

**2023 No. 985**

**PUBLIC SERVICE PENSIONS, ENGLAND AND WALES**

**NATIONAL HEALTH SERVICE, ENGLAND AND  
WALES**

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

*Made* - - - - *6th September 2023*  
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The Secretary of State for Health and Social Care makes the following Regulations in exercise of the powers conferred by sections 1(1) and (2)(e), 2(1) (together with paragraph 5(a) of Schedule 2) and 3(1), (2)(b) and (c) and (3) of the Public Service Pensions Act 2013<sup>(a)</sup> (“PSPA 2013”) and sections 5(1), (5) and (6)(a), 6(1), 7(3), 8, 10(1), 11(1) and (5), 12(1) and (3), 18(1) to (3), (5), (6) and (8), 19(1), (4) and (5), 20(1), (2), (4) and (5), 21(1)(a), (b) and (e), and (2) to (5), 22(1), (2)(c), (d), (e), (i) and (j) and (6), 23(1), 24(1), 25(1) and (4), 26(1) and (2)(a) to (c), 29(1), (7) and (8), 31(2) and (3), and 37(2) of the Public Service Pensions and Judicial Offices Act 2022<sup>(b)</sup> (“PSPJOA 2022”).

In accordance with section 3(5) of PSPA 2013, these Regulations are made with the consent of the Treasury.

In accordance with section 21(1) of PSPA 2013<sup>(c)</sup>, the Secretary of State has consulted such persons or the representatives of such persons as appear to the Secretary of State likely to be affected by these Regulations.

To the extent required by section 27 of PSPJOA 2022 as it applies to these Regulations, these Regulations are made in accordance with Treasury directions<sup>(d)</sup>.

## PART 1

### General provisions

#### Citation, commencement and extent

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

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

(3) These Regulations extend to England and Wales.

#### Interpretation

2.—(1) In these Regulations—

“PSPJOA 2022” means the Public Service Pensions and Judicial Offices Act 2022<sup>(e)</sup>;

“the 1995 Regulations” means the National Health Service Pension Scheme Regulations 1995<sup>(f)</sup>;

“the 1995 Section” means the section of the legacy scheme set out in the 1995 Regulations;

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(a) 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.

(b) 2022 c. 7.

(c) Section 21 has been amended by section 94(8) of PSPJOA 2022. The Secretary of State has published a statement pursuant to section 21(2) of PSPA 2013 indicating the persons the Secretary of State would normally expect to consult under section 21(1) of that Act. An up-to-date version of that list may be found at [www.gov.uk/government/publications/nhs-pension-scheme-consultee-list](http://www.gov.uk/government/publications/nhs-pension-scheme-consultee-list) or by writing to the Department of Health and Social Care, Quarry House, Quarry Hill, Leeds, West Yorkshire, LS2 7UE

(d) The Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022 which was published on 15th December 2022 and 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>. A hard copy is available on written request to His Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ.

(e) 2022 c. 7.

(f) S.I. 1995/300.

“the 2008 Regulations” means the National Health Service Pension Scheme Regulations 2008(a);

“the 2008 Section” means the section of the legacy scheme set out in the 2008 Regulations;

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

“2015 scheme” means the National Health Service Pension Scheme for England and Wales set out in the 2015 Regulations;

“2015 scheme contributions” means contributions under regulation 38(c) of the 2015 Regulations (members’ contributions: supplementary: medical practitioners and non-GP providers);

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

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

“deferred choice member” has the meaning given in paragraph (4);

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

“end of the deferred choice election period” means—

- (a) the end of the period of three months beginning with the day on which a remediable service statement is provided to the deferred choice member or, as the case may be, 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 immediate choice member or, as the case may be, 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 immediate choice member or the designated person;

“immediate choice member” has the meaning given in paragraph (2);

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

“legacy scheme” means the National Health Service Pension Scheme for England and Wales set out in the 1995 Regulations and the 2008 Regulations;

“legacy scheme contributions” means contributions under paragraph 10 of Schedule 2 to the 1995 Regulations(g) (practitioners and non-GP providers: contributions to the 1995 Section)

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(a) S.I. 2008/653.

(b) S.I. 2015/94.

(c) Regulation 38 was amended by S.I. 2019/418, 2022/273, 2023/301.

(d) S.I. 2015/95.

(e) A copy may be obtained from the hyperlink <https://www.gov.uk/government/publications/public-service-pensions-and-judicial-offices-act-2022-treasury-directions>. A hard copy is available on written request to His Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ.

(f) Section 32 of PSPJOA 2022 sets out the circumstances in which an “immediate detriment remedy” has been obtained for the purposes of section 31 of that Act.

(g) Paragraph 10 was substituted by S.I. 2005/661 and subsequently amended by S.I. 2006/600, 2008/654 and 2263, 2009/381 and 2446, 2010/492 and 1634, 2012/413, 2014/570, 2015/96, 2017/275, 2019/418.

or regulation 3.C.2 of the 2008 Regulations<sup>(a)</sup> (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;

“medical practitioner” has the same meaning as in regulation 166 of the 2015 Regulations<sup>(b)</sup>;

“non-GP provider” has the same meaning as in Schedule 15 to the 2015 Regulations;

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

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

“remedy member” means a member who has pensionable service under the legacy scheme or the 2015 scheme that is remediable service;

“scheme administrator” means the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)<sup>(c)</sup>;

“scheme manager” means—

- (a) the Secretary of State, or
- (b) where the Secretary of State has made arrangements for any of the functions and responsibilities as scheme manager under the 2015 Regulations to be performed on the Secretary of State's behalf by another person pursuant to regulation 3(2) of those Regulations, that other person.

(2) In these Regulations, “immediate choice member” means a remedy member who, immediately before 1st October 2023, was entitled to the present payment of a pension which—

- (a) is a pension under the legacy scheme or the 2015 scheme, and
- (b) is not a deferred choice pension.

(3) In paragraph (2)(b), “deferred choice pension” means a pension the rate of which—

- (a) is not determined (to any extent) by reference to the member's remediable service, and
- (b) is not affected by the coming into force of section 2(1) of PSPJOA 2022.

(4) In these Regulations, “deferred choice member” means a remedy member who is not—

- (a) an immediate choice member, or
- (b) a deceased member.

(5) In these Regulations, “in writing” includes by electronic communication where such communication is approved by the scheme manager from time to time and “electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000<sup>(d)</sup>.

(6) 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.

(7) 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.

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(a) Regulation 3.C.2 was substituted by S.I. 2009/381 and amended by S.I. 2010/1634, 2013/413, 2014/570, 2015/96, 2019/418.

(b) Regulation 166 was amended by S.I. 2017/274, 2023/301.

(c) This Authority was established by S.I. 2005/2414.

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

## PART 2

### Remediable service

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

3.—(1) This regulation applies in relation to a relevant member (“M”) who has remediable service under 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—

- (a) the paid contributions amount in relation to M exceeds
- (b) the adjusted contributions amount in relation to M.

(3) In these circumstances, the scheme manager must, as soon as reasonably practicable after 1st October 2023, pay an amount of compensation equal to the difference to the appropriate person adjusted 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) to (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, as the case may be, the designated person does not make an election under regulation 12 (election for 2015 scheme benefits: deferred choice members 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 and in such form as the scheme manager determines.

(7) The scheme manager must send a notice in writing to M of M’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 M before 1st 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 legacy scheme contributions;

“appropriate person” means—

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

“paid contributions amount” means 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 is—

- (a) a deferred choice member, and
- (b) a medical practitioner or non-GP provider who paid contributions in respect of their certified or final pensionable earnings uprated according to the formula in regulation 38(3)(a) of the 2015 Regulations in respect of any scheme year falling within the period of their remediable service.

(10) Where this regulation applies, section 16 of PSPJOA 2022 (pension contributions: active and deferred members (immediate correction)) does not apply.



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

4.—(1) This regulation applies in relation to a relevant member (“M”) who has remediable service under 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)(a) or (b).

(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 adjusted 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) to (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 adjusted 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) to (8) and, if relevant, (11) and (12) of direction 4 of the 2022 Directions.

(7) In this regulation—

“adjusted contributions amount” means—

- (a) if an election under regulation 9 is made 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 9 is made in relation to M’s remediable service, the time the election is made;
- (b) otherwise, the end of the immediate 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 other than an immediate detriment remedy member who—

- (a) either—
  - (i) is an immediate choice member, or
  - (ii) died before 1st October 2023, and

- (b) is or was a medical practitioner or non-GP provider who paid or would have paid contributions in respect of any scheme year falling within the period of their remediable service in respect of their certified or final pensionable earnings in accordance with—
  - (i) paragraph 10 of Schedule 2 to the 1995 Regulations;
  - (ii) regulation 3.C.2 of the 2008 Regulations; or
  - (iii) regulation 38(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.

