase additional pension by the making of additional periodical contributions under 2011 regulation Q8; or
- (c) an option to purchase additional pension by the making of additional periodical contributions under 2013 regulation 2.C.8 or 2013 regulation 3.C.6.

(2) M may revoke the cancellation of an arrangement or option referred to in paragraph (1) with the effect that it is treated as if it had never been cancelled.

(3) The revocation referred to in paragraph (2) may only be made—

- (a) if the scheme manager is satisfied that it is more likely than not that, but for an actual or anticipated relevant breach of a non-discrimination rule, M would not have made the decision to cancel the arrangement or option (whether or not by virtue of opting out of the legacy scheme or the 2015 scheme);

- (b) before—
 - (i) the end of the period of one year beginning with the day on which a remediable service statement is first provided in respect of M, or
 - (ii) such later deadline as the scheme manager considers reasonable in all the circumstances of the case; and
- (c) after making an application in accordance with paragraph (5).

(4) The scheme manager must determine that the condition in respect of which the scheme manager is required to be satisfied under paragraph (3)(a) has been met where M cancelled an arrangement or option referred to in paragraph (1) at any time between 1 October 2014 and 31 March 2022 (those dates included).

- (5) An application is made in accordance with this paragraph where—
 - (a) it is in writing and in such form as the scheme manager determines;
 - (b) it is accompanied by any information the scheme manager reasonably requires to be provided for the purpose of determining the matters mentioned in paragraph (3)(a);
 - (c) it is received by the scheme manager before—
 - (i) the end of the period of six months beginning with the day on which a remediable service statement is first provided in respect of M, or
 - (ii) such later deadline as the scheme manager considers reasonable in all the circumstances of the case.

(6) Where M revokes the cancellation of an arrangement or option referred to in paragraph (1), M must pay to the scheme an amount equal to—

- (a) the outstanding balance of voluntary contributions owed plus interest in accordance with regulation 63, less
- (b) amounts representing tax relief calculated in accordance with direction 12(2) to (7) of the 2022 Directions, as if the arrangement or option were a new remedial voluntary contributions arrangement made by virtue of section 25(1) of PSPJOA 2022.

(7) Where the scheme manager makes a determination in accordance with paragraph (6) of direction 12 of the 2022 Directions (remedial arrangements to pay voluntary contributions to legacy schemes), paragraphs (8) (provision of explanation) and (9) and (10) (appeals) of that direction apply.

(8) In this regulation, “2011 regulation Q5” means regulation Q5 of the 2011 Regulations(a) (paying for additional service or unreduced retirement lump sum by regular additional contributions).

PART 5

Divorce or the dissolution of a civil partnership

Interpretation of Part 5

25. In this Part—

“the 1999 Act” means the Welfare Reform and Pensions Act 1999**(b)**;

“the 2000 Regulations” means The Pensions on Divorce etc. (Provision of Information) Regulations 2000**(c)**;

“appropriate amount” means the appropriate amount for the purposes of section 29(1) of the 1999 Act (creation of pension debits and credits) determined in accordance with section 29(2)

(a) Regulation Q5 of the 2011 Regulations.
 (b) 1999 c. 30.
 (c) S.I. 2000/1048.

or (3) (whichever is relevant) of that Act but converted, where it is determined in accordance with section 29(3), into a percentage using the formula—

$$(A \times 100) / B$$

where—

A is the amount specified to be transferred, and

B is the valuation of pension benefits at the valuation date provided by the scheme manager;

“non-remediable service shareable rights” means the shareable rights of the remedy member that are not remediable service shareable rights on the day before the transfer day;

“operative time” means—

- (a) if an election under regulation 9 is made in relation to a pension debit member’s remediable service, the time the election is made or otherwise the end of the immediate choice election period;
- (b) if an election under regulation 12 is made in relation to a pension debit member’s remediable service, the time the election is made or otherwise the end of the deferred choice election period;

“pension debit” means a debit of the appropriate amount under section 29(1)(a) of the 1999 Act;

“remediable service shareable rights” means the shareable rights of the remedy member obtained by virtue of the remedy member’s remediable service during the period beginning with 1 April 2015 and ending with the earlier of—

- (a) the day before the transfer day, or
- (b) the last day of the member’s remediable service;

“shareable rights” has the meaning given in section 27(2) of the 1999 Act (scope of mechanism);

“transfer day” has the meaning given in section 29(8) of the 1999 Act;

“valuation day” has the meaning given in section 29(7) of the 1999 Act.

Pension debits: valuation of pension benefits before 1 October 2023: active and deferred members (immediate alternative debit of appropriate amount)

26.—(1) This regulation applies to a corresponding pension debit member(a) (“DM”) where—

- (a) DM has pensionable service in the legacy scheme by virtue of section 2(1) of PSPJOA 2022;
- (b) on 30 September 2023, DM was an active or deferred member of the 2015 scheme in respect of remediable service(b);
- (c) before these Regulations came into force, the scheme manager provided a valuation of benefits, in respect of remediable service shareable rights, under regulation 3 of the 2000 Regulations(c) (information about pensions and divorce and dissolution of a civil partnership: valuation of pension benefits); and
- (d) on or after 1 April 2015, DM became subject to a debit of the appropriate amount in the 2015 scheme in respect of remediable service shareable rights.

(2) Where this regulation applies, all DM’s debit of the appropriate amount in the 2015 scheme in respect of remediable service shareable rights—

- (a) becomes a debit of the appropriate amount in the legacy scheme, and

(a) For the meaning of “corresponding pension debit member”, see section 19(3) of PSPJOA 2022.

(b) For the meaning of “remediable service”, see section 1 of PSPJOA 2022.

(c) Regulation 3 was amended by S.I. 2005/2877, S.I. 2008/1050, S.I. 2016/289.

- (b) is adjusted to a debit of equivalent value to a debit of the appropriate amount that DM would have had in the legacy scheme on the transfer day.
- (3) The scheme manager must make the adjustment referred to in paragraph (2)—
 - (a) where the scheme manager discharged their liability under section 33(1) of the 1999 Act^(a) (time for discharge of liability in respect of a pension credit) before 1 October 2023—
 - (i) before 1 July 2024, or
 - (ii) on such later date as the scheme manager considers reasonable in all the circumstances of the case, or
 - (b) as soon as reasonably practicable after the day on which the scheme manager discharges their liability under that section where the scheme manager does so after 30 September 2023.
- (4) Where paragraph (3)(a) applies, the scheme manager must send a notice in writing to DM specifying the adjusted debit of the appropriate amount in the legacy scheme.
- (5) The scheme manager must send the notice to DM within one month beginning with the day after making the adjustment under paragraph (2)(b).

Pension debits: valuation of pension benefits before 1 October 2023: immediate choice election for 2015 scheme benefits: pensioner and deceased members

- 27.—**(1) This regulation applies to a corresponding pension debit member (“DM”) where—
- (a) on 30 September 2023, DM was a pensioner remedy member, or a deceased member of the legacy scheme or the 2015 scheme in respect of remediable service, and
 - (b) before these Regulations came into force, the scheme manager provided a valuation of benefits, in respect of remediable service shareable rights, under regulation 3 of the 2000 Regulations^(b) (information about pensions and divorce and dissolution of a civil partnership: valuation of pension benefits).
- (2) Paragraph (3) applies where—
- (a) DM or, where DM has died after the transfer day, the designated person (see regulation 7) makes an immediate choice election for 2015 scheme benefits under regulation 9 (immediate choice election for 2015 scheme benefits: pensioner and deceased members) or such an election is treated by the scheme manager as having been made in accordance with regulation 9(6);
 - (b) DM has remediable service in the legacy scheme that is not pensionable service by virtue of section 2(1) of the PSPJOA 2022; and
 - (c) DM is subject to a debit of the appropriate amount in the legacy scheme in respect of remediable service shareable rights—
 - (i) at or before the operative time, or
 - (ii) after the operative time.
- (3) Where this paragraph applies, the scheme manager must adjust all DM’s debit of the appropriate amount in the legacy scheme in respect of remediable service shareable rights to a debit of equivalent value to a debit of the appropriate amount that DM would have had in the 2015 scheme on the transfer day.
- (4) Paragraph (5) applies where—
- (a) DM or, where DM has died after the transfer day, the designated person (see regulation 7) makes an immediate choice election for 2015 scheme benefits under regulation 9 or such an election is treated by the scheme manager as having been made in accordance with regulation 9(6);

(a) Section 33 has been amended but the amendment is not relevant to these Regulations.
 (b) Regulation 3 was amended by S.I. 2005/2877, S.I. 2008/1050, S.I. 2016/289.

- (b) DM has remediable service in the legacy scheme that is pensionable service by virtue of section 2(1) of PSPJOA 2022; and
- (c) DM is subject to a debit of the appropriate amount in the 2015 scheme in respect of remediable service shareable rights—
 - (i) at or before the operative time, or
 - (ii) after the operative time.

(5) Where this paragraph applies, all DM’s debit of the appropriate amount in the 2015 scheme in respect of remediable service shareable rights—

- (a) becomes a debit of the appropriate amount in the legacy scheme, and
- (b) must be treated by the scheme manager as a debit of equivalent value to a debit of the appropriate amount that DM would have had in the 2015 scheme on the transfer day.

(6) Paragraphs (3) and (5) have effect—

- (a) where paragraph (2)(c)(i) or (4)(c)(i) applies, at the operative time;
- (b) where paragraph (2)(c)(ii) or (4)(c)(ii) applies, immediately after DM is subject to a debit of the appropriate amount in respect of remediable service shareable rights; or
- (c) on such later date as the scheme manager considers reasonable in all the circumstances of the case.

(7) Where paragraph (2)(c)(ii) or 4(c)(ii) applies, the scheme manager must send a notice in writing to DM specifying the equivalent debit of the appropriate amount, in respect of remediable service shareable rights, in the legacy scheme that DM would have had in the 2015 scheme on the transfer day.

(8) The scheme manager must send the notice mentioned in paragraph (7) to DM within one month beginning with the day after paragraph (3) or (5) (whichever is relevant) has effect in accordance with paragraph (6)(b) or (c).

Pension debits: no immediate choice election for 2015 scheme benefits: pensioner and deceased members

28.—(1) This regulation applies to a corresponding pension debit member (“DM”) where—

- (a) on 30 September 2023, DM was a pensioner remedy member, or a deceased member of the 2015 scheme in respect of remediable service, and
- (b) before these Regulations came into force, the scheme manager provided a valuation of benefits, in respect of remediable service shareable rights, under regulation 3 of the 2000 Regulations.

(2) Paragraph (3) applies where—

- (a) DM or, where DM has died after the transfer day, the designated person (see regulation 7) does not make an immediate choice election for 2015 scheme benefits under regulation 9 before the end of the immediate choice election period and such an election is not treated by the scheme manager as having been made in accordance with regulation 9(6);
- (b) DM has remediable service in the legacy scheme that is pensionable service by virtue of section 2(1) of PSPJOA 2022; and
- (c) DM is subject to a debit of the appropriate amount in the 2015 scheme in respect of remediable service shareable rights—
 - (i) at or before the operative time, or
 - (ii) after the operative time,

(3) Where this paragraph applies, all DM’s debit of the appropriate amount in the 2015 scheme in respect of remediable service shareable rights—

- (a) becomes a debit of the appropriate amount in the legacy scheme, and
- (b) is adjusted to a debit of equivalent value to a debit of the appropriate amount that DM would have had in the legacy scheme on the transfer day.

(4) Paragraph (3) has effect—

- (a) at the operative time, where paragraph (2)(c)(i) applies, or
- (b) on such later date as the scheme manager considers reasonable in all the circumstances of the case.

(5) Where paragraph (2)(c)(ii) applies, the scheme manager must send a notice in writing to DM specifying the equivalent debit of the appropriate amount, in respect of remediable service shareable rights, in the legacy scheme that DM would have had in the legacy scheme on the transfer day.

(6) The scheme manager must send the notice mentioned in paragraph (5) to DM within one month beginning with the day after paragraph (3) has effect in accordance with paragraph (4).

Pension debits: deferred choice election for 2015 scheme benefits: active and deferred members

29.—(1) This regulation applies to a corresponding pension debit member (“DM”) where—

- (a) DM has remediable service in the legacy scheme that is pensionable service under that scheme whether or not by virtue of section 2(1) of PSPJOA 2022;
- (b) on 30 September 2023, DM was an active or deferred member of the legacy scheme or the 2015 scheme in respect of remediable service;
- (c) under regulation 12, DM or, where DM has died after the transfer day, the designated person (see regulation 7) makes a deferred choice for 2015 scheme benefits or such an election is treated by the scheme manager as having been made in accordance with regulation 12(6); and
- (d) DM is subject to—
 - (i) an adjustment to a debit of equivalent value to a debit of the appropriate amount that DM would have had in the legacy scheme on the transfer day under regulation 26(2);
 - (ii) a debit of the appropriate amount in the legacy scheme in respect of remediable service shareable rights at or before the operative time;
 - (iii) a debit of the appropriate amount in the legacy scheme in respect of remediable service shareable rights after the operative time.

(2) Where this regulation applies, the scheme manager must adjust all DM’s debit of the appropriate amount in the legacy scheme in respect of remediable service shareable rights to an equivalent value to the debit of the appropriate amount that DM would have had in the 2015 scheme on the transfer day.

(3) Paragraph (2) has effect—

- (a) where paragraph (1)(d)(i) or (ii) applies, at the operative time;
- (b) where paragraph (1)(d)(iii) applies, immediately after DM is subject to a debit of the appropriate amount in respect of remediable service shareable rights; or
- (c) on such later date as the scheme manager considers reasonable in all the circumstances of the case.

(4) Where paragraph (1)(d)(ii) applies, the scheme manager must send a notice in writing to DM specifying the equivalent debit of the appropriate amount, in respect of remediable service shareable rights, in the legacy scheme that DM would have had in the 2015 scheme on the transfer day.

(5) The scheme manager must send the notice mentioned in paragraph (4) to DM within one month beginning with the day after paragraph (2) has effect in accordance with paragraph (3)(b) or (c).

Valuation of pension benefits on or after 1 October 2023

30.—(1) This regulation applies to a remedy member (“RM”) where—

- (a) on 30 September 2023, the RM was an active or deferred member of the legacy scheme or the 2015 scheme or a pensioner remedy member, and
 - (b) after these Regulations come into force, the scheme manager receives a request in writing for a valuation of pension benefits, under regulation 2 of the 2000 Regulations^(a) (basic information about pensions and divorce or dissolution of a civil partnership), in respect of remediable service shareable rights.
- (2) Paragraph (3) applies where on the valuation day—
- (a) the scheme manager has not received an immediate choice election under regulation 9 or a deferred choice election under regulation 12 in respect of those rights, and
 - (b) the immediate choice election period or the deferred choice election period has not ended.
- (3) The scheme manager must determine—
- (a) an aggregated legacy scheme valuation of pension benefits in respect of—
 - (i) non-remediable service shareable rights, and
 - (ii) remediable service shareable rights, and
 - (b) where relevant, a 2015 scheme valuation of pension benefits in respect of non-remediable service shareable rights.
- (4) For the purposes of paragraph (3)(a)(ii), the scheme manager must determine the legacy scheme valuation of pensions benefits as if the RM's remediable service on the valuation day was in—
- (a) the legacy scheme, and
 - (b) the 2015 scheme.
- (5) The scheme manager must provide—
- (a) an aggregated legacy scheme valuation of pension benefits determined under paragraph (3)(a) using the higher of the two valuations determined under paragraph (4), and
 - (b) where relevant, a 2015 scheme valuation of pension benefits determined under paragraph (3)(b),
- in accordance with regulation 2 of the 2000 Regulations.
- (6) Paragraph (7) applies where on the valuation day—
- (a) the scheme manager has received an immediate choice election under regulation 9 or a deferred choice election under regulation 12 in respect of those rights, or
 - (b) no such election has been received and the immediate choice election period or the deferred choice election period has ended.
- (7) The scheme manager must determine the legacy scheme valuation of pension benefits in respect of remediable service shareable rights as if RM's remediable service on the valuation day were in—
- (a) the legacy scheme, where—
 - (i) the scheme manager has not received an immediate choice election for 2015 scheme benefits under regulation 9 or a deferred choice election for 2015 scheme benefits under regulation 12 by the end of the immediate choice election period or the deferred choice election period (whichever is relevant), and
 - (ii) such a choice is not treated as having been made in accordance with regulation 9(6) or regulation 12(6) (whichever is relevant); or
 - (b) the 2015 scheme, where—
 - (i) the scheme manager has received an immediate choice election for 2015 scheme benefits under regulation 9 or a deferred choice election under regulation 12 (whichever is relevant), or

(a) Regulation 2 was amended by S.I. 2005/2877, S.I. 2016/289.

- (ii) such an election is treated by the scheme manager as having been made in accordance with regulation 9(6) or 12(6) (whichever is relevant).

Pension debits: valuation of pension benefits on or after 1 October 2023: immediate choice election for 2015 scheme benefits: pensioner members

31.—(1) This regulation applies to a corresponding pension debit member (“DM”) where—

- (a) on 30 September 2023, DM was a pensioner remedy member, and
- (b) after these Regulations have come into force, the scheme manager provides an aggregated legacy scheme valuation of pension benefits determined under regulation 30(3)(a) taking into account the higher of the two valuations determined under regulation 30(4).

(2) Paragraph (3) applies where—

- (a) DM or, where DM has died after the transfer day, the designated person (see regulation 7) makes an immediate choice election for 2015 scheme benefits under regulation 9 (immediate choice election for 2015 scheme benefits: pensioner and deceased members) or such an election is treated by the scheme manager as having been made in accordance with regulation 9(6), and
- (b) DM is subject to a debit of the appropriate amount in the legacy scheme in respect of remediable service shareable rights—
 - (i) at or before the operative time, or
 - (ii) after the operative time.

(3) Where this paragraph applies, all DM’s debit of the appropriate amount in the legacy scheme in respect of remediable service shareable rights is adjusted to a debit of equivalent value to a debit of the appropriate amount that DM would have had in the 2015 scheme on the transfer day.

(4) Paragraph (3) has effect—

- (a) where paragraph (2)(b)(i) applies, at the operative time;
- (b) where paragraph (2)(b)(ii) applies, immediately after DM is subject to a debit of the appropriate amount in respect of remediable service shareable rights; or
- (c) on such later date as the scheme manager considers reasonable in all the circumstances of the case.

(5) Where paragraph (2)(b)(ii) applies, the scheme manager must send a notice in writing to DM specifying the equivalent debit of the appropriate amount, in respect of remediable service shareable rights, in the legacy scheme, that DM would have had in the 2015 scheme on the transfer day.

(6) The scheme manager must send the notice mentioned in paragraph (5) to DM within one month beginning with the day after (3) has effect in accordance with paragraph (4)(b) or (c).

Pension debits: valuation of pension benefits on or after 1st October 2023: no immediate choice election for 2015 scheme benefits: pensioner members

32.—(1) This regulation applies to a corresponding pension debit member (“DM”) where—

- (a) on 30 September 2023, DM was a pensioner remedy member, and
- (b) after these Regulations have come into force, the scheme manager provides an aggregated legacy scheme valuation of pension benefits determined under regulation 30(3)(a) taking into account the higher of the two valuations determined under regulation 30(4).

(2) Paragraph (3) applies where—

- (a) DM or, where DM has died after the transfer day, the designated person (see regulation 7) does not make an immediate choice election for 2015 scheme benefits under regulation 9 (immediate choice election for 2015 scheme benefits: pensioner and deceased members) before the end of the immediate choice election period and such an election is not treated by the scheme manager as having been made in accordance with regulation 9(6), and

- (b) DM is subject to a debit of the appropriate amount in the legacy scheme in respect of remediable service shareable rights—
 - (i) at or before the operative time, or
 - (ii) after the operative time.

(3) Where this paragraph applies, all DM's debit of the appropriate amount in the legacy scheme in respect of remediable service shareable rights is adjusted to a debit of equivalent value to a debit of the appropriate amount that DM would have had in the legacy scheme on the transfer day.

(4) Paragraph (3) has effect—

- (a) where paragraph (2)(b)(i) applies, at the operative time;
- (b) where paragraph (2)(b)(ii) applies, immediately after DM is subject to a debit of the appropriate amount in respect of remediable service shareable rights; or
- (c) on such later date as the scheme manager considers reasonable in all the circumstances of the case.

(5) Where paragraph (2)(b)(ii) applies, the scheme manager must send a notice in writing to DM specifying the equivalent debit of the appropriate amount, in respect of remediable service shareable rights, in the legacy scheme, that DM would have had in the legacy scheme on the transfer day.

(6) The scheme manager must send the notice mentioned in paragraph (5) to DM within one month beginning with the day after paragraph (3) has effect in accordance with paragraph (4)(b) or (c).

Pension credits: valuation of pension benefits before 1st October 2023: pension credit adjustment: remediable service shareable rights in the legacy scheme only or the 2015 scheme only

33.—(1) This regulation applies to a relevant pension credit member^(a) (“CM”) where—

- (a) before these Regulations came into force, the scheme manager provided a valuation of benefits, in respect of remediable service^(b) shareable rights, under regulation 3 of the 2000 Regulations^(c) (information about pensions and divorce and dissolution of a civil partnership: valuation of pension benefits), and
- (b) in respect of the corresponding pension debit member's (“DM”) remediable service shareable rights, CM has a pension credit^(d) solely in—
 - (i) the legacy scheme, or
 - (ii) the 2015 scheme.

(2) Paragraphs (3) and (4) apply where CM has a pension credit, in respect of DM's remediable service shareable rights, in the legacy scheme but does not have a pension credit, in respect of DM's remediable service shareable rights, in the 2015 scheme.

(3) Where this paragraph applies, the scheme manager, after having regard to the advice of the scheme actuary, must determine a valuation of pension benefits, in respect of DM's remediable service shareable rights, as though DM's remediable service on or before the day before the transfer day had been in the 2015 scheme.

(4) Where—

- (a) the valuation of pension benefits determined under paragraph (3) is greater than
- (b) the valuation of pension benefits, in respect of DM's remediable service shareable rights in the legacy scheme on or before the day before the transfer day,

(a) For the meaning of “relevant pension credit member”, see section 19(2) of PSPJOA 2022.

(b) For the meaning of “remediable service”, see section 1 of PSPJOA.

(c) Regulation 3 was amended by S.I. 2005/2877, S.I. 2008/1050, S.I. 2016/289.