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

**5.**—(1) This regulation applies in relation to a relevant member (“M”) who has remediable service under 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”) 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 is less than
- (b) the adjusted contributions amount in relation to M.

(3) In these circumstances, the appropriate person must pay an amount equal to the difference to the scheme adjusted 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(5)) 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) to (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 an election under regulation 12 is made 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 is—

- (a) a deferred choice member, and

- (b) a medical practitioner or non-GP provider who paid or would have paid contributions in respect of any scheme year falling within the period of their remediable service in respect of their certified or final pensionable earnings in accordance with—
  - (i) paragraph 10 of Schedule 2 to the 1995 Regulations;
  - (ii) regulation 3.C.2 of the 2008 Regulations; or
  - (iii) regulation 38(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.

### **Remediable service statements**

**6.**—(1) The scheme manager must provide a remediable service statement in accordance with section 29 of PSPJOA 2022, direction 20 of the 2022 Directions and this regulation to each remedy member or, as the case may be, designated person 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<sup>(a)</sup>.

(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.

## **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 may 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)(i), 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 1995 Regulations<sup>(b)</sup>;
    - (bb) entitled to a surviving adult dependant pension in relation to that member under regulation 2.E.1 or 3.E.1 of the 2008 Regulations<sup>(c)</sup>; or
    - (cc) entitled to a surviving adult dependant pension in relation to that member under regulation 113 of the 2015 Regulations<sup>(d)</sup>; or

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(a) For the meaning of “the relevant date”, see section 29(10) of PSPJOA 2022.

(b) Part G was amended by S.I. 2005/3074, 2007/3280, 2008/654, 2009/2446, 2010/492, 2013/413, 2014/78, 2015/96, 2019/418, 2021/631.

(c) Regulations 2.E.1 and 3.E.1 were amended by S.I. 2009/381, 2019/418.

(d) Regulation 113 was amended by S.I. 2019/418.

- (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 1995 Regulations<sup>(a)</sup> (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 2008 Regulations<sup>(b)</sup>; 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<sup>(c)</sup> (survivor benefits: 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), 9(2)(b)(iii)(aa) or 12(2)(b)(ii), the personal representatives of the remedy member;
  - (c) in the circumstances described in regulation 8(2)(b)(iii), 9(2)(b)(iii)(bb) or 12(2)(b)(iii), 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 or 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.

### **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<sup>(d)</sup> of a member of the legacy scheme or the 2015 scheme (“an opted-out service election”) in accordance with this regulation.

- (2) That person is—
- (a) a member (“M”) who has a period or periods of employment or office that would have been pensionable and remediable service under 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 where—
    - (i) M is deceased and was not at the time of their death entitled to a retirement pension in respect of pensionable service under 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

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<sup>(a)</sup> Part H was amended by S.I. 2005/3074, 2006/600, 2007/3280, 2008/654 and 2263, 2009/381 and 2446, 2010/492, 2013/413, 2019/418.

<sup>(b)</sup> Chapter 2.E of Part 2 was amended by S.I. 2008/2263, 2009/381 and 2446, 2010/492, 2011/2586, 2013/413, 2015/96, 2016/245, 2019/418, 2020/354, 2021/631. Chapter 3.E of Part 3 was amended by S.I. 2008/2263, 2009/381 and 2446, 2010/492, 2011/2586, 2013/413, 2016/245, 2019/418, 2020/354, 2021/631.

<sup>(c)</sup> Chapter 2 was amended by S.I. 2016/245, 2017/275, 2019/418.

<sup>(d)</sup> For the meaning of “opted-out service”, see section 36 of PSPJOA 2022.

- (iii) M is, in the opinion of the scheme manager, by reason of illness or 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 in writing 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 likely than not that, but for an actual or anticipated relevant breach of a non-discrimination rule(a), M would not have made the decision to opt out of the legacy scheme or the 2015 scheme between 1st April 2015 and 31st March 2022 (those dates included).

(6) That condition is met where M informed the scheme manager at any time between 1st October 2014 and 31st 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 election period(b); and
- (c) in a form determined, and accompanied by such information as is required, by the scheme manager.

#### **Election for 2015 scheme benefits: immediate choice members 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 under the 2015 scheme (an "immediate choice election") in accordance with this regulation.

(2) That person is—

- (a) an immediate choice member, or
- (b) a designated person where—
  - (i) the remedy member died before 1st 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 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 immediate choice member—
    - (aa) died on or after 1st October 2023, or
    - (bb) is, in the opinion of the scheme manager, by reason of illness or 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;

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(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) For the meaning of "the end of the election period", see section 5(4) of PSPJOA 2022.

- (b) be made by the immediate choice member or designated person in writing and 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 an immediate choice member or 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 member became a pensioner member<sup>(a)</sup> of the legacy scheme or the 2015 scheme, or
  - (ii) immediately before the remedy member’s death if the member died before becoming a pensioner 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 under 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 in respect of the remedy member’s remediable service are determined under the 2015 Regulations.

(8) Where this regulation applies, the reference in section 6(4)(a) of PSPJOA 2022 (immediate choice to receive new scheme benefits) to “the end of the section 6 election period” is to be read as a reference to the end of the immediate choice election period (see regulation 2(1)).

**Pension benefits and lump sum benefits: immediate choice members and deceased members**

**10.**—(1) This regulation applies in relation to a relevant member (“M”) who has remediable service under 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 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,

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(a) For the meaning of “pensioner member”, see section 109(3) of PSPJOA 2022.

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) 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 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 appropriate 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 20(1)(c) (treatment of additional contributions made under the legacy scheme: immediate choice members and deceased members) 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) (treatment of additional contributions made under the 2015 scheme: immediate choice members and deceased members) 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 48: immediate choice members and deceased members) applies in relation to those contributions; and
- (d) the acceptance by the scheme manager of a transfer payment or transfer value payment—
  - (i) under the circumstance 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) under the circumstance described in regulation 41(1)(c)(iii) (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: immediate choice members and deceased members); or
  - (iii) in accordance with regulation 53(1) (application of regulations 54 to 56: remediable transfer value payments and remediable club transfer value payments).

(7) In this regulation—

“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 paragraphs (4) and (5), the beneficiary referred to in paragraph (4) or, if the beneficiary is deceased, that beneficiary's personal representatives;

“operative time” means—

- (a) 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;
- (b) otherwise, the end of the immediate choice election period in relation to M;

“relevant member” means a member other than an immediate detriment remedy member who—

- (a) is an immediate choice member, or
- (b) died before 1st October 2023.

(8) Where this regulation applies, section 14 of PSPJOA 2022 (pension benefits and lump sum benefits: pensioner and deceased members) does not apply.

**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 or after 30th 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 1995 Regulations (dependent child);
- (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 2008 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 made in accordance with regulation 9 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), or
  - (ii) if that designated person does not make such an election, the end of the deferred choice election period.

**Election for 2015 scheme benefits: deferred choice members 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”) in accordance with this regulation.

(2) That person is—

- (a) a deferred choice member, or
- (b) a designated person where—
  - (i) the remedy member dies on or after 1st 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 becomes entitled to a retirement pension in respect of their remediable service, and dies, on or after that date; or
  - (iii) the deferred choice member is, in the opinion of the scheme manager, by reason of illness or 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 a deferred choice member or a designated person in writing and 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 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 deferred choice member becomes a pensioner member in respect of their remediable service, or
  - (ii) immediately before the 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 remedy member’s remediable 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 under 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 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 deferred choice 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 under 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 appropriate 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 made under the legacy scheme: deferred choice members) 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 48: deferred choice members) applies in relation to those contributions; and
- (d) the acceptance by the scheme manager of a transfer payment or transfer value payment—
  - (i) under the circumstance 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) under the circumstance 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: deferred choice members);
  - (iii) under the circumstance described in regulation 40(1) (transfer value payments in accordance with regulation 39: variation of the member's rights on the making of a deferred choice election); or
  - (iv) in accordance with regulation 53(1) (application of regulations 54 to 56: remediable transfer value payments and remediable club transfer value payments).

(7) In this regulation—

“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 paragraphs (4) and (5), the beneficiary referred to in paragraph (4) or, if the beneficiary is deceased, that beneficiary's personal representatives.