(d) For the meaning of “pension credit”, see section 29(1)(b) of the 1999 Act.

the scheme manager, after having regard to the advice of the scheme actuary, must adjust CM's legacy scheme pension credit to take account of the difference between the valuations referred to in sub-paragraphs (a) and (b).

(5) Paragraphs (6) and (7) apply where CM has a pension credit, in respect of DM's remediable service shareable rights in the 2015 scheme but does not have a pension credit, in respect of DM's remediable service shareable rights, in the legacy scheme.

(6) Where this paragraph applies, the scheme manager, after having regard to the advice of the scheme actuary, must determine a valuation of pension benefits, in respect of DM's remediable service shareable rights, as though DM's remediable service on or before the day before the transfer day had been in the legacy scheme.

(7) Where—

- (a) the valuation of pension benefits determined under paragraph (6) is greater than
- (b) the valuation of pension benefits, in respect of DM's remediable service shareable rights in the 2015 scheme on or before the day before the transfer day,

the scheme manager, after having regard to the advice of the scheme actuary, must adjust CM's legacy scheme pension credit to take account of the difference between the valuations referred to in sub-paragraphs (a) and (b).

(8) An adjustment made under paragraph (4) or (7) has effect as though it had been made on the transfer day.

(9) The scheme manager must make the adjustment referred to in paragraph (4) or (7) (whichever is relevant)—

- (a) where the scheme manager discharged their liability under section 33(1) of the 1999 Act (time for discharge of liability in respect of a pension credit) before 1 October 2023—
 - (i) before 1 October 2024, or
 - (ii) on such later date as the scheme manager considers reasonable in all the circumstances of the case, or
- (b) as soon as reasonably practicable after the day on which the scheme manager discharges their liability under that section where the scheme manager does so after 30 September 2023.

(10) Where paragraph (9) applies, the scheme manager must send a notice in writing to CM specifying—

- (a) the adjusted pension credit, and
- (b) in which scheme the adjusted pension credit is retained.

(11) The scheme manager must send the notice referred to in paragraph (10) to CM within one month beginning with the day after the day on which the scheme manager made the adjustment under paragraph (4) or (7).

Pension credits: valuation of pension benefits before 1 October 2023: pension credit adjustment: remediable service shareable rights in the legacy scheme and the 2015 scheme

34.—(1) This regulation applies to a relevant pension credit member^(a) (“CM”) where—

- (a) before these Regulations came into force, the scheme manager provided a valuation of benefits, in respect of remediable service shareable rights, under regulation 3 of the 2000 Regulations (information about pensions and divorce and dissolution of a civil partnership: valuation of pension benefits), and
- (b) CM has a pension credit, in respect of the corresponding pension debit member's (“DM”) remediable service shareable rights, in the legacy scheme and the 2015 scheme.

(a) For the meaning of “relevant pension credit member”, see section 19(2) of PSPJOA 2022.

(2) Where this regulation applies, CM's pension credit in respect of DM's remediable service shareable rights must, by virtue of section 19(5) of PSPJOA 2022, be retained solely in the legacy scheme or solely in the 2015 scheme.

(3) The scheme manager must, after having regard to the advice of the scheme actuary, determine—

- (a) a valuation of pension benefits, in respect of DM's remediable service shareable rights and the legacy scheme corresponding pension credit, under section 29(1) of the 1999 Act (creation of pension debits and credits), as though all DM's remediable service on or before the day before the transfer day were pensionable service in the legacy scheme, and
- (b) a valuation of pension benefits, in respect of DM's remediable service shareable rights, and the 2015 scheme corresponding pension credit, under section 29(1) of the 1999 Act, as though all DM's remediable service on or before the day before the transfer day were pensionable service in the 2015 scheme.

(4) CM must make an election to choose one of the pension credits, in respect of DM's remediable service shareable rights, determined under paragraph (3).

(5) The election referred to in paragraph (4) must—

- (a) be made by CM in writing;
- (b) be received by the scheme manager within a period—
 - (i) of three months, beginning with the day after the scheme manager provides the notice referred to in paragraph (6), or
 - (ii) that the scheme manager considers reasonable in all the circumstances of the case; and
- (c) contain such information as the scheme manager requires.

(6) The scheme manager must inform CM of the right to make an election under paragraph (5) in a notice in writing to CM—

- (a) where the scheme manager discharged their liability under section 33(1) of the 1999 Act (time for discharge of liability in respect of a pension credit) before 1 October 2023—
 - (i) before 1 October 2024, or
 - (ii) on such later date as the scheme manager considers reasonable in all the circumstances of the case, or
- (b) as soon as reasonably practicable after the day on which the scheme manager discharges their liability under that section where the scheme manager does so after 30 September 2023.

(7) The notice referred to in paragraph (6) must specify—

- (a) the valuation of pension benefits and corresponding pension credits calculated by the scheme manager, determined under paragraph (3);
- (b) the date by which an election under this regulation must be received by the scheme manager;
- (c) that the election is irrevocable.

(8) Where the scheme manager accepts such an election—

- (a) the pension credit, in respect of DM's remediable service shareable rights, in whichever of the legacy scheme and the 2015 scheme CM identified in the election is retained, and
- (b) any pension credit, in respect of DM's remediable service shareable rights, in whichever of the legacy scheme and the 2015 scheme CM did not identify in the election is extinguished.

(9) The pension credit—

- (a) retained under paragraph (8)(a) has effect as though it had been retained in that scheme on the transfer day,

(b) extinguished under paragraph (8)(b) has effect as though it had been extinguished in that scheme on the transfer day.

(10) The personal representatives of CM may make an election under paragraph (4) where CM dies before making such an election.

(11) Where the scheme manager does not receive an election within the period specified in paragraph (5)(b), the pension credit, in respect of DM's remediable service shareable rights, is to be retained in whichever of the legacy scheme or the 2015 scheme the scheme manager, after having regard to the advice of the scheme actuary, deems would be most beneficial to CM.

(12) Where paragraph (8) applies, the scheme manager must send a notice in writing to CM specifying—

- (a) the adjusted pension credit, in respect of DM's remediable service shareable rights;
- (b) in which scheme that adjusted pension credit is retained;
- (c) details of the pension credit that is extinguished under paragraph (9)(b).

(13) The scheme manager must send the notice mentioned in paragraph (12) to CM within one month beginning with the day after the day on which the scheme manager accepts an election under paragraph (8).

Pension credits: pensioner and deceased relevant pension credit members

35.—(1) This regulation applies where the relevant pension credit member ("CM") is—

- (a) a pensioner pension credit member before—
 - (i) the adjustment is made under regulation 33(4) or 33(7), or
 - (ii) receiving the notice sent by the scheme manager under regulation 34(6), or
- (b) a deceased member, where the personal representatives of CM make an election under regulation 34(10).

(2) Where this regulation applies, subsections (3) to (8) of section 14 of PSPJOA 2022 apply in relation to CM as they apply in relation to a relevant member ("M") described in subsection (1) of that section with the following modifications—

- (a) the references to "M's remediable service in the employment or office" in subsections (3)(a) and (5)(a) are to be read as references to CM's pension credit;
- (b) the references to "the effect, if any, of sections 2(1) and 6(4) and (5)" in subsections (3)(b) and (5)(b) are to be read as references to the effect, if any, of this regulation; and
- (c) the term "operative time" is to be read as meaning the time at which—
 - (i) the adjustment mentioned in regulation 33(4) or regulation 33(7) has effect, or
 - (ii) the pension credit mentioned in regulation 34(8)(a) has effect.

Pension credits: valuation of pension benefits on or after 1 October 2023: creation of a pension credit

36.—(1) This regulation applies to a relevant pension credit member^(a) ("CM") where—

- (a) on or after these Regulations came into force, the scheme manager provided an aggregated legacy scheme valuation of pension benefits, determined under regulation 30(3)(a) and the higher of the two valuations determined under regulation 30(4); and
- (b) the corresponding pension debit member ("DM") is subject to a legacy scheme debit of the appropriate amount in respect of remediable service shareable rights.

(2) Where this regulation applies the scheme manager, having regard to the advice of the scheme actuary, must determine the legacy pension credit, determined under section 29(1) of the

^(a) For the meaning of "relevant pension credit member", see section 19(2) of PSPJOA 2022.

1999 Act, by means of the aggregated legacy scheme valuation calculated under paragraph (1)(a), which is recalculated to the day before the transfer day.

(3) Where paragraph (2) applies, the scheme manager must send a notice in writing to CM specifying the legacy scheme pension credit.

(4) The scheme manager must send the notice mentioned in paragraph (3) to CM as soon as reasonably practicable after the day on which the scheme manager discharges their liability under section 33(1) of the 1999 Act (time for discharge of liability in respect of a pension credit).

PART 6

Transfers

Interpretation of Part 6

37.—(1) In this part—

“2011 regulation N1” means regulation N1 of the 2011 Regulations(a) (member’s right to transfer accrued rights to benefits to this Section of the scheme);

“2011 regulation N4” means regulation N4 of the 2011 Regulations(b) (transfers that are not made under the Public Sector Transfer Arrangements);

“2013 regulation 2.F.9” means regulation 2.F.9 of the 2013 Regulations(c) (procedure for applications under regulation 2.F.8);

“2013 regulation 2.F.11” means regulation 2.F.11 of the 2013 Regulations (calculation of transferred-in pensionable service);

“2013 regulation 3.F.9” means regulation 3.F.9 of the 2013 Regulations(d) (procedure for applications under regulation 3.F.8);

“2013 regulation 3.F.11” means regulation 3.F.11 of the 2013 Regulations (calculation of increase to pensionable earnings as the result of a transfer-in);

“2015 regulation 142” means regulation 142 of the 2015 Regulations (acceptance of transfer value payment);

“2015 scheme joining date” means the date on which the member became eligible to be an active member of the 2015 scheme for the purpose of regulation 141(1)(c)(i) of the 2015 Regulations (application procedure);

“legacy scheme remediable cash equivalent”, in relation to a member, means the use by the scheme manager of the cash equivalent of rights in the legacy scheme to acquire rights in the 2015 scheme under—

(a) regulation M7A of the 2011 Regulations(e) (member’s right to transfer a preserved pension to the 2015 Scheme), or

(b) regulation 2.F.18 or regulation 3.F.18 of the 2013 Regulations(f) (right to transfer a deferred pension to the 2015 Scheme),

so far as the cash equivalent relates to the member’s remediable rights;

“Public Sector Transfer Arrangements” means the arrangements applying to certain public sector and other schemes under which a common basis for transfer payments is applied by the scheme and those other participating schemes;

(a) Regulation N1 was amended by S.S.I. 2013/109.

(b) Regulation N4 was amended by S.S.I. 2012/163.

(c) Regulation 2.F.9 was amended by S.S.I. 2015/95, S.S.I.s 2017/27 and 434.

(d) Regulation 3.F.9 was amended by S.S.I. 2015/95 and S.S.I. 2017/27.

(e) Regulation M7A was inserted by S.S.I. 2015/96 and amended by S.S.I. 2017/434.

(f) Regulations 2.F.18 and 3.F.18 were inserted by S.S.I. 2015/96 and amended by S.S.I. 2017/434.

“receiving scheme”, in relation to a remediable value, means the scheme to which the remediable value was, or is to be, paid;

“reformed public service pension scheme” means—

- (a) a Chapter 1 scheme;
- (b) a judicial scheme within the meaning of section 70(1) of PSPJOA 2022;
- (c) a local government scheme within the meaning of section 86(1) of PSPJOA 2022;

“remediable benefits” means the benefits payable to or in respect of a member in relation to that member’s remediable service;

“remediable club transfer value”, in relation to a member, means the payment or acceptance by the scheme manager of—

- (a) a transfer value under Part M (Transfer-out Arrangements and buy-outs) or Part N (Transfers from Other Pension Arrangements) of the 2011 Regulations in accordance with the public sector transfer arrangements (within the meaning given to that term by regulation A2 of those Regulations);
- (b) a transfer value payment under Chapter 2.F of the 2013 Regulations (Transfers) in accordance with the public sector transfer arrangements (within the meaning given to that term by regulation 2.A.1 of those Regulations);
- (c) a transfer value payment under Chapter 3.F of the 2013 Regulations (Transfers) under the public sector transfer arrangements (within the meaning given to that term by regulation 3.A.1 of those Regulations);
- (d) a club transfer value under Part 7 of the 2015 Regulations (Transfers) (within the meaning given to that term by regulation 131 of those Regulations)

so far as the transfer value or transfer value payment relates to the member’s remediable rights;

“remediable rights”, in relation to a member, means the member’s rights to benefits under a reformed public service pension scheme secured by virtue of the member’s remediable service;

“remediable transfer value”, in relation to a member, means the payment or acceptance by the scheme manager of a transfer value or transfer value payment other than—

- (a) a legacy scheme remediable cash equivalent, or
- (b) a remediable club transfer value under—
 - (i) Part M or Part N of the 2011 Regulations;
 - (ii) Chapter 2.F or 3.F of the 2013 Regulations; or
 - (iii) Part 7 of the 2015 Regulations.

so far as the transfer value or transfer value payment relates to the member’s remediable rights;

“remediable value” means a remediable club transfer value or a remediable transfer value;

“sending scheme”, in relation to a remediable value, means the scheme which paid, or is to pay, the remediable value.

(2) Where a provision of this Part requires the scheme manager to calculate a transfer value (including a remediable club transfer value or a remediable transfer value) in relation to rights secured in the legacy scheme or the 2015 scheme, that value is to be calculated in accordance with—

- (a) the provisions of the legacy scheme or the 2015 scheme which apply to the calculation of values of that type, and
- (b) the guidance and tables provided by the Government Actuary for the purpose of calculating such values that were, or are, in use on the date used for the original calculation.

Treatment of transfer and transfer value payments made to the 1995 Section or the 2008 Section that are not made under public sector transfer arrangements

38.—(1) This regulation applies to a relevant transfer member who has remediable service in the 1995 Section or the 2008 Section and was on 30 September 2023 an active, deferred or pensioner member of that Section in respect of that service where one of the following has occurred in relation to that member—

- (a) an immediate choice election has been accepted by the scheme manager or treated by the scheme manager as having been made in accordance with paragraph (6) of regulation 9 (immediate choice election for 2015 scheme benefits: pensioner and deceased members); or
- (b) a deferred choice election has been accepted by the scheme manager or treated by the scheme manager as having been made in accordance with paragraph (6) of regulation 12 (deferred choice election for 2015 scheme benefits: active, deferred and deceased members).

(2) For the purposes of paragraph (1), a member is a relevant transfer member if—

- (a) the scheme manager has accepted—
 - (i) a transfer payment and in respect of that payment—
 - (aa) the member is credited with a period of pensionable service calculated in accordance with 2011 regulation N4, or
 - (bb) the member is entitled to an increase in the member’s pensionable earnings calculated in accordance with paragraph 27 of schedule 1 of the 2011 Regulations (medical and dental practitioners: transfers from other pension arrangements), or
 - (ii) a transfer value payment and in respect of that payment—
 - (aa) the member is entitled to an additional period of pensionable service calculated in accordance with paragraphs (1) to (4) of 2013 regulation 2.F.11, or
 - (bb) the member is entitled to count an increase in the member’s pensionable earnings calculated in accordance with paragraphs (1) to (4) of 2013 regulation 3.F.11; and
- (b) the member’s legacy scheme joining date in relation to the transfer payment or transfer value payment referred to in sub-paragraph (a) falls within the period of that member’s remediable service.

(3) Where this regulation applies and the scheme manager determines that the benefits payable in respect of the member’s remediable service are 2015 scheme benefits, the scheme manager must, after having regard to the advice of the scheme actuary, vary the member’s rights to benefits in respect of the additional period of pensionable service or increase in pensionable earnings referred to in paragraph (2) so that those rights are of an equivalent value to the rights the member would have secured if the transfer payment or transfer value payment (whichever is relevant) had been accepted for the purposes of 2015 regulation 142.

(4) In this regulation, “legacy scheme joining date” means—

- (a) the date on which the member joined the 1995 Section for the purposes of paragraph (1) of 2011 regulation N1, or
- (b) the date on which the member became eligible to be an active member of the 2008 Section for the purposes of paragraph (1)(c)(i) of 2013 regulation 2.F.9 or 2013 regulation 3.F.9.

Transfer value payments made to the 2015 scheme that are not made under public sector transfer arrangements: treatment as transfer payments under the 1995 Section or transfer value payments under the 2008 Section active and deferred members

39.—(1) This regulation applies to a remedy member who has pensionable service in the legacy scheme by virtue of section 2(1) of PSPJOA 2022 and was an active or deferred member of the 2015 scheme on 30 September 2023 in respect of that service where—

- (a) the scheme manager has accepted a transfer value payment in relation to the member that is a non-club transfer^(a) for the purposes of 2015 regulation 142;
- (b) in respect of that payment, the member is entitled to an increase in the member’s pensionable earnings and has been credited with a period of pensionable service under paragraph (2) of that regulation; and
- (c) the member’s 2015 scheme joining date in relation to the transfer value payment falls within the period of that member’s remediable service.

(2) Where this regulation applies—

- (a) all the remedy member’s rights secured by the transfer value payment mentioned in paragraph (1) are extinguished;
- (b) the scheme manager must treat the payment as if it had been accepted for the purposes of—
 - (i) 2011 regulation N4 where, pursuant to section 2(1) of PSPJOA 2022, the remedy member’s remediable service is treated as being pensionable service under the 2011 Regulations, or
 - (ii) 2013 regulation 2.F.11 or 2013 regulation 3.F.11 (whichever is relevant) where, pursuant to section 2(1) of PSPJOA 2022, the remedy member’s remediable service is treated as being pensionable service under the 2013 Regulations; and
- (c) in respect of the payment, the member is entitled to count the pensionable service or increase in pensionable earnings set out in paragraph (3) or (4) (whichever is relevant).

(3) If the scheme manager treats the transfer value payment as if it had been accepted for the purposes of 2011 regulation N4, the member is entitled to—

- (a) an additional period of pensionable service calculated in accordance with 2011 regulation N4, or
- (b) count an increase in the member’s pensionable earnings calculated in accordance with paragraph 27 of schedule 1 of the 2011 Regulations (medical and dental practitioners: transfers from other pension arrangements).

(4) If the scheme manager treats the transfer value payment as if it had been accepted for the purposes of the 2013 Regulations, the member is entitled to—

- (a) an additional period of pensionable service calculated in accordance with paragraphs (1) to (4) of 2013 regulation 2.F.11, or
- (b) count an increase in the member’s pensionable earnings calculated in accordance with paragraphs (1) to (4) of 2013 regulation 3.F.11.

(5) The scheme manager must send a notification in writing to the remedy member specifying the additional period of pensionable service or increase in pensionable earnings that the member is entitled to count under paragraph (3) or (4) of this regulation.

(6) The notification must be sent to the remedy member before 1 October 2024 or such earlier date as the scheme manager determines, after having regard to all the circumstances of the case.

(a) For the meaning of “non-club transfer”, see the definition of “club transfer” in regulation 131 of the 2015 Regulations.

Transfer value payments treated in accordance with regulation 39: variation of the member's rights on the making of a deferred choice election

40.—(1) This regulation applies to a remedy member who—

- (a) is entitled to an additional period of pensionable service or an increase in pensionable earnings in the 1995 Section under paragraph (3), or in the 2008 Section under paragraph (4), of regulation 39, and
- (b) makes a deferred choice election for 2015 scheme benefits under regulation 12.

(2) Where this regulation applies and the scheme manager determines that the benefits to be paid to or in respect of the remedy member for the member's remediable service are to be determined in accordance with the 2015 Regulations, the scheme manager must, after having regard to the advice of the scheme actuary, vary the member's rights to benefits in respect of the additional period of pensionable service or increase in pensionable earnings referred to in paragraph (1) so that those rights are of an equivalent value to the rights the member would have secured if the transfer payment or transfer value payment (whichever is relevant) had been accepted for the purposes of 2015 regulation 142.

Transfer value payments made to the 2015 scheme that are not made under public sector transfer arrangements: treated as if accepted under the legacy scheme: pensioner and deceased members

41.—(1) This regulation applies to a remedy member—

- (a) who has pensionable service in the legacy scheme by virtue of section 2(1) of PSPJOA 2022;
- (b) who on 30 September 2023—
 - (i) was a pensioner member with regard to benefits paid in respect of remediable service in the 2015 scheme, or
 - (ii) was deceased;
- (c) in respect of whom—
 - (i) an immediate choice election may be made or treated by the scheme manager as having been made in accordance with regulation 9;
 - (ii) the scheme manager has accepted a transfer value payment that is in relation to the member that is a non-club transfer for the purposes of 2015 regulation 142 and, in respect of that payment, the member is entitled to an increase in the member's pensionable earnings and has been credited with a period of pensionable service under paragraph (2) of that regulation; and
 - (iii) the 2015 scheme joining date in relation to the transfer value payment referred to in paragraph (ii) falls within the period of that member's remediable service.

(2) Where this regulation applies, on the acceptance of an election referred to in paragraph (1)(c)(i) in respect of a member or at the end of the immediate choice election period if no such election is accepted—

- (a) all the remedy member's rights secured by the transfer payment or transfer value payment mentioned in paragraph (1)(c)(ii) are extinguished;
- (b) the scheme manager must treat the payment as if it had been accepted for the purposes of—
 - (i) 2011 regulation N4 where, pursuant to section 2(1) of PSPJOA 2022, the remedy member's remediable service is treated as being pensionable service under the 2011 Regulations, or
 - (ii) 2013 regulation 2.F.11 or 2013 regulation 3.F.11 (whichever is relevant) where, pursuant to section 2(1) of PSPJOA 2022, the remedy member's remediable service is treated as being pensionable service under the 2013 Regulations;

- (c) in respect of the payment, the member is entitled to count the pensionable service or increase in pensionable earnings set out in paragraph (3) or (4) (whichever is relevant); and
 - (d) paragraph (5) applies if the scheme manager determines that the benefits payable in respect of the member's remediable service are 2015 scheme benefits.
- (3) If the scheme manager treats the transfer payment as if it had been accepted for the purposes of the 2011 regulation N4, in respect of the payment the member is entitled to—
- (a) an additional period of pensionable service calculated in accordance with 2011 regulation N4, or
 - (b) an increase in the member's pensionable earnings in respect of the payment calculated in accordance with paragraph 27 of schedule 1 of the 2011 Regulations.
- (4) If the scheme manager treats the transfer value payment as if it had been accepted for the purposes of the 2013 Regulations, the member is entitled to—
- (a) an additional period of pensionable service calculated in accordance with paragraphs (1) to (4) of 2013 regulation 2.F.11, or
 - (b) count an increase in the member's pensionable earnings calculated in accordance with paragraphs (1) to (4) of 2013 regulation 3.F.11.
- (5) Where this paragraph applies (see paragraph (2)(d)), the scheme manager must, after having regard to the advice of the scheme actuary, vary the member's rights to benefits in respect of the additional period of pensionable service or increase in pensionable earnings referred to in paragraph (3) or (4) (whichever is relevant) so that those rights are of an equivalent value to the rights the member would have secured if the transfer payment or transfer value payment (whichever is relevant) had been accepted for the purposes of 2015 regulation 142.