“operative time” means—

- (c) 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;
- (d) otherwise, the end of the deferred choice election period in relation to M;

“relevant member” means a deferred choice member or a remedy member who dies on or after 1st October 2023;

## PART 4

### Voluntary contributions

#### Interpretation of Part 4

14. In this Part—

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

“1995 regulation Q10” means regulation Q10 of the 1995 Regulations (members option to pay lump sum contributions to purchase additional pension);

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

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

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

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

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

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

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

“2015 regulation 48” means regulation 48 of the 2015 Regulations (payment of buy-out contributions);

“2015 regulation 59” means regulation 59 of the 2015 Regulations (accepting an additional pension election);

“2015 regulation 62” means regulation 62 of the 2015 Regulations (lump sum contributions: payment of contributions and credit of additional pension);

“2015 regulation 64” means regulation 64 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 13 to 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 9 to the 2015 Regulations (pension accounts);

“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 1995 Regulations—

(i) an option under 1995 regulation Q8 if the member paid contributions in respect of an additional pension election in accordance with 2015 regulation 64;

(ii) an option under 1995 regulation Q10 if the member paid the lump sum contribution referred to in 2015 regulation 62; or

(iii) an option under 1995 regulation Q11 if the member’s employing authority paid the lump sum contribution referred to in 2015 regulation 62, 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 2008 Regulations—

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(a) Regulations Q8, Q10 and Q11 of the 1995 Regulations were inserted by S.I. 2008/654.  
 (b) Regulations 2.C.8, 2.C.10 and 2.C.11 of the 2008 Regulations were amended by S.I. 2009/2446.  
 (c) Regulations 3.C.6, 3.C.8 and 3.C.9 of the 2008 Regulations were amended by S.I. 2009/2446.  
 (d) Regulation 25 of the 2015 Transitional Regulations was amended by S.I. 2022/327.

- (i) an option under 2008 regulation 2.C.8 or 2008 regulation 3.C.6 if the member paid contributions in respect of an additional pension election in accordance with 2015 regulation 64;
- (ii) an option under 2008 regulation 2.C.10 or 2008 regulation 3.C.8 if the member paid the lump sum contribution referred to in 2015 regulation 62; or
- (iii) an option under 2008 regulation 2.C.11 or 2008 regulation 3.C.9 if the member's employing authority paid the lump sum contribution referred to in 2015 regulation 62.

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

- (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 1995 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 2008 Regulations;

“remedy period” means the period from 1st April 2015 to 31st 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 1995 Regulations or the 2008 Regulations**

**15.—**(1) This regulation applies to a deferred choice member 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 62;
- (b) the member paid contributions in respect of an additional pension election in accordance with 2015 regulation 64.

(2) Where this regulation applies—

- (a) all the member's rights secured by the credit or payment of contributions mentioned in paragraph (1) are extinguished, and
- (b) those contributions must 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 1995 Regulations or the 2008 Regulations.

(3) For the purposes of this regulation, the reference to “£5,000” in paragraph (7) of 1995 regulation Q8, 2008 regulation 2.C.8 and 2008 regulation 3.C.6 is to be read as if it were a reference to “£12,079”.

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

(5) 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 (6).

(6) For the purposes of paragraph (5), the determinations are—

- (a) whether the scheme manager is prohibited from accepting an election from a member under regulation 55(2) 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 61 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 43(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 46(3) of those Regulations (overall limit on extra pension).

### **Treatment of contributions paid after 31st 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 where, during the remedy period, the member paid contributions in respect of an additional pension election in accordance with 2015 regulation 64 (see regulation 15(1)(b)) and those contributions are treated as having been paid under a corresponding option exercised under the 1995 Regulations or the 2008 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) 1st 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 sends 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 1st 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 59 in respect of such contributions made by the member after 31st 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 64 (see regulation 15(1)(b)) was accepted under 2015 regulation 59.

### **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) 1995 regulation Q8,
  - (ii) 2008 regulation 2.C.8, or

- (iii) 2008 regulation 3.C.6,  
with effect from (and including) 1st 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) 1995 regulation Q10 or 1995 regulation Q11,
    - (ii) 2008 regulation 2.C.10 or 2008 regulation 2.C.11, or
    - (iii) 2008 regulation 3.C.8 or 2008 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 before 1st April 2022 under a corresponding option exercised under—
    - (i) 1995 regulation Q8,
    - (ii) 2008 regulation 2.C.8, or
    - (iii) 2008 regulation 3.C.6;
  - (b) paragraph (3)(b) applies in respect of the member’s rights to additional pension secured by the payment of contributions made under a corresponding option exercised under—
    - (i) 1995 regulation Q10 or 1995 regulation Q11,
    - (ii) 2008 regulation 2.C.10 or 2008 regulation 2.C.11, or
    - (iii) 2008 regulation 3.C.8 or 2008 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 64, where paragraph (2)(a) applies to the member, and
  - (b) in respect of an election under 2015 regulation 62, where paragraph (2)(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 1995 regulation Q8 or 1995 regulation Q10.

**Treatment of buy-out contributions made under 2015 regulation 48: deferred choice members**

- 18.**—(1) This regulation applies to a remedy member—
- (a) who has pensionable service under the legacy scheme by virtue of section 2(1) of PSPJOA 2022;
  - (b) who is a deferred choice member; and
  - (c) who paid buy-out contributions in accordance with 2015 regulation 48 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 (8) applies in relation to employer buy-out contributions made in respect of a member who makes an election under regulation 12 (election for 2015 scheme benefits: deferred choice members 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, 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 under 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 under 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 1995 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 2008 regulation 2.C.8 or 2008 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 under 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 31st 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 (5)(a) or (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), 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 (8) and, if relevant, (11) to (12) of direction 5 of the 2022 Directions.

### **Treatment of additional contributions made under the legacy scheme: deferred choice members**

**19.**—(1) This regulation applies to a member—

- (a) who is a deferred choice member;
- (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 1995 regulation Q8 or 1995 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 1995 regulation Q8, 2008 regulation 2.C.8 or 2008 regulation 3.C.6;
  - (ii) the member's employing authority paid to the Secretary of State the single lump sum contribution in relation to the member's option under 1995 regulation Q10, 2008 regulation 2.C.10 or 2008 regulation 3.C.8;
  - (iii) the member's employing authority paid to the Secretary of State the single lump sum contribution in relation to that authority's option under 1995 regulation Q11, 2008 regulation 2.C.11 or 2008 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 (election for 2015 scheme benefits: deferred choice members 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 64 where paragraph (1)(c)(i) applies to or in respect of the member, and
- (b) in respect of an election under 2015 regulation 62, where paragraph (1)(c)(ii) or (iii) applies to or in respect of the member.

**Treatment of additional contributions made under the legacy scheme: immediate choice members and deceased members**

**20.**—(1) This regulation applies to or in respect of a remedy member—

- (a) who on 30th September 2023—
  - (i) was a pensioner member with regard to benefits paid in respect of remediable service under 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 1995 regulation Q8 or 1995 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 1995 regulation Q8, 2008 regulation 2.C.8 or 2008 regulation 3.C.6;
  - (ii) the member's employing authority paid to the Secretary of State the single lump sum contribution in relation to the member's option under 1995 regulation Q10, 2008 regulation 2.C.10 or 2008 regulation 3.C.8;
  - (iii) the member's employing authority paid to the Secretary of State the single lump sum contribution in relation to that authority's option under 1995 regulation Q11, 2008 regulation 2.C.11 or 2008 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 (election for 2015 scheme benefits: immediate choice members 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 benefits 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 64, where paragraph (1)(c)(i) applies to or in respect of the member, and
- (b) in respect of an election under 2015 regulation 62, 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 pension, including a partial retirement pension under regulation 2.D.5 or 3.D.5 of the 2008 Regulations<sup>(a)</sup> (partial retirement (members aged at least 55)), where—

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(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.

- (a) the person became entitled to that pension on or after 1st 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 2008 Regulations.

**Treatment of additional contributions made under the 2015 scheme: immediate choice members and deceased members**

**21.**—(1) This regulation applies to or in respect of a remedy member—

- (a) who has pensionable service under the legacy scheme by virtue of section 2(1) of PSPJOA 2022;
- (b) who—
  - (i) is a relevant immediate choice member on 1st October 2023, or
  - (ii) is a member who died before that date;
- (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 62;
  - (ii) the member paid contributions in respect of an additional pension election in accordance with 2015 regulation 64.

(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 1995 Regulations or the 2008 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;
- (c) from (and including) 1st October 2023 until the date on which the scheme manager completes the steps set out in sub-paragraph (b), any additional benefits 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 benefits 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 62, where paragraph (1)(c)(i) applies to or in respect of the member, and
- (b) in respect of an election under 2015 regulation 64, 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 (8) and, if relevant, (11) to (12) of direction 5 of the 2022 Directions.

(5) In this regulation—

“relevant immediate choice member” means an immediate choice member other than a member entitled to a partial retirement pension under regulation 85 of the 2015 Regulations (effect of the election) where the member did not also become entitled to the immediate payment of additional pension under paragraph (2)(c) of that regulation at the same time as the member became entitled to the partial retirement pension;

“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 1995 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 2008 Regulations.