Treatment of transfer and transfer value payments and statements accepted from other and corresponding health service schemes

42.—(1) This regulation applies to a member who—

- (a) is credited with a period of pensionable service (together with the rights attaching to that service) in accordance with regulation R7(2) or (6) of the 2011 Regulations (Former members of health service schemes) in respect of a transfer payment made by a health service scheme;
- (b) is entitled to count a period of pensionable service in accordance with paragraph (6) of 2013 regulation 2.F.11 or entitled to count an increase in pensionable earnings in accordance with paragraph (6) of 2013 regulation 3.F.11 in respect of a transfer value payment made by a corresponding 2008 Section; or
- (c) is entitled to count an increase in pensionable earnings in accordance with regulation 145(5) of the 2015 Regulations (calculation of increase to pensionable earnings) in respect of a transfer value statement accepted from a corresponding scheme.

(2) Where this regulation applies and the scheme manager determines that the payment or transfer value statement referred to in paragraph (1) represents any rights in respect of a period of pensionable service that is remediable service in another health service scheme, a corresponding 2008 scheme or a corresponding scheme, the scheme manager must treat that period of pensionable service as a period of pensionable service that is remediable service in the 1995 Section, the 2008 Section or the 2015 scheme (whichever is relevant).

(3) In this regulation—

“corresponding 2008 scheme” means a scheme as so defined in regulation 2.A.1(1) of the 2013 Regulations;

“corresponding scheme” means a scheme as so defined in schedule 13 of the 2015 Regulations;

“health service scheme” means a scheme as so defined in regulation R7(1) of the 2011 Regulations.

Transferred out remediable service statements

43. Where a remedy member has transferred any rights in respect of remediable service out of the legacy scheme or the 2015 scheme, the scheme manager must provide a transferred out remediable service statement in accordance with direction 6(2) to (4) of the 2022 Directions (Transfers) (and direction 6(4) applies as if the reference to “any provision made by virtue of section 29(1) of PSPJOA 2022” were a reference to regulation 6 of these Regulations).

Remediable transfer value payments made before 1 October 2023

44.—(1) This regulation applies in relation to each member (“M”) in respect of whom the scheme manager paid a remediable transfer value before 1 October 2023.

(2) Where this regulation applies, the scheme manager must, after having regard to the advice of the scheme actuary, must calculate the transfer value of M’s remediable rights as if they had been secured in—

- (a) the 1995 Section or the 2008 Section (whichever is relevant);
- (b) the 2015 scheme.

(3) The scheme manager must notify the receiving scheme of the results of the calculation mentioned in paragraph (2).

(4) Where—

- (a) the greater of the amounts calculated under paragraph (2) (“x”) is greater than
- (b) the amount of the remediable transfer value (“y”),

the scheme manager must take reasonable steps to pay the receiving scheme an amount equal to $x - y$ (“top-up transfer value payment”).

(5) Where the greater of the amounts calculated under paragraph (2) (“x”) is less than the amount of the remediable transfer value (“y”), the scheme manager must waive any overpayment.

(6) A top-up transfer value payment made under paragraph (4) is subject to the same conditions as the remediable transfer value.

(7) Where a receiving scheme, other than a reformed public service scheme, cannot accept the top-up transfer value payment, the scheme manager may—

- (a) pay the top-up transfer value payment to another nominated registered pension scheme, or
- (b) pay an amount of compensation to the member in accordance with direction 6(5) of the 2022 Directions.

(8) Where, if the amount of compensation under paragraph (7)(b) had been paid immediately after the requirement to pay it arose, the payment—

- (a) would have been a payment described in regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulation 2009 (“the 2009 Regulations”) (payment after relevant accretion) as if regulation 6(1)(a) of those Regulations had been omitted, the amount of compensation is to be reduced by the amount equal to the income tax that would be chargeable on it as if regulation 3(b) of the 2009 Regulations applied to;
- (b) would not have been a payment so described, the amount of compensation is to be reduced by an amount equal to the income tax that would be charged on the amount at M’s marginal tax rate under the Income Tax Acts.

(9) In this regulation, a “nominated registered pension scheme” means a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004, that—

- (a) is chosen by M;
- (b) agrees to accept the top-up transfer value payment; and
- (c) meets such other conditions as the scheme manager may require.

Remediable transfer value payments on or after 1 October 2023 that are not made under the public sector transfer arrangements

45.—(1) This regulation applies in relation to a member (“M”) in respect of whom the scheme manager has made a remediable transfer value payment on or after 1 October 2023.

(2) Where this regulation applies, the scheme manager must, after having regard to the advice of the scheme actuary, calculate the transfer value of M’s remediable rights as if those rights had been secured in—

- (a) the 1995 Section or the 2008 Section (whichever is relevant);
- (b) the 2015 scheme.

(3) The amount of the remediable transfer value is the greater of the amounts calculated under paragraph (2).

Transfers of remediable rights in the legacy scheme to the 2015 scheme before 1 October 2023

46.—(1) This regulation applies in relation to each member (“M”) in respect of whom the scheme manager has used a legacy scheme remediable cash equivalent to acquire rights in the 2015 scheme before 1 October 2023.

(2) Where this regulation applies, the scheme manager, after having regard to the advice of the scheme actuary, must calculate the cash equivalent of M’s remediable rights as if they were secured in—

- (a) the 1995 Section or the 2008 Section (whichever is relevant);
- (b) the 2015 scheme.

(3) Where—

- (a) the greater of the amounts calculated under paragraph (2) (“x”) is greater than
- (b) the legacy scheme remediable cash equivalent (“y”),

the scheme manager must, after having regard to the advice of the scheme actuary, must use an amount equal to $x - y$ to acquire further rights in the 2015 scheme in respect of the member on the same terms as the legacy scheme remediable cash equivalent.

Transfers of remediable rights in the legacy scheme to the 2015 scheme on or after 1 October 2023

47.—(1) This regulation applies in relation to each member (“M”) in respect of whom the scheme manager uses a legacy scheme remediable cash equivalent to acquire rights in the 2015 scheme on or after 1 October 2023.

(2) Where this regulation applies, the scheme manager, after having regard to the advice of the scheme actuary, must calculate the cash equivalent of M’s remediable rights as if they were secured in—

- (a) the 1995 Section or the 2008 Section (whichever is relevant);
- (b) the 2015 scheme.

(3) The amount of the legacy scheme remediable cash equivalent is the greater of the amounts calculated under paragraph (2).

Remediable transfer values payments accepted from other public service schemes but not accepted under the public sector transfer arrangements

48.—(1) This regulation applies in relation to each payment of a remediable transfer value in respect of a member (“M”).

(2) Where this regulation applies the scheme manager must, after having regard to the advice of the scheme actuary, determine M's remediable benefits if the transfer value, together with any adjustment payment accepted under paragraph (3), were applied in respect of rights in—

- (a) the 1995 Section or the 2008 Section (whichever is relevant);
- (b) the 2015 scheme.

(3) Where the remediable transfer value was accepted by the scheme manager before 1 October 2023 and the sending scheme is a reformed public service pension scheme, the scheme manager may accept an adjustment in the value of a remediable transfer value—

- (a) in respect of the remediable rights to which the payment relates, and
- (b) which is made by the sending scheme pursuant to, or to provision made under, PSPJOA 2022.

(4) An adjustment payment accepted under paragraph (3) is to be used for the purpose of determining M's benefits under the legacy scheme or the 2015 scheme on the same terms as the remediable transfer value.

Remediable club transfer value payments made before 1 October 2023

49.—(1) This regulation applies in relation to each member ("M") in respect of whom the scheme manager paid a remediable club transfer value before 1 October 2023.

(2) Where this regulation applies, the scheme manager must calculate the transfer value of M's remediable rights as if they had been secured in —

- (a) the 1995 Section or the 2008 Section (whichever is relevant), and, separately
- (b) the 2015 Scheme.

(3) The scheme manager must provide to the receiving scheme—

- (a) the result of the calculations mentioned in paragraph (2); and
- (b) such further information as the receiving scheme may require in relation to M's remediable rights.

(4) Where the receiving scheme is a local government pension scheme (within the meaning of section 86(1) of PSPJOA 2022), and—

- (a) the greater of the amounts calculated under paragraph (2) ("x") is greater than
- (b) the amount of the remediable club transfer value ("y"),

the scheme manager must pay the receiving scheme an amount equal to $x - y$.

(5) A payment made under paragraph (4) is subject to the same conditions as the remediable club transfer value.

Remediable club transfer value payments made on or after 1 October 2023

50.—(1) This regulation applies in relation to each member ("M") in respect of whom the scheme manager is to make a remediable club transfer value payment on or after 1 October 2023.

(2) The scheme manager must calculate the transfer value of M's remediable rights as if they had all been secured in—

- (a) the 1995 Section or the 2008 Section (whichever is relevant);
- (b) the 2015 scheme.

(3) The amount of the remediable club transfer value is the greater of the amounts calculated under paragraph (2).

(4) The scheme manager must provide to the receiving scheme—

- (a) the result of the calculations mentioned in paragraph (2); and
- (b) such further information as the receiving scheme may require in relation to M's remediable rights.

Remediable club transfer value payments accepted before 1 October 2023

51.—(1) This regulation applies in relation to a member (“M”) in respect of whom the scheme manager has accepted a remediable club transfer value before 1 October 2023.

(2) Where this regulation applies and the sending scheme is a local government pension scheme (within the meaning of section 86(1) of PSPJOA 2022), and the scheme manager may accept an adjustment in the value of a remediable club transfer value—

- (a) in respect of the remediable rights to which the remediable club transfer value payment relates, and
- (b) which is made by the sending scheme pursuant to, or to provision made under, PSPJOA 2022.

(3) The scheme manager must determine M’s remediable benefits if the transfer value, together with any payment adjustment accepted under paragraph (2), were applied in respect of rights secured in—

- (a) the 1995 Section or the 2008 Section (whichever is relevant);
- (b) the 2015 scheme.

Remediable club transfer value payments accepted on or after 1 October 2023

52.—(1) This regulation applies in relation to a member (“M”) in respect of whom the scheme manager has accepted a remediable club transfer value payment on or after 1 October 2023.

(2) Where this regulation applies, the scheme manager, must determine M’s remediable benefits as if the remediable club transfer value payments were applied in respect of rights secured in—

- (a) the 1995 Section or the 2008 Section (whichever is relevant);
- (b) the 2015 scheme.

Application and interpretation of regulations 54 to 56

53.—(1) Regulations 54 to 56 apply in relation to a member (“M”) in respect of whom the scheme manager has accepted either or both of the following —

- (a) a remediable transfer value payment, together with any payment accepted under regulation 48(3);
- (b) a remediable club transfer value payment, together with any adjustment accepted under regulation 51(2).