(6) For the purposes of this regulation, the reference to “£5,000” in paragraph (7) of 1995 regulation Q8, 2008 regulation 2.C.8 and 2008 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 48: immediate choice members and deceased members**

**22.**—(1) This regulation applies to or in respect of a remedy member—

- (a) who has pensionable service under the legacy scheme by virtue of section 2(1) of PSPJOA 2022;
- (b) who—
  - (i) is an immediate choice member, or
  - (ii) is a member who died before 1st October 2023; and
- (c) who paid buy-out contributions in accordance with 2015 regulation 48 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 representatives 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 where—

- (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 (5) 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 (6) 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 1995 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 2008 regulation 2.C.8 or 2008 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, and
- (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, and
- (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 (if any) 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 (8) 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) 1995 regulation Q8 or 1995 regulation Q10, or
- (b) 2008 regulation 2.C.8, 2008 regulation 2.C.10, 2008 regulation 3.C.6 or 2008 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;

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(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”.

- (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 of the case; and
  - (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 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 purposes of—
    - (i) determining the matters mentioned in paragraph (3)(b);
    - (ii) complying with any requirement imposed by 1995 regulation Q12, 2008 regulation 2.C.12 or 2008 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) 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 1995 regulation Q12, 2008 regulation 2.C.12 or 2008 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 (if any) calculated in accordance with paragraphs (2) to (6) and, if relevant, (9) and (10) of direction 12 of the 2022 Directions.
- (7) In this regulation—
- “1995 regulation Q12” means regulation Q12 of the 1995 Regulations<sup>(a)</sup> (exercise of options under regulations Q8, Q10 and Q11);
- “2008 regulation 2.C.12” means regulation 2.C.12 of the 2008 Regulations (exercise of options under regulations 2.C.8, 2.C.10 and 2.C.11);
- “2008 regulation 3.C.10” means regulation 3.C.10 of the 2008 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 1995 regulation Q6;
  - (b) an option to purchase additional pension by the making of additional periodical contributions under 1995 regulation Q8; or
  - (c) an option to purchase additional pension by the making of additional periodical contributions under 2008 regulation 2.C.8 or 2008 regulation 3.C.6.

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(a) Regulation Q12 was inserted by S.I. 2008/654.

(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 time 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 1st October 2014 and 31st 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 time 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 legacy scheme an amount equal to—

- (a) the outstanding balance of voluntary contributions owed plus interest in accordance with regulation 64, 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, “1995 regulation Q6” means regulation Q6 of the 1995 Regulations(a) (paying for additional service or unreduced retirement lump sum by regular additional contributions).

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(a) Regulation Q6 of the 1995 Regulations was amended by S.I. 2008/654, 2009/246.

## PART 5

### Divorce or the dissolution of a civil partnership

#### Interpretation of Part 5

25. In this Part—

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

“appropriate amount” means the appropriate amount for the purposes of section 29(1) of WRPA 1999 (creation of pension debits and credits) determined in accordance with section 29(2) 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 day provided by the scheme manager;

“operative time” means—

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

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

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

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

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

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

#### **Pension debits: valuation of pension benefits before 1st October 2023: deferred choice members (immediate alternative debit of appropriate amount)**

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

- (a) DM is a deferred choice member who has pensionable service under the legacy scheme by virtue of section 2(1) of PSPJOA 2022;
- (b) before 1st October 2023, 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
- (c) on or after 1st April 2015, DM’s remediable service shareable rights became subject to a debit of the appropriate amount under the 2015 scheme.

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(a) S.I. 2000/1048.

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

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



(2) Where this regulation applies, all DM's remediable service shareable rights subject to a debit of the appropriate amount under the 2015 scheme—

- (a) become a debit of the appropriate amount in the legacy scheme, and
- (b) must be adjusted by the scheme manager 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 WRPA 1999 (a) (time for discharge of liability in respect of a pension credit) before 1st October 2023—
  - (i) before 1st 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 30th 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 under 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 1st October 2023: immediate choice election for 2015 scheme benefits: immediate choice members and deceased members**

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

- (a) DM is an immediate choice member or a remedy member who died before 1st October 2023, and
- (b) before that date, 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 makes an immediate choice election for 2015 scheme benefits under regulation 9 (election for 2015 scheme benefits: immediate choice members 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 that is not pensionable service under the legacy scheme by virtue of section 2(1) of the PSPJOA 2022; and
- (c) DM is subject to a debit of the appropriate amount under 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 under 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 under the 2015 scheme on the transfer day.

(4) Paragraph (5) applies where—

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(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, 2008/1050, 2016/289.

- (a) DM or, where DM has died after the transfer day, the designated person 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);
- (b) DM has remediable service that is pensionable service under the legacy scheme by virtue of section 2(1) of PSPJOA 2022; and
- (c) DM is subject to a debit of the appropriate amount under 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 under the 2015 scheme in respect of remediable service shareable rights—

- (a) becomes a debit of the appropriate amount under 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 under 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 or, as the case may be, the designated person specifying the equivalent debit of the appropriate amount, in respect of remediable service shareable rights, under the legacy scheme that DM would have had under the 2015 scheme on the transfer day.

(8) The scheme manager must send the notice mentioned in paragraph (7) 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: valuation of pension benefits before 1st October 2023: no immediate choice election for 2015 scheme benefits: immediate choice members and deceased members**

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

- (a) DM is an immediate choice member or a remedy member who died before 1st October 2023, and
- (b) before that date, the scheme manager provided a valuation of benefits, in respect of remediable service shareable rights, under regulation 3 of the 2000 Regulations<sup>(a)</sup> (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 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 that is pensionable service under the legacy scheme by virtue of section 2(1) of PSPJOA 2022; and
- (c) DM is subject to a debit of the appropriate amount under the 2015 scheme in respect of remediable service shareable rights—

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

- (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 under the 2015 scheme in respect of remediable service shareable rights—

- (a) becomes a debit of the appropriate amount under 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 under 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 or, as the case may be, the designated person specifying the equivalent debit of the appropriate amount, in respect of remediable service shareable rights, under the legacy scheme that DM would have had under the legacy scheme on the transfer day.

(6) The scheme manager must send the notice mentioned in paragraph (5) 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: deferred choice members**

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

- (a) DM is a deferred choice member who has remediable service under the legacy scheme that is pensionable service under that scheme whether or not by virtue of section 2(1) of PSPJOA 2022;
- (b) under regulation 12, DM or, where DM has died after the transfer day, the designated person makes a deferred choice election 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
- (c) 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 under the legacy scheme on the transfer day under regulation 26(2);
  - (ii) a debit of the appropriate amount under the legacy scheme in respect of remediable service shareable rights at or before the operative time; or
  - (iii) a debit of the appropriate amount under 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 under 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 under the 2015 scheme on the transfer day.

(3) Paragraph (2) has effect—

- (a) where paragraph (1)(c)(i) or (ii) applies, at the operative time;
- (b) where paragraph (1)(c)(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)(c)(ii) applies, the scheme manager must send a notice in writing to DM or, as the case may be, the designated person specifying the equivalent debit of the appropriate amount, in respect of remediable service shareable rights, under the legacy scheme that DM would have had under the 2015 scheme on the transfer day.

(5) The scheme manager must send the notice mentioned in paragraph (4) 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 1st October 2023**

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

- (a) M is a deferred choice member or an immediate choice member, and
- (b) on or after 1st October 2023, the scheme manager receives a request in writing for a valuation of pension benefits, under regulation 2 of the 2000 Regulations<sup>(a)</sup> (basic information about pensions and divorce or dissolution of a civil partnership), in respect of M’s 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 pension benefits as if M’s remediable service on the valuation day were service under—

- (a) the legacy scheme;
- (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 M’s remediable service on the valuation day were service under—

- (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

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

- (ii) such an election 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
  - (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).

(8) In this regulation, “non-remediable service shareable rights” means the shareable rights of a remedy member that are not remediable service shareable rights on the day before the transfer day.

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

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

- (a) DM is an immediate choice member, and
- (b) on or after 1st October 2023, 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 makes an immediate choice election for 2015 scheme benefits under regulation 9 (election for 2015 scheme benefits: immediate choice members 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 under 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 under 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 under 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 or, as the case may be, the designated person specifying the equivalent debit of the appropriate amount, in respect of remediable service shareable rights, under the legacy scheme, that DM would have had under the 2015 scheme on the transfer day.

(6) The scheme manager must send the notice mentioned in paragraph (5) 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: immediate choice members**

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

- (a) DM is an immediate choice member, and

- (b) on or after 1st October 2023, 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 does not make an immediate choice election for 2015 scheme benefits under regulation 9 (election for 2015 scheme benefits: immediate choice members 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 under 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 under 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 under 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 or, as the case may be, the designated person specifying the equivalent debit of the appropriate amount, in respect of remediable service shareable rights, under the legacy scheme, that DM would have had under the legacy scheme on the transfer day.

(6) The scheme manager must send the notice mentioned in paragraph (5) 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 under 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 1st October 2023, the scheme manager provided a valuation of benefits, in respect of remediable service shareable rights of the corresponding pension debit member (“DM”), under regulation 3 of the 2000 Regulations(b) (information about pensions and divorce and dissolution of a civil partnership: valuation of pension benefits), and
- (b) in respect of DM's remediable service shareable rights, CM has a pension credit(c) solely under—
  - (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, under the legacy scheme.

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

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

(c) For the meaning of “pension credit”, see section 29(1)(b) of WRPA 1999. This definition applies by virtue of section 19(7) of PSPJOA 2022.

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

(5) Paragraphs (6) and (7) apply where CM has a pension credit, in respect of DM's remediable service shareable rights under the 2015 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 before the transfer day had been under 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 under the 2015 scheme before the transfer day,

the scheme manager, after having regard to the advice of the scheme actuary, must adjust CM's 2015 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 WRPA 1999 (time for discharge of liability in respect of a pension credit) before 1st October 2023—
  - (i) before 1st 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 30th 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 1st October 2023: pension credit adjustment: remediable service shareable rights under the legacy scheme and the 2015 scheme**

- 34.—(1) This regulation applies to a relevant pension credit member(a) (“CM”) where—
- (a) before 1st October 2023, the scheme manager provided a valuation of benefits, in respect of remediable service shareable rights of the corresponding pension debit member (“DM”), under regulation 3 of the 2000 Regulations (information about pensions and divorce and dissolution of a civil partnership: valuation of pension benefits), and
  - (b) in respect of DM’s remediable service shareable rights, CM has a pension credit under the legacy scheme and the 2015 scheme.
- (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 under the legacy scheme or solely under 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 WRPA 1999 (creation of pension debits and credits), as though all DM’s remediable service before the transfer day were pensionable service under 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 WRPA 1999, as though all DM’s remediable service before the transfer day were pensionable service under 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 WRPA 1999 (time for discharge of liability in respect of a pension credit) before 1st October 2023—
    - (i) before 1st 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 30th 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);

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



- (b) the date by which an election under this regulation must be received by the scheme manager; and
  - (c) that the election is irrevocable.
- (8) Where the scheme manager accepts such an election—
- (a) the adjusted pension credit, in respect of DM’s remediable service shareable rights, is retained under whichever of the legacy scheme and the 2015 scheme CM identified in the election, and
  - (b) any pension credit, in respect of DM’s remediable service shareable rights, is extinguished under whichever of the legacy scheme and the 2015 scheme CM did not identify in the election.
- (9) The pension credit—
- (a) retained under paragraph (8)(a) has effect as though it had been retained under that scheme on the transfer day,
  - (b) extinguished under paragraph (8)(b) has effect as though it had been extinguished under 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 adjusted pension credit, in respect of DM’s remediable service shareable rights, must be retained under 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) or (11) applies, the scheme manager must send a notice in writing to CM or, as the case may be, CM’s personal representatives 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) 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”)—
- (a) was entitled to a pension derived from the member’s pension credit rights 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) is 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 “sections 2(1) and 6(4) and (5)” in subsections (3)(b) and (5)(b) are to be read as references to regulation 35 of the National Health Service Pension Schemes (Remediable Service) Regulations 2023;
  - (c) the references to “the service” in subsections (3)(b) and (5)(b) are to be read as references to CM’s pension credit; and
  - (d) the term “the operative time” is to be read as meaning the time at which—

- (i) the adjustment mentioned in regulation 33(4) or regulation 33(7) of the National Health Service Pension Schemes (Remediable Service) Regulations 2023 has effect, or
- (ii) the pension credit mentioned in regulation 34(8)(a) of the National Health Service Pension Schemes (Remediable Service) Regulations 2023 has effect.

**Pension credits: valuation of pension benefits on or after 1st 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 1st October 2023, the scheme manager provided an aggregated legacy scheme valuation of pension benefits, determined under regulation 30(3)(a) and taking into account the higher of the two valuations determined under regulation 30(4), and
- (b) the corresponding pension debit member (“DM”) is subject to a debit under the legacy scheme 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 corresponding pension credit under the legacy scheme in accordance with section 29(1) of WRPA 1999, by means of the aggregated legacy scheme valuation referred to in 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 WRPA 1999 (time for discharge of liability in respect of a pension credit).

## PART 6

### Transfers

**Interpretation of Part 6**

**37.—**(1) In this Part—

“1995 regulation N1” means regulation N1 of the 1995 Regulations(b) (member’s right to transfer accrued rights to benefits to this Section of the scheme);

“1995 regulation N3” means regulation N3 of the 1995 Regulations(c) (transfers that are not made under the Public Sector Transfer Arrangements);

“2008 regulation 2.F.9” means regulation 2.F.9 of the 2008 Regulations(d) (procedure for applications under regulation 2.F.8);

“2008 regulation 2.F.11” means regulation 2.F.11 of the 2008 Regulations(e) (calculation of transferred-in pensionable service);

“2008 regulation 3.F.9” means regulation 3.F.9 of the 2008 Regulations(f) (procedure for applications under regulation 3.F.8);

“2008 regulation 3.F.11” means regulation 3.F.11 of the 2008 Regulations(g) (calculation of increase to pensionable earnings as the result of a transfer-in);

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

(b) Regulation N1 and its heading was amended by S.I. 1997/80, 2002/561, 2006/600, 2008/654, 2009/2446.

(c) Regulation N3 was amended by S.I. 2009/2446.

(d) Regulation 2.F.9 was amended by S.I. 2008/2263, 2009/2446, 2015/95, 2016/245, 2017/275.

(e) Regulation 2.F.11 was amended by S.I. 2008/2263, 2009/2446.

(f) Regulation 3.F.9 was amended by S.I. 2008/2263, 2009/2446, 2015/95, 2016/245.

(g) Regulation 3.F.11 was amended by S.I. 2008/2263, 2009/2446.

“2015 regulation 143” means regulation 143 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 142(1)(c)(i) of the 2015 Regulations (application procedure);

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

- (a) regulation M8 of the 1995 Regulations(a) (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 2008 Regulations(b) (right to transfer a deferred pension to the 2015 Scheme),

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

“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(c);
- (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 payment under Part M (transfers and buy-outs) or Part N (transfers from other pension arrangements) of the 1995 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 2008 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 2008 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 132 of those Regulations),

so far as the transfer value payment or transfer value 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,

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(a) Regulation M8 was inserted by S.I. 2015/96 and amended by S.I. 2017/275.  
(b) Regulations 2.F.18 and 3.F.18 were inserted by S.I. 2015/96 and amended by S.I. 2017/275  
(c) For the meaning of “Chapter 1 scheme”, see section 33 of PSPJOA 2022.

so far as the transfer value payment or transfer value 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 value) in relation to rights secured in the legacy scheme or the 2015 scheme, that value must 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 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 under the legacy scheme 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 regulation 9 (election for 2015 scheme benefits: immediate choice members 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 regulation 12 (election for 2015 scheme benefits: deferred choice members 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 an additional period of pensionable service calculated in accordance with 1995 regulation N3, or
    - (bb) the member is entitled to an increase in the member's pensionable earnings calculated in accordance with paragraph 18 of Schedule 2 to the 1995 Regulations<sup>(a)</sup> (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 2008 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 2008 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

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<sup>(a)</sup> Paragraph 18 was amended by S.I. 2009/2446.

would have secured if the transfer payment or transfer value payment (whichever is relevant) had been accepted for the purposes of 2015 regulation 143.

- (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 1995 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 2008 regulation 2.F.9 or paragraph (1)(c)(i) of 2008 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: deferred choice members**

**39.**—(1) This regulation applies to a deferred choice member who has remediable service under the legacy scheme that is pensionable service under that scheme by virtue of section 2(1) of PSPJOA 2022, where—

- (a) the scheme manager has accepted a transfer value payment in relation to the member that is a non-club transfer<sup>(a)</sup> for the purposes of 2015 regulation 143;
- (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 referred to in sub-paragraph (a) 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) 1995 regulation N3 where, pursuant to section 2(1) of PSPJOA 2022, the remedy member’s remediable service is treated as being pensionable service under the 1995 Section, or
  - (ii) 2008 regulation 2.F.11 or 2008 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 2008 Section; and
- (c) in respect of the payment, the member is entitled to count the additional period of pensionable service or the increase in pensionable earnings as 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 the 1995 Regulations, in respect of the payment the member is entitled to—

- (a) an additional period of pensionable service calculated in accordance with 1995 regulation N3, or
- (b) count an increase in the member’s pensionable earnings calculated in accordance with paragraph 18 of Schedule 2 to the 1995 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 2008 Regulations, in respect of the payment the member is entitled to—

- (a) an additional period of pensionable service calculated in accordance with paragraphs (1) to (4) of 2008 regulation 2.F.11, or

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(a) For the meaning of “non-club transfer”, see the definition of “club transfer” in regulation 132 of the 2015 Regulations.

(b) count an increase in the member's pensionable earnings calculated in accordance with paragraphs (1) to (4) of 2008 regulation 3.F.11.