(2) In regulations 54 to 56—

“relevant Section of the legacy scheme” means—

- (a) the 1995 Section if M has pensionable service in that Section;
- (b) the 2008 Section if M has pensionable service in that Section;
- (c) otherwise, the 2008 Section;

“transferred in remediable rights” means M’s remediable rights in the legacy scheme or the 2015 scheme secured by virtue of a remediable value together with any payment or, as the case may be, adjustment under regulation 48(3) or regulation 51(2).

Transferred in remediable rights treated as being the legacy scheme

54.—(1) Where this regulation applies (see regulation 53) and the transferred in remediable rights of a member (“M”) would, apart from this regulation, be rights to benefits under the 2015 scheme, the rights—

- (a) are not, and are treated as never having been, rights under the 2015 scheme, and
- (b) are treated as being, and as always having been, rights under the relevant Section of the legacy scheme.

(2) Paragraph (1) has effect—

- (a) for the purposes of determining which Section of the legacy scheme is (or at any time was) required to pay benefits to or in respect of M's transferred in remediable rights, and
- (b) subject to regulation 56, for all other purposes.

Varying the value of benefits secured by virtue of transferred in remediable rights

55.—(1) Where this regulation applies (see regulation 53) and—

- (a) a member is an active or deferred remedy member (“M”), and
- (b) M's transferred in remediable rights are treated as rights to benefits under the relevant Section of the legacy scheme by virtue of regulation 54,

the scheme manager must vary the value of those rights so that they are of an equivalent value to rights M would have secured under the relevant Section of the legacy scheme if the rights had been transferred into that Section.

(2) A variation under paragraph (1) is to be treated as having taken effect when these Regulations come into force.

(3) Where—

- (a) M is a pensioner remedy member or a remedy member who died before 1 October 2023, and the end of the immediate choice election period has passed in relation to M and no election has been made (or treated by the scheme manager as having been made) under regulation 9 in relation to M's remediable service, and
- (b) M's transferred in remediable rights are treated as rights to benefits under the relevant Section of the legacy scheme by virtue of regulation 54,

the scheme manager must vary the value of those rights so that they are of an equivalent value to the rights M would have secured under the relevant Section of the legacy scheme if the rights had been transferred into that Section.

(4) A variation under paragraph (3) is to be treated as having taken effect at the end of the immediate choice election period.

(5) Where—

- (a) the benefits payable to or in respect of M's remediable service are 2015 scheme benefits by virtue of an immediate choice election under regulation 9 or a deferred choice election under regulation 12 (including such an election which the scheme manager treats as having been made under either of those regulations), and
- (b) the benefits payable in relation to M's transferred in remediable rights would otherwise be benefits in the relevant Section of the legacy scheme,

the scheme manager must vary the value of those rights so that they are of an equivalent value to rights M would have secured under the 2015 scheme if the rights had been transferred into that scheme.

(6) Where the scheme manager is required to vary the value of any rights under this regulation so that they are equivalent to rights that would have been secured in another scheme (“the alternative scheme”), the scheme manager must, after having regard to the advice of the scheme actuary, calculate the varied rights as if the remediable transfer value which originally secured the rights had been paid to the alternative scheme or Section of the scheme in the scheme year the payment was received by the scheme manager.

(7) In paragraph (6), “scheme year” means a period of one year beginning on 1 April and ending with 31 March.

Benefits already paid in relation to transferred in remediable rights

56.—(1) Where this regulation applies (see regulation 53), paragraph (2) applies in relation to any benefits (“the paid benefits”) that have at any time been paid to a person (“P”) from the 2015 scheme so far as—

- (a) they are calculated by reference to P’s, or any other person’s, transferred in remediable rights, and
- (b) they are benefits that, as a result of regulation 54(1)(a), P was not entitled to receive from the 2015 scheme.

(2) The paid benefits are to be treated for all purposes—

- (a) as not having been paid to P by the 2015 scheme, but
- (b) as having been paid to P instead by the relevant Section of the legacy scheme.

PART 7

Taxation

Interpretation of Part 7

57. In this Part—

“2023 Regulations” means the Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023(a);

“annual allowance charge” has the same meaning as in section 227(1) (annual allowance charge) of the 2004 Act(b);

“relevant rectification provision” has the same meaning as in regulation 2(1) of the 2023 Regulations.

Scheme administrator to be liable where private sector scheme administrator’s liability is discharged

58.—(1) This regulation applies in the circumstances described in paragraph (2) in relation to a remedy member (“M”) who—

- (a) has remediable service in the legacy scheme that is pensionable service under that scheme whether or not by virtue of section 2(1) of PSPJOA 2022, and
- (b) on 30 September 2023 was a pensioner or deceased member of the legacy scheme or the 2015 scheme in respect of remediable service.

(2) The circumstances are that—

- (a) before these Regulations came into force, a benefit crystallisation event in accordance with section 216 (benefit crystallisation events and amounts crystallised) of the 2004 Act occurred in connection with M’s entitlement to any benefits under the legacy scheme or the 2015 scheme;
- (b) a later benefit crystallisation event (“later BCE”) occurs in relation to M’s entitlement to any benefits under a pension scheme that is not a public service pension scheme (“private sector scheme”);
- (c) a lifetime allowance charge, or any part of such a charge, is charged in connection with the later BCE that is attributable to a relevant rectification provision; and

(a) S.I. 2023/113.

(b) Section 227(1) was amended by paragraph 63(2) of schedule 1 to the Taxation of Pensions Act 2014 (c. 30) and paragraph 11(2)(a) of schedule 4 to the Finance Act (No. 2) 2015 (c. 33).

(d) the scheme administrator of the private sector scheme makes a successful application under section 267(lifetime allowance charge) of the 2004 Act in respect of their liability for the lifetime allowance charge, or part of such a charge.

(3) The scheme administrator is jointly and severally liable in accordance with regulation 36(3) of the 2023 Regulations (public service scheme to be liable where private sector scheme discharged) for the lifetime allowance charge or part of such a charge mentioned in paragraph (2)(d).

(4) M's present and future benefits must be reduced by an amount that fully reflects the amount of the lifetime allowance charge, or part of such a charge, paid by the scheme administrator and is to be calculated by reference to advice provided by the scheme actuary for that purpose.

(5) In this regulation, "lifetime allowance charge" has the same meaning as in section 214 (lifetime allowance charge) of the 2004 Act.

Scheme pays

59.—(1) This regulation applies in relation to a remedy member ("M")—

- (a) who is not a deceased member;
- (b) who has remediable service in the legacy scheme that is pensionable under that scheme whether or not by virtue of section 2(1) of PSPJOA 2022;
- (c) who has an annual allowance charge in one or more of the tax years 2019-20 to 2022-23 attributable to a relevant rectification provision; and
- (d) in respect of whom the time limit referred to in section 237BA (time limit for notices under section 237B) of the 2004 Act^(a) has ended.

(2) M may give a notice in writing to the scheme administrator requesting that the scheme administrator pay the annual allowance charge on behalf of the member.

(3) Upon receipt of the notice mentioned in paragraph (2), the scheme administrator must pay the annual allowance charge arising in that tax year.

(4) M's present or future benefits in respect of which that charge arises must be adjusted in accordance with section 237E of the 2004 Act^(b) (consequential benefit adjustments to be reasonable etc) and must be calculated by reference to advice provided by the scheme actuary for that purpose.

(5) The scheme administrator must provide information to M in relation to the process for making a request under paragraph (2) and the consequences of such a request.

PART 8

Compensation

Applications for compensation or indirect compensation

60.—(1) Where paragraph (2) applies, the scheme manager may pay an amount by way of compensation under section 23(1) of PSPJOA 2022 and in accordance direction 8 of the 2022 Directions or an increase to benefits by way of indirect compensation under regulation 61 unless paragraph (2) applies.

(2) This paragraph applies where—

- (a) an application is made in accordance with direction 18(1) and (2) of the 2022 Directions;
- (b) the application is accompanied by such information as the scheme manager may by written notice require a person to provide in relation to the compensation which is—

^(a) Section 237BA was inserted by section 9(3) of the Finance Act 2022 (c. 3).

^(b) Section 237E was inserted by paragraph 15 of Schedule 17 to the Finance Act 2011 (c. 11).

- (i) information within the person's possession, or
 - (ii) information which the person may reasonably be expected to obtain; and
 - (c) the scheme manager makes a determination in accordance with direction 18(3) of the 2022 Directions.
- (3) The following apply in relation to a determination under direction 18(3) of the 2022 Directions—
- (a) direction 18(4) (provision of explanation), and
 - (b) direction 18(5) and (6) (appeals).

Indirect compensation

61.—(1) This regulation applies where pursuant to an application under regulation 60 the scheme manager determines that a person has incurred a compensatable loss under section 23 of PSPJOA 2022 that is a Part 4 of the Finance Act 2004 tax loss as defined in subsection (9) of that section (“relevant loss”) and the relevant loss is a reduction of benefit.

- (2) The amount of benefit payable under the legacy scheme or the 2015 scheme—
- (a) must not be paid under section 23 of PSPJOA 2022 by way of compensation in respect of the relevant loss, and
 - (b) must be increased to reflect the amount of the relevant loss in such manner as is determined by the scheme manager in accordance with direction 10(2) to (4) of the 2022 Directions.

PART 9

Interest and the payment, reduction or waiver of liabilities

Application and interpretation of Part 9

62.—(1) This Part applies in respect of relevant amounts (and any interest on them) payable by a person to the legacy scheme or by that scheme to a person under or by virtue of Chapter 1 of PSPJOA 2022.

- (2) In this Part, a reference to a direction is a reference to that direction in the 2022 Directions.

Interest and process

63.—(1) The scheme manager must calculate interest on any amount described in directions 14 (Interest: rates), 15 (Interest: periods) or 16 (Interest: other) in accordance with the provisions of whichever of those directions is relevant to that amount.

(2) Where an amount is described in paragraphs (4), (5), (6), (7) or (8), the scheme manager must calculate interest on it in accordance with whichever paragraph is relevant.

(3) Direction 14(6) applies where the rate of interest has varied during a period for which interest is to be calculated.

(4) Where amounts are owed under regulation 3, interest must be calculated and applied in accordance with the 2022 Directions as if those amounts were owed under section 16 of PSPJOA 2022 (pension contributions: active and deferred members (immediate correction)).

(5) Where amounts are owed under regulation 4, interest must be calculated and applied in accordance with the 2022 Directions as if those amounts were owed under section 15 of PSPJOA 2022 (Pension contributions: pensioner and deceased members).

(6) Where amounts are owed under regulation 5, interest must be calculated and applied in accordance with the 2022 Directions as if those amounts were owed under section 17 of PSPJOA 2022 (Pension contributions: active and deferred members (deferred correction)).

(7) Where amounts are owed under regulation 10, 13 or 35, interest must be calculated and applied in accordance with the 2022 Directions as if those amounts were owed under section 14 of PSPJOA 2022 (Pension benefits and lump sum benefits: pensioner and deceased members).

(8) Where compensation is owed under regulation 18 and that liability is waived by virtue of regulation 18(3) and that waiver subsequently ceases to have effect, interest must be calculated in the form and applied at the rate specified—

- (a) in direction 14(5) from the mid-point date described in direction 15(16) to the date 28 days after a remediable service statement is first issued, and
- (b) in direction 14(4) from the date 29 days after a remediable service statement is first issued to the date of payment.