(5) The scheme manager must send a notice in writing to the remedy member specifying the additional period of pensionable service or the increase in pensionable earnings that the member is entitled to count as set out in paragraph (3) or (4) (whichever is relevant).

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

#### **Transfer value payments 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 where—

- (a) the member 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) a deferred choice election has been accepted by the scheme manager or treated as having been made in accordance with 12 (election for 2015 scheme benefits: deferred choice members 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 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 143.

#### **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: immediate choice members and deceased members**

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

- (a) who has pensionable service under the legacy scheme by virtue of section 2(1) of PSPJOA 2022;
- (b) who—
  - (i) is an immediate choice member, or
  - (ii) is a member who died before 1st October 2023;
- (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 in relation to the member that is a non-club transfer for the purposes of 2015 regulation 143 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 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) 1995 regulation N3 where, pursuant to section 2(1) of PSPJOA 2022, the remedy member’s remediable service is treated as being pensionable service under the 1995 Section, or
    - (ii) 2008 regulation 2.F.11 or 2008 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 2008 Section;
  - (c) in respect of the payment, the member is entitled to count the additional period of pensionable service or the 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 value payment as if it had been accepted for the purposes of the 1995 Regulations, in respect of the payment the member is entitled to—
- (a) an additional period of pensionable service calculated in accordance with 1995 regulation N3, or
  - (b) count an increase in the member’s pensionable earnings calculated in accordance with paragraph 18 of Schedule 2 to the 1995 Regulations.
- (4) If the scheme manager treats the transfer value payment as if it had been accepted for the purposes of the 2008 Regulations, in respect of the payment the member is entitled to—
- (a) an additional period of pensionable service calculated in accordance with paragraphs (1) to (4) of 2008 regulation 2.F.11, or
  - (b) count an increase in the member’s pensionable earnings calculated in accordance with paragraphs (1) to (4) of 2008 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 143.

**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 R8(2) or (6) of the 1995 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 2008 regulation 2.F.11 or entitled to count an increase in pensionable earnings in accordance with paragraph (6) of 2008 regulation 3.F.11 in respect of a transfer value payment made by a corresponding 2008 scheme; or
- (c) is entitled to count an increase in pensionable earnings in accordance with regulation 144(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 under 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 under 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 2008 Regulations;

“corresponding scheme” means a scheme as so defined in Schedule 15 to the 2015 Regulations 2015;

“health service scheme” means a scheme as so defined in regulation R8(1) of the 1995 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 1st October 2023**

**44.—**(1) This regulation applies in relation to a member (“M”) in respect of whom the scheme manager paid a remediable transfer value before 1st 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 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 calculations 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 M reduced (where relevant) 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) Regulations 2009<sup>(a)</sup> (“the 2009 Regulations”) (payment after relevant accretion) read as if paragraph (1)(a) of that regulation had been omitted, the

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<sup>(a)</sup> S.I. 2009/1171. Regulation 6 was amended by section 42(6)(a) of the Finance Act 2014 (c. 26).



amount of compensation must 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 it;

- (b) would not have been a payment so described, the amount of compensation must 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<sup>(a)</sup>.

(9) In this regulation, a “nominated registered pension scheme” means a pension scheme registered under Chapter 2 of Part 4 of FA 2004<sup>(b)</sup>, 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 made on or after 1st October 2023 that are not made under public sector transfer arrangements**

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

**46.**—(1) This regulation applies in relation to a 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 1st October 2023.

(2) Where this regulation applies, the scheme manager must, after having regard to the advice of the scheme actuary, recalculate the cash equivalent 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) 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, use an amount equal to  $x - y$  to acquire further rights in the 2015 scheme in respect of M on the same terms as applied when M's legacy scheme remediable cash equivalent was used to acquire rights in the 2015 scheme.

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(a) For the meaning of “The Income Tax Acts”, see Schedule 1 to the Interpretation Act 1978 (c. 30).

(b) 2004 c. 12.

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

**47.**—(1) This regulation applies in relation to a 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 1st October 2023.

(2) Where this regulation applies, the scheme manager must, after having regard to the advice of the scheme actuary, calculate the cash equivalent 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 amount of the legacy scheme remediable cash equivalent used to acquire rights in the 2015 scheme in respect of M is the greater of the amounts calculated under paragraph (2).

### **Remediable transfer value 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 accepted by the scheme manager 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 payment or transfer value, together with any adjustment payment accepted under paragraph (3), is 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 payment was accepted by the scheme manager before 1st 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) must 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 1st October 2023**

**49.**—(1) This regulation applies in relation to a member (“M”) in respect of whom the scheme manager paid a remediable club transfer value before 1st 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);
- (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 1st October 2023**

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

**51.**—(1) This regulation applies in relation to a member (“M”) in respect of whom the scheme manager accepts a remediable club transfer value payment before 1st 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), 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 1st 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 1st 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 adjustment payment accepted under regulation 48(3);

- (b) a remediable club transfer value payment, together with any adjustment payment 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 under that Section;
- (b) the 2008 Section if M has pensionable service under 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 rights under 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 a deferred choice member, and
- (b) the member’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 the member 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 on 1st October 2023.

(3) Where this regulation applies and—

- (a) a member is an immediate choice member or a remedy member who died before 1st October 2023;
- (b) the end of the immediate choice election period has passed in relation to the member and no election has been made (or treated by the scheme manager as having been made) under regulation 9 in relation to the member’s remediable service; and
- (c) the member’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 the member 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 this regulation applies and—

- (a) the benefits payable to or in respect of the member’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 the member'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 the member 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 value of 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 1st April and ending with 31st 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) of FA 2004(b) (annual allowance charge);

"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—

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(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).

- (a) has remediable service that is pensionable service under the legacy scheme whether or not by virtue of section 2(1) of PSPJOA 2022, and
  - (b) is an immediate choice member or a remedy member who died before 1st October 2023.
- (2) The circumstances are that—
- (a) before 1st October 2023, a benefit crystallisation event in accordance with section 216 of FA 2004(a) (benefit crystallisation events and amounts crystallised) 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 pension scheme for persons in public service (“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
  - (d) the scheme administrator of the private sector scheme makes a successful application under section 267 of FA 2004 (application for discharge of scheme administrator’s liability for lifetime allowance charge) 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 of FA 2004 (lifetime allowance charge);
  - “persons in public service” means the persons listed in section 1(2) of the Public Service Pensions Act 2013(b).

**The 2019/20 Pensions Annual Allowance Charge Compensation Scheme**

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

- (a) has remediable service under the legacy scheme that is pensionable service under that scheme whether or not by virtue of section 2(1) of PSPJOA 2022, and
  - (b) is an immediate choice remedy member or a remedy member who died before 1st October 2023.
- (2) The circumstances are that—
- (a) in respect of an annual allowance charge arising in tax year 2019-20, M gives notice—
    - (i) under section 237B(3) of FA 2004(c) (liability of scheme administrator), or
    - (ii) otherwise, on a voluntary basis, and

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(a) Section 216 was amended by paragraph 42 of Schedule 10 to the Finance Act 2005 (c. 7). There are other amendments but none is relevant.

(b) 2013 c. 25.

(c) Section 237B was inserted by paragraph 15 of Schedule 17 to the Finance Act 2011 (c. 11). It has been amended by paragraph 129 of Schedule 46 to the Finance Act 2013 (c. 29), paragraph 68 of Schedule 1 to the Taxation of Pensions Act 2014 (c. 30) and section 9 of the Finance Act 2022 (c. 3) and by S.I. 2015/80 and 1810, 2017/468, 2019/201.

(b) M has been paid any amount under the 2019/20 Pensions Annual Allowance Charge Compensation Scheme (“PAACCS”)(a).

(3) Where regulation 8 of the 2023 Regulations (Chapter 1 schemes and judicial 2015 schemes: operation of scheme pays for remedy years) applies and the annual allowance charge arising in respect of tax year 2019-20 has reduced, the legacy scheme will pay to NHS England an amount equal to the compensation amount, in respect of the overpaid annual allowance charge, paid to M under PAACCS.

(4) The amount of pension benefit corrections, made under regulations 10 and 13 (pension benefits and lump sum benefits) of these Regulations to be paid by the legacy scheme to M in respect of the reduced annual allowance charge arising in respect of tax year 2019-20 is not a relevant amount for interest under Part 9 of these Regulations (interest and the payment, reduction or waiver of liabilities).

### **Scheme pays**

**60.**—(1) This regulation applies in relation to a remedy member (“M”)—

- (a) who is not a deceased member;
- (b) who has remediable service under the legacy scheme that is pensionable service 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 of FA 2004(b) (time limit for notices under section 237B) 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 FA 2004(c) (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**

**61.**—(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 with direction 8 of the 2022 Directions, or an increase to benefits by way of indirect compensation under regulation 62.

(2) This paragraph applies where—

- (a) an application is made in accordance with direction 18(1) and (2) of the 2022 Directions;

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(a) A booklet, 2019/20 Pensions Annual Allowance Charge Compensation Scheme (PAACCS) Member booklet (version 1, July 2022), describing this scheme is available here: <https://www.england.nhs.uk/wp-content/uploads/2022/07/Pensions-Allowance-21-07-22.pdf>. Alternatively, a copy may be obtained following a request in writing to NHS England, PO Box 16738, Redditch, B97 9PT.

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

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

- (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—
  - (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**

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

(2) The relevant loss must not be paid by way of compensation under section 23 of PSPJOA 2022.

(3) Instead, the amount of benefits payable under the legacy scheme 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**

**63.**—(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 Part 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**

**64.**—(1) The scheme manager must calculate interest on any amount described in direction 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 paragraph (4), (5), (6), (7) or (8), the scheme manager must calculate interest on it in accordance with that paragraph (whichever 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, 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 1995 Regulations or the 2008 Regulations**

**65.**—(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 Part 1 of PSPJOA 2022 where the scheme manager must calculate interest on that amount in accordance with regulation 64.

(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 T8 of the 1995 Regulations<sup>(a)</sup> (interest on late payment of benefits), or
- (b) it is not an unpaid amount for the purposes of regulation 2.J.9 or regulation 3.J.9 of the 2008 Regulations<sup>(b)</sup> (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**

**66.** The scheme manager may net off relevant amounts (and any interest owed on them) which are owed by the legacy scheme to a person or by a person to that scheme in accordance with direction 19 (process: netting off).

### **Payments of amounts owed to the scheme**

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

(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) (election for retrospective provision to apply to opted-out service) 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).

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(a) Regulation T8 was inserted by S.I. 2000/605 and amended by S.I. 2001/3649, 2007/3280, 2008/2263, 2009/381, 2014/570.  
(b) Regulation 2.J.9 was amended by S.I. 2008/2263, 2009/381, 2009/2446, 2014/570. Regulation 3.J.9 was amended by S.I. 2008/2263, 2009/381, 2009/2446.

(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 of such a period as the scheme manager considers reasonable in all the circumstances of the case, 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.

### **Payments of amounts owed to a person**

**68.**—(1) This regulation applies where the legacy scheme owes a net liability to a person ("P") after taking into account regulation 66.

(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—
  - (i) before the end of the period of six months beginning with the day after the day on which the scheme manager sends the notice, or
  - (ii) by such later time as the scheme manager considers reasonable in all the circumstances of the case.

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

**69.**—(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 any powers exercisable by virtue of regulation 67.

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

## PART 10

### Immediate detriment remedy

#### Immediate detriment

70. Schedule 1 makes provision for immediate detriment remedy members(a).

## PART 11

### Revocation of election to convert pensionable service under the legacy scheme

#### Option to revoke election to convert pensionable service under the legacy scheme

71.—(1) This regulation applies to a remedy member (“M”) who has made an election under regulation 41 of the 2015 Transitional Regulations (option for 1995 Section members to convert to 2008 Section membership).

(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 Regulations is treated as if it were never such service for the purposes of the 2008 Regulations.

(3) Where M may make an election under regulation 9 (election for 2015 scheme benefits: immediate choice members 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 in all the circumstances of the case.

(4) Where M may make an election under regulation 12 (election for 2015 scheme benefits: deferred choice members and deceased members)—

- (a) the scheme manager must send a notice in writing to M of M’s right under paragraph (2) before 1st 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 after 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 in all the circumstances of the case.

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(a) Section 32 of PSPJOA 2022 provides for the circumstances in which an immediate detriment remedy has been obtained.

## PART 12

### Retirement pensions

#### **Premature retirement in the interests of efficiency**

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

(2) Where this regulation applies and the scheme manager accepts an immediate choice election made in accordance with regulation 9 or a deferred choice election made 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 whose employment has been or is terminated by M’s employing authority in accordance with—

- (a) regulation E3A of the 1995 Regulations<sup>(a)</sup> (early retirement pension (termination of employment by employing authority)), or
- (b) regulation 2.D.11 of the 2008 Regulations<sup>(b)</sup> (early retirement on termination of employment by employing authority).

#### **Premature retirement on grounds of redundancy**

**73.**—(1) This regulation applies in relation to a relevant remedy 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 1995 Regulations<sup>(c)</sup> (contributions by employing authorities);
- (b) regulation 2.C.6 of the 2008 Regulations<sup>(d)</sup> (contributions by employing authorities: members becoming entitled to pensions under regulation 2.D.11); or
- (c) regulation 35 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

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(a) Regulation E3A was substituted by S.I. 2006/2919 and amended by S.I. 2013/413, 2014/570, 2015/96.

(b) Regulation 2.D.11 was amended by S.I. 2009/381 and 2446, 2013/413, 2014/570, 2015/96.

(c) Regulation D2 was amended by S.I. 2003/631, 2004/665, 2005/661 and 3074, 2006/2919, 2007/3280, 2008/654 and 2263, 2010/1634, 2011/2586, 2013/413, 2014/570, 2015/96, 2016/245, 2019/418.

(d) Regulation 2.C.6 was amended by S.I. 2010/492, 2013/413, 2014/570, 2015/96, 2017/275.

- (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 E3AB(7) to (12) of the 1995 Regulations(a) (early retirement pension: additional contribution option);
  - (b) regulation 2.D.11A(7) to (12) of the 2008 Regulations(b) (early retirement on termination of employment by employing authority: additional contribution option); or
  - (c) paragraph 7(4) to (6) and (8) to (10) of Schedule 13 to the 2015 Regulations (calculation of amount of premature retirement pension).
- (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 (5), 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 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).
- (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 this regulation—
- “additional contribution” has the meaning given in (whichever is relevant)—
- (a) regulation E3AB of the 1995 Regulations;
  - (b) regulation 2.D.11A of the 2008 Regulations; or
  - (c) regulation 32 of the 2015 Regulations (members' contributions: redundancy);
- “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 1995 Regulations(c);
  - (b) regulations 2.D.11 and 2.D.14 (general option to exchange part of pension for lump sum) of the 2008 Regulations(d); or
  - (c) regulations 77 (conversion of part of pension into lump sum) and 82 (premature retirement on grounds of redundancy) of the 2015 Regulations;

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(a) Regulation E3AB was inserted by S.I. 2015/96.  
 (b) Regulation 2.D.11A was inserted by S.I. 2015/96.  
 (c) Regulation E6 was amended by S.I. 2006/600, 2007/3280, 2009/381, 2010/492, 2011/2586. Regulation E7 was inserted by S.I. 2008/654 and amended by S.I. 2009/381.  
 (d) Regulation 2.D.14 was amended by S.I. 2009/381 and 2446.

“relevant remedy member” means a member 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 employing 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 E3A(5)(a) of the 1995 Regulations;
- (b) regulation 2.D.11(6)(a) of the 2008 Regulations; or
- (c) paragraph 7(2)(a) of Schedule 13 to the 2015 Regulations.

**Partial retirement: immediate choice members**

**74.**—(1) This regulation applies to an immediate choice member (“M”) who—

- (a) is entitled to a pension under—
  - (i) regulation 2.D.5 or 3.D.5 of the 2008 Regulations (a) (partial retirement (members aged at least 55)), or
  - (ii) regulation 84 of the 2015 Regulations (election for partial retirement (members over normal minimum pension age)), and
- (b) either—
  - (i) has remediable service that is pensionable service under the 2008 Section by virtue of section 2(1) of PSPJOA 2022 and does not make an immediate choice election under regulation 9 of these Regulations in respect of that service, or
  - (ii) has remediable service that is pensionable service under the 2008 Section other than by virtue of section 2(1) of PSPJOA 2022 and makes an immediate choice election under regulation 9 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, or
- (b) the date the member makes an immediate choice election under regulation 9 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);
- (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 after 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.

(4) In this regulation, “specified percentage” in relation to M’s pension has the meaning given in regulation 2.D.5(4)(a) of the 2008 Regulations, regulation 3.D.5(3)(a) of the 2008 Regulations or regulation 84(3)(a) of the 2015 Regulations (whichever is relevant).

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(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, 2013/413.

### **Partial retirement: deferred choice members**

**75.**—(1) This regulation applies to a deferred choice member (“M”) who, at the operative time, is entitled to a pension under—

- (a) regulation E5A of the 1995 Regulations<sup>(a)</sup> (partial retirement pension);
- (b) regulation 2.D.5 or 3.D.5 of the 2008 Regulations (partial retirement (members aged at least 55)); or
- (c) regulation 84 of the 2015 Regulations (election for partial retirement (members over normal minimum pension age)).