Interest not payable under the 2011 Regulations or the 2013 Regulations

64.—(1) This regulation applies in respect of any relevant amount payable by the legacy scheme to a person under or by virtue of Chapter 1 of PSPJOA 2022 where the scheme manager must calculate interest on that amount in accordance with regulation 63.

(2) Where this regulation applies, the scheme manager must treat the relevant amount as if—

- (a) it is not a qualifying payment for the purposes of regulation T10 of the 2011 Regulations (interest on late payment of benefits), or
- (b) it is not an unpaid amount for the purposes of regulation 2.J.10 or regulation 3.J.10 of the 2013 Regulations (interest on late payment of benefits and refunds of contributions),

where it would be such a qualifying payment or unpaid amount but for this regulation.

Netting off of liabilities

65. The scheme manager must net off relevant amounts (and any interest owed on them) which are owed by the scheme to a person or by a person to the scheme (as the case may be) in accordance with direction 19 (process: netting off).

Payments of amounts owed to the scheme

66.—(1) This regulation applies where a person (“P”) owes a net liability to the scheme after taking into account regulation 65.

(2) The scheme manager must send a notice in writing to P that the net liability must be paid.

(3) P must pay the amount of the net liability to the scheme manager—

- (a) on or before a date determined by the scheme manager as being reasonable after having regard to all the circumstances of the case, or
- (b) in accordance with an agreement under paragraph (4).

(4) P and the scheme manager may agree that the net liability is paid in part or in full—

- (a) by instalments;
- (b) by way of deductions from any benefits (including a lump sum benefit) to which P is entitled under the legacy scheme or the 2015 scheme; or
- (c) by a combination of (a) and (b).

(5) But where the net liability includes amounts owed as a consequence of an election under regulation 8(1) and P is not a pensioner member, the scheme manager may not agree that the net liability is paid in part or in full in accordance with paragraph (4)(b) or (c).

(6) P and the scheme manager may agree to vary an agreement made in accordance with paragraph (4).

(7) Where P does not pay the amount that P is required to pay under paragraph (3), the scheme manager may, after providing notice in writing to P, deduct such sums from benefits payable to P

from the legacy scheme or the 2015 scheme as the scheme manager considers reasonable for the purpose of discharging P's liability.

Payment of amounts owed to a person

67.—(1) This regulation applies where the scheme owes a net liability to a person (“P”) after taking into account regulation 65

(2) The scheme manager must pay the amount of the net liability to P as soon as reasonably practicable—

- (a) after the scheme manager determines the amount of the net liability, or
- (b) where the scheme manager requires P to make an application in accordance with paragraph (3), after receipt of that application.

(3) Before paying the amount of a net liability owed to P, the scheme manager may by notice in writing require P to make an application which is—

- (a) in a form and manner determined by the scheme manager;
- (b) accompanied by such information as the scheme manager may require—
 - (i) which is within P's possession, or
 - (ii) which P may reasonably be expected to obtain; and
- (c) received by the scheme manager before the end of the period of six months beginning with the day after the day on which P receives notice that the application is required.

Power to reduce or waive amounts owed by a person to the legacy scheme

68.—(1) The scheme manager may reduce or waive an amount owed by a person to the legacy scheme under these Regulations.

(2) When, under paragraph (1), reducing or waiving an amount owed, the scheme manager must—

- (a) have regard to the particular circumstances of the person;
- (b) apply a presumption in favour of recovering the amount owed by the person unless it is uneconomic to recover it; and
- (c) have regard to whether, instead of or in addition to reducing or waiving the liability, it is appropriate in the reasonable opinion of the scheme manager, to exercise regulation 66.

(3) In paragraph (2)(a), the particular circumstances include those set out in direction 4(3).

PART 10

Revocation of election to convert pensionable service in the legacy scheme

Option to revoke election to convert pensionable service in the legacy scheme

69.—(1) This regulation applies to a remedy member (“M”) who has made an election under regulation 41 of the 2015 Transitional Regulations.

(2) M may revoke the election referred to in paragraph (1) with the effect that M's pensionable service for the purposes of the 1995 Section is treated as if it were never such service for the purposes of the 2008 Section.

(3) Where M may make an election under regulation 9 (immediate choice election for 2015 scheme benefits: pensioner and deceased members)—

- (a) the scheme manager must send a notice in writing to M of M's right under paragraph (2) on or before the relevant date referred to in regulation 6(2);

- (b) M must, if M decides to exercise that right, give the scheme manager notice in writing of that decision—
 - (i) within three months beginning with the day on which the scheme manager issued the notice referred to in sub-paragraph (a); or
 - (ii) by such later time as the scheme manager considers reasonable after having regard to all the circumstances of the case.
- (4) Where M may make an election under regulation 12 (deferred choice election for 2015 scheme benefits: active, deferred and deceased members)—
 - (a) the scheme manager must send a notice in writing to M of M’s right under paragraph (2) before 1 April 2024;
 - (b) M must, if M decides to exercise that right, give the scheme manager notice in writing of that decision—
 - (i) within three months beginning with the day on which the scheme manager issued the notice referred to in sub-paragraph (a); or
 - (ii) by such later time as the scheme manager considers reasonable after having regard to all the circumstances of the case.
- (5) Where M revokes the election in accordance with paragraph (2), for the purposes of section 4(9)(a) of PSPJOA 2022, the Section under which the person most recently accrued pensionable service is the 1995 Section.

PART 11

Retirement pensions

Premature retirement in the interests of efficiency

70.—(1) This regulation applies in relation to a relevant member (“M”) who has remediable service in the legacy scheme that is pensionable service under that scheme whether or not by virtue of section 2(1) (remediable service”). of PSPJOA 2022 (“M’s remediable service”).

(2) Where this regulation applies and the scheme manager accepts an immediate choice election in accordance with regulation 9 or a deferred choice election in accordance with regulation 12 and, as a result of that election, the additional contribution due from the employing authority increases, the scheme manager must waive that increase.

(3) In paragraph (2), the additional contribution due from the employing authority is the amount the scheme manager determines is required to meet the cost of providing the pension in the 1995 Section or 2008 Section (whichever is relevant).

(4) In this regulation, “relevant member” means a member—

- (a) who—
 - (i) on 30 September 2023—
 - (aa) was a pensioner member with regard to benefits paid in respect of remediable service in the legacy scheme, or
 - (bb) was deceased, or
 - (ii) on or after 1 October 2023 was an active, deferred or deceased remedy member but not a pensioner member; and
- (b) whose employment has been or is terminated by M’s employing authority under—
 - (i) regulation E8 of the 2011 Regulations (early retirement pension (redundancy etc notifications)), or
 - (ii) regulation 2.D.11 of the 2013 Regulations (early retirement on termination of employment by employing authority).

Premature retirement on grounds of redundancy

71.—(1) This regulation applies in relation to a relevant member (“M”) where M’s employing authority has made or makes a contribution to the scheme manager in accordance with—

- (a) regulation D2 of the 2011 Regulations (contributions and other payments by employing authorities);
- (b) regulation 2.C.6 of the 2013 Regulations (contributions by employing authorities: early retirement on termination of employment); or
- (c) regulation 34 of the 2015 Regulations (employing authority contributions: redundancy).

(2) Paragraphs (3) and (4) apply if the cost of any benefits on termination in respect of M increase as a result of—

- (a) the scheme manager accepting—
 - (i) an immediate choice election made by or in respect of M in accordance with regulation 9, or
 - (ii) A deferred choice election made by or in respect of M in accordance with regulation 12; or
- (b) an election referred to in sub-paragraph (a) not being made by or in respect of M before the end of the immediate choice election period or the end of the deferred choice election period (whichever election period applies in respect of M).

(3) M may pay all or part of the additional contribution as the scheme manager, after having regard to the advice of the scheme actuary, determines will be sufficient to meet the increased cost of the benefits insofar as that cost—

- (a) is not met by the contribution referred to in paragraph (1), and
- (b) exceeds the cost in respect of which M was entitled to make an additional contribution on becoming entitled to any benefits on termination.

(4) If M elects not to pay any additional contribution in accordance with paragraph (3), the scheme manager must reduce the amount of pension pursuant to—

- (a) regulation E7 of the 2011 Regulations;
- (b) regulation 2.D.11 of the 2013 Regulations (early retirement on termination of employment by employing authority); or
- (c) schedule 11 of the 2015 Regulations.

(5) Subject to paragraph (6), if the member is not entitled to make an additional contribution to meet the increase in costs referred to in paragraph (2) and that increase is to be met by M’s employing authority in accordance with the terms and conditions relevant to M’s employment, the scheme manager must waive the element of the further contribution due from the employing authority that relates to the increase.

(6) Where M has received a relevant employing authority payment and that payment must be reduced as a consequence of the increase in costs referred to in paragraph (2), the amount that must be waived under that paragraph must also be reduced by the same amount.

(7) Paragraph (8) applies if the cost of any benefits on termination in respect of M decrease as a result of—

- (a) the scheme manger accepting—
 - (i) an immediate choice election made by or in respect of M in accordance with regulation 9, or
 - (ii) a deferred choice election made by or in respect of M in accordance with regulation 12; or
- (b) an election referred to in sub-paragraph (a) not being made by or in respect of M before the end of the immediate choice election period or the end of the deferred choice election period (whichever election period applies in respect of M).

(8) The scheme manager must send a notice in writing to M or the designated person of the amount by which the cost of any benefits on termination in respect of M have decreased.

(9) In paragraph (5), the element to be waived does not include any payment received by M under—

- (a) regulation E3A(5)(a) of the 2011 Regulations;
- (b) regulation 2.D.11(6)(a) of the 2013 Regulations; or
- (c) paragraph 7(2)(a) of schedule 11 of the 2015 Regulations.

(10) In this regulation—

“benefits on termination” means benefits under—

- (a) regulations E3A, E6 (lump sum on retirement) and E7 (general option to exchange part of pension for lump sum) of the 2011 Regulations ;
- (b) regulations 2.D.11 (early retirement on termination of employment by employing authority) and 2.D.14 (general option to exchange part of pension for lump sum) of the 2013 Regulations;
- (c) regulations 76 (conversion of part of pension into lump sum) and 80 (premature retirement in the interests of efficiency) of the 2015 Regulations,

“relevant member” means a member

(a) who—

(i) on 30 September 2023—

- (aa) was a pensioner remedy member, or
- (bb) was deceased; or

(ii) on or after 1 October 2023 was an active, deferred or deceased remedy member; and

(b) who in respect of the termination of M’s employment by M’s employing authority is entitled to the payment of any benefits on termination,

“relevant employment authority payment” means a payment made to M by M’s employing authority in respect of the cessation of M’s employment referred to in (whichever is relevant)—

- (a) regulation E6 of the 2011 Regulations;
- (b) regulation 2.D.11(6)(a) of the 2013 Regulations; or
- (c) paragraph 7(2)(a) of schedule 11 of the 2015 Regulations.

Partial retirement: pensioner remedy members

72.—(1) This regulation applies to a pensioner remedy member (“M”) who—

(a) is entitled to a pension under—

- (i) regulation 2.D.5 or 3.D.5 of the 2013 Regulations (Partial retirement (members aged at least 55)), or
- (ii) regulation 83 of the 2015 Regulations (election for partial retirement (members over normal minimum pension age)); and

(b) either—

- (i) has remediable service in the 2008 Section that is pensionable service under that section by virtue of section 2(1) of PSPJOA 2022 and does not make an immediate choice election under regulation 10 of these Regulations in respect of that service, or
- (ii) has remediable service in the 2008 Section that is pensionable service under that section other than by virtue of section 2(1) of PSPJOA 2022 and makes an immediate choice election under regulation 10 of these Regulations in respect of that service.

(2) M may elect to adjust the specified percentage of M's pension (excluding any additional pension) in respect of which M has claimed immediate payment by an amount determined by the scheme manager as being necessary to maintain the amount of M's annual partial retirement pension in payment at—

- (a) the end of the immediate choice election period where paragraph (1)(b)(i) applies to M; and
 - (b) the date the member makes an immediate choice election under regulation 10 where paragraph (1)(b)(ii) applies to M.
- (3) Where this regulation applies —
- (a) the scheme manager must send a notice in writing to M of M's right under paragraph (2) on or before the relevant date referred to in regulation 6(2); and
 - (b) M must, if M decides to exercise that right, give the scheme manager notice in writing of that decision—
 - (i) within three months beginning with the day on which the scheme manager sends the notice referred to in sub-paragraph (a); or
 - (ii) by such later time as the scheme manager considers reasonable in all the circumstances of the case.

Partial retirement: deferred and active remedy members

73.—(1) This regulation applies to an active or deferred remedy member (“M”) who, at the operative time, is entitled to a pension under—

- (a) regulation E11 (early retirement with actuarial reduction) of the 2011 Regulation;
- (b) regulation 2.D.5 or 3.D.5 (partial retirement (members aged at least 55)) of the 2013 Regulations; or
- (c) regulation 83(election for partial retirement (members over normal minimum pension age)) of the 2015 Regulations.

(2) M may make an election to substitute the specified percentage of M's pension (excluding any additional pension) in respect of which M has claimed immediate payment with a different specified percentage (“a substitute percentage election”).

(3) The scheme manager must send a notice in writing to M of M's right to make a substitute percentage election under paragraph (2) on or before the relevant date referred to in regulation 6(2).

- (4) A substitute percentage election must—
- (a) be notified by M to the scheme manager in writing;
 - (b) be received by the scheme manager—
 - (i) within a period of three months beginning with the day after the scheme manager sends the notice referred to in paragraph (3), or
 - (ii) by such later time as the scheme manager considers reasonable in all the circumstances of the case;
 - (c) contain such information as the scheme manager requires;
 - (d) take effect from the day on which M became entitled to the pension referred to in paragraph (1) (whichever is relevant); and
 - (e) be disregarded for the purposes of determining whether M may make a further election for partial retirement under the regulation referred to in paragraph (1) (whichever is relevant).

(5) In this regulation—

“operative time” means if a deferred choice election by virtue of regulation 12 is made in relation to M's remediable service, the time when the election is made; otherwise, the end of the deferred choice election period in relation to M.

Determining whether a member meets the ill-health criteria in each scheme

74.—(1) This regulation applies to a remedy member (“M”)—

- (a) who ceased to be employed in NHS employment during the period of M’s remediable service, and
- (b) whose application for an ill-health pension in relation to that service (“M’s application”) has been determined by the scheme manager.

(2) Where this regulation applies, the scheme manager must reconsider M’s application together with any supporting medical evidence to determine whether M would have met the ill-health retirement criteria in M’s alternative scheme or section when the application was initially determined.

(3) Where M or a designated person on M’s behalf (see regulation 7) has the right to make an immediate choice election under regulation 9—

- (a) the scheme manager must send a notice in writing to M or the designated person of the outcome of the scheme manager’s determination under paragraph (2) before the immediate choice election period commences in respect of M, and
- (b) if M or the designated person on M’s behalf elects to take an ill-health pension as a result of the scheme manager’s determination under paragraph (2), any rights for M to make that election must be deemed to have been fulfilled.

(4) Where M or a designated person on M’s behalf (see regulation 7) has the right to make a deferred choice election under regulation 12—

- (a) the scheme manager must send a notice in writing to M or the designated person of the outcome of the scheme manager’s determination under paragraph (2) as soon as reasonably practicable after 1 October 2023, and
- (b) if M or the designated person on M’s behalf elects to take an ill-health pension as a result of the scheme manager’s determination under paragraph (2), any rights for M to make that election must be deemed to have been fulfilled.

(5) The provisions of chapter 1 of PSPJOA 2022 and Part 3 of these Regulations about the timing and effect of an immediate choice election by virtue of section 6, and of a deferred choice election by virtue of section 10, of that Act apply subject to this regulation.

(6) In this regulation—

“ill-health pension” means a pension under—

- (a) regulation E3 (early retirement on ill health grounds (post 1st April 2008)) of the 2011 Regulations ;
- (b) regulation L1 (treatment of pensionable service of early leavers returning to pensionable employment) of the 2011 Regulations;
- (c) regulation 2.D.8 or regulation 3.D.7 of the 2013 Regulations (early retirement on ill-health: active members and non-contributing members);
- (d) regulation 2.D.10 or regulation 3.D.9 of the 2013 Regulations (early retirement on ill-health: deferred members);
- (e) regulation 89 of the 2015 Regulations (entitlement to ill-health pension); or
- (f) regulation 93 of the 2015 Regulations (early retirement on ill-health (deferred members));

“M’s alternative scheme or section” means—

- (a) where M’s eligibility for ill-health pension was assessed under the 1995 Section or the 2008 Section, the 2015 scheme;
- (b) where M’s eligibility for ill-health pension was assessed under the 2015 scheme, the 1995 Section or the 2008 Section (whichever is relevant);

“NHS employment” has the meaning given in schedule 13 to the 2015 Regulations.

Ill-health pension: acceptance of retrospective applications

75.—(1) This regulation applies where—

- (a) a remedy member (“M”) submits an application for ill-health pension on or after 1 October 2023, and
- (b) the scheme manager is satisfied that it is more likely than not that, but for a relevant breach of a non-discrimination rule (in terms of section 61 of the Equality Act 2010 (c.15)), M would, during the period of M’s remediable service, have made the decision to apply for ill-health pension.

(2) The scheme manager may treat the application—

- (a) in accordance with regulation 27 (ill-health benefits: continuity of existing applications) of the 2015 Transitional Regulations(a), and
- (b) as if the application had been submitted before 1 April 2022.

(3) In this regulation—

“ill-health pension” means a pension under—

- (a) regulation E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations;
- (b) regulation 2.D.8 or regulation 3.D.7 (early retirement on ill- health: active members and non-contributing members) of the 2013 Regulations; or
- (c) regulation 89 (entitlement to ill-health pension) of the 2015 Regulations.

PART 12

Consequential amendments

Consequential amendment of the 2011 Regulations, the 2013 Regulations and the 2015 Transitional Regulations

76. The schedule makes consequential amendments to the 2011 Regulations, the 2013 Regulations and the 2015 Transitional Regulations.

TOM ARTHUR

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
At 11.32 a.m. on 5th September 2023

We consent

STEVE DOUBLE

ANDREW STEPHENSON

Two of the Lords Commissioners of His Majesty’s Treasury

4th September 2023

(a) Regulation 27 was amended by S.S.I. 2022/100.

SCHEDULE

Regulation 76

Amendment of the 2011 Regulations, the 2013 Regulations and the 2015 Transitional Regulations

Amendment of the 2011 Regulations

1. In the 2011 Regulations, in regulation B3(a) (restriction on further participation in this Section of the scheme), after paragraph (A2), insert—

“(A3) Nothing in paragraphs (4) to (18) of this regulation prevents a member’s remediable service within the meaning of section 1 of the Public Service Pensions and Judicial Offices Act 2022 being treated as pensionable service under this scheme in accordance with section 2 of that Act (Remediable service treated as pensionable under Chapter 1 legacy schemes).”.

Amendment of the 2013 Regulations

2.—(1) the 2013 Regulations are amended as follows.

(2) In regulation 2.B.3(b), (restrictions on eligibility: general), after paragraph (A2), insert—

“(A3) Nothing in paragraph (1A) and paragraphs (1C) to (1L) of this regulation prevents a member’s remediable service within the meaning of section 1 of the Public Service Pensions and Judicial Offices Act 2022 being treated as pensionable service under this Section of the scheme in accordance with section 2 of that Act (Remediable service treated as pensionable under Chapter 1 legacy schemes).”.

(3) In regulation 3.B.3(c) (restrictions on eligibility: general), after paragraph (A2), insert—

“(A3) Nothing in paragraph (1A) and paragraphs (1C) to (1L) of this regulation prevents a member’s remediable service within the meaning of section 1 of the Public Service Pensions and Judicial Offices Act 2022 being treated as pensionable service under this Section of the scheme in accordance with section 2 of that Act (Remediable service treated as pensionable under Chapter 1 legacy schemes).”.

Amendment of the 2015 Transitional Regulations

3.—(1) Regulation 27 of the 2015 Transitional Regulations (ill-health benefits: continuity of existing applications) is amended as follows.

(2) In paragraph (1)—

- (a) in the words before sub-paragraph (a), after “This regulation” insert “, except paragraph (1A) and paragraph (2) to the extent that it relates to paragraph (1A),”;
- (b) in sub-paragraph (a), in the words before paragraph (i), for “on 1st April 2022 (“the transition date”)” substitute “the transition date”.

(3) After paragraph (1), insert—

“(1A) This regulation, except paragraph (1) and paragraph (2) to the extent that it relates to paragraph (1), applies during the application period to a member—

- (a) who has remediable service in the legacy scheme up to and including 31 March 2022—

(a) Regulation B3 was amended by S.S.I. 2015/95 and S.S.I. 2022/100.

(b) Regulation 2.B.3 was amended by S.S.I. 2015/95, S.S.I. 2015/96, S.S.I. 2017/434 and S.S.I. 2022/100.

(c) Regulation 3.B.3 was amended by S.S.I. 2015/95, S.S.I. 2015/96, S.S.I. 2017/434 and S.S.I. 2022/100.

- (i) that is pensionable service under that scheme by virtue of section 2(1) of PSPJOA 2022; and
 - (ii) in respect of which an immediate choice election by virtue of regulation 10 of the National Health Service Pension Schemes Remediable Service) (Scotland) Regulations 2023 (Immediate choice election for 2015 scheme benefits: pensioner and deceased members) has not been made;
- (b) who on the transition date—
- (i) was prevented from contributing to or accruing further pensionable service in the 1995 Section or being an active member of the 2008 Section; and
 - (ii) was eligible to be an active member of the new scheme;
- (c) who submitted a claim to the Scottish Ministers together with supporting medical evidence (if not included in the form) for the purposes of 2015 regulation 89 before the transition date;
- (d) whose claim and supporting medical evidence (“the member’s application for ill-health pension”) was received by the Scottish Ministers before the transition date; and
- (e) whose ill-health pension had not become payable under the new scheme before the transition date.”.
- (4) In paragraph (2), in the words before sub-paragraph (a), for “paragraph (1)” substitute “paragraphs (1) and (1A)”.
- (5) In paragraph (21)—
- (a) in the definition of “the member’s application for ill-health pension”—
 - (i) for “give” substitute “given”;
 - (ii) at the end, insert “or (1A)(d) (whichever is relevant)”;
 - (b) at the end of the definition of “the member’s application for ill-health pension”, for the full stop substitute a semicolon;
 - (c) after that definition, insert ““the transition date” means 1 April 2022.”.

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 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.

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