(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 made by M by notice 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 the member became entitled to the pension referred to in paragraph (1) (whichever is relevant); and
- (e) be disregarded for the purposes of determining whether the member 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;

“specified percentage” in relation to M’s pension has the meaning given in regulation E5A(4)(a) of the 1995 Regulations, regulation 2.D.5(4)(a) of the 2008 Regulations, regulation 3.D.5(3)(a) of the 2008 Regulations or regulation 84(3)(a) of the 2015 Regulations (whichever is relevant).

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

**76.**—(1) This regulation applies to or in respect of 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 (where relevant) 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.

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(a) Regulation E5A was inserted by S.I. 2023/952.

(3) Where M or a designated person on M’s behalf 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 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 1st 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 Part 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 E2A of the 1995 Regulations<sup>(a)</sup> (ill health pension on early retirement);
- (b) regulation L1(3) of the 1995 Regulations<sup>(b)</sup> (preserved pension: entitlement to pension and retirement lump sum before age 60);
- (c) regulation 2.D.8 or 3.D.7 of the 2008 Regulations<sup>(c)</sup> (early retirement on ill-health: active members and non-contributing members);
- (d) regulation 2.D.10 or 3.D.9 of the 2008 Regulations<sup>(d)</sup> (early retirement on ill-health (deferred members));
- (e) regulation 90 of the 2015 Regulations<sup>(e)</sup> (entitlement to ill-health pension); or
- (f) regulation 94 of the 2015 Regulations<sup>(f)</sup> (early retirement on ill-health (deferred members));

“M’s alternative scheme or section” means—

- (a) where M’s eligibility for an ill-health pension was assessed under the 1995 Section or the 2008 Section, the 2015 scheme;
- (b) where M’s eligibility for an 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 15 to the 2015 Regulations.

### **Ill-health pension: acceptance of retrospective applications**

**77.—**(1) This regulation applies where—

- (a) a remedy member (“M”) submits an application for an ill-health pension on or after 1st October 2023, and

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(a) Regulation E2A was inserted by S.I. 2008/654 and subsequently amended by S.I. 2009/2446, 2019/418.  
(b) Regulation L1 was amended by S.I. 2000/605, 2003/631, 2004/665, 2006/600, 2008/654, 2009/381 and 2446, 2015/95, 2019/418.  
(c) Regulations 2.D.8 and 3.D.6 and their headings were amended by S.I. 2009/381 and 2446, 2010/492, 2021/631.  
(d) Regulations 2.D.10 and 3.D.9 were amended by S.I. 2008/2263, 2009/2446.  
(e) Regulation 90 was amended by S.I. 2017/275.  
(f) Regulation 94 was amended by S.I. 2016/245.



- (b) the scheme manager is satisfied that it is more likely than not that, but for a relevant breach of a non-discrimination rule(a), M would, during the period of M’s remediable service, have made the decision to apply for an ill-health pension.
- (2) The scheme manager may treat the application—
  - (a) in accordance with regulation 27 of the 2015 Transitional Regulations(b) (ill-health benefits: continuity of existing applications), and
  - (b) as if the application had been submitted before 1st April 2022.
- (3) In this regulation, “ill-health pension” means a pension under—
  - (a) regulation E2A of the 1995 Regulations (ill health pension on early retirement);
  - (b) regulation 2.D.8 or 3.D.7 of the 2008 Regulations (early retirement on ill-health: active members and non-contributing members); or
  - (c) regulation 90 of the 2015 Regulations (entitlement to ill-health pension).

## PART 13

### Consequential amendments

#### **Consequential amendments of the 1995 Regulations, the 2008 Regulations and the 2015 Transitional Regulations**

**78.** Schedule 2 makes consequential amendments to the 1995 Regulations, the 2008 Regulations and the 2015 Transitional Regulations.

Signed by authority of the Secretary of State for Health and Social Care

6th September 2023

*Will Quince*  
Minister of State  
Department of Health and Social Care

We consent

5th September 2023

*Steve Double*  
*Stuart Anderson*  
Two of the Lords Commissioners of His Majesty’s Treasury

## SCHEDULE 1

Regulation 70

### Immediate detriment remedy

#### **Application of this Schedule**

1. This Schedule applies to an immediate detriment remedy member.

#### **Application of provisions within sections 2 to 30 of PSPJOA 2022 in relation to an immediate detriment remedy member**

2. The following sections of PSPJOA 2022 and, where stated, provisions of these Regulations made under them, apply in respect of an immediate detriment remedy member—

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(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) Regulation 27 was amended by S.I. 2022/327.

- (a) section 2 (remediable service treated as pensionable under Chapter 1 legacy schemes);
- (b) section 3 (benefits already paid);
- (c) section 4(1) and (9) (meaning of “the relevant Chapter 1 legacy scheme” etc);
- (d) section 5 (election for retrospective provision to apply to opted-out service) and regulation 8 (election for retrospective provision to apply to opted-out service);
- (e) section 18 (powers to reduce or waive liabilities) and regulation 69 (power to reduce or waive amounts owed by a person to the legacy scheme);
- (f) section 22(1), (2)(j) and (6) (further powers to make provision about special cases) and Parts 7 (taxation) and 11 (revocation of election to convert pensionable service under the legacy scheme) of these Regulations;
- (g) section 23 (power to pay compensation) and regulation 61 (applications for compensation or indirect compensation);
- (h) section 24 and regulation 62 (indirect compensation);
- (i) section 25 (remedial arrangements to pay voluntary contributions to legacy schemes) and regulation 23 (remedial arrangements to pay voluntary contributions to secure legacy scheme additional pension);
- (j) section 26 (interest and process) and—
  - (i) regulation 63 (application and interpretation of Part 9);
  - (ii) regulation 64 (interest and process);
  - (iii) regulation 65 (interest not payable under the 1995 Regulations or the 2008 Regulations);
  - (iv) regulation 66 (netting off of liabilities);
  - (v) regulation 67 (payments of amounts owed to the scheme);
  - (vi) regulation 68 (payments of amounts owed to a person);
- (k) section 27(1), (2)(a), (e), (f) and (h) to (j) and (3) to (5) (Treasury directions);
- (l) section 28 (scheme rules that prohibit unauthorised payments);
- (m) section 30 (section 61 of the Equality Act 2010 etc).

**Pension contributions of medical practitioners and non-GP providers: immediate detriment remedy members**

3.—(1) This paragraph applies in relation to a relevant member (“M”) who has remediable service under the legacy scheme that is pensionable service under that scheme 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 on 1st October 2023—

- (a) the paid contributions amount in relation to M exceeds
- (b) the adjusted contributions amount in relation to M.

(3) In these circumstances, the scheme manager must, as soon as reasonably practicable after 1st October 2023, pay an amount of compensation equal to the difference to the appropriate person adjusted 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) to (8) and, if relevant, (11) and (12) of direction 4 of the 2022 Directions (powers to reduce or waive liabilities).

(5) In this paragraph—

“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 legacy scheme contributions;

“appropriate person” means M, or if M is deceased, M’s personal representatives;

“paid contributions amount” means 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 immediate detriment remedy member, and
- (b) is or was a medical practitioner or non-GP provider who paid contributions in respect of their certified or final pensionable earnings uprated according to the formula in regulation 38(3)(a) of the 2015 Regulations in respect of any scheme year falling within the period of their remediable service.

### **Pension benefits and lump sum benefits: immediate detriment remedy member**

**4.**—(1) This paragraph applies in relation to an immediate detriment remedy member (“M”) (whether or not deceased on 1st October 2023) who has remediable service under 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 on 1st October 2023—

- (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 M’s remediable service is less than
- (b) the aggregate of the pension benefits to which, after taking into account the effect, if any, of section 2(1) of PSPJOA 2022 in relation to the service, the beneficiary is entitled under the scheme in respect of the service,

the scheme manager must, subject to sub-paragraph (4), pay an amount equal to the difference to the beneficiary.

(3) Where on 1st October 2023—

- (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 is less than
- (b) the aggregate of the lump sum benefits to which, after taking into account the effect, if any, of section 2(1) of PSPJOA 2022 in relation to the service, the beneficiary is entitled under the scheme in respect of the service,

the scheme manager must, subject to sub-paragraph (4), pay an amount equal to the difference to the beneficiary.

(4) The aggregate of the amounts payable to the beneficiary under sub-paragraphs (2) and (3) must be reduced by the amount paid to the beneficiary under section 32(1) of PSPJOA 2022 (whether an “immediate detriment remedy” has been obtained).

### **Remediable service statement in respect of an immediate detriment remedy member**

**5.**—(1) The scheme manager must provide a remediable service statement to each immediate detriment remedy member before 1st April 2025.

(2) The remediable service statement must include—

- (a) a description of the benefits currently available under the legacy scheme in respect of the member’s remediable service;
- (b) a description of—
  - (i) the remedial arrangement that may be entered into under regulation 23 (remedial arrangements to pay voluntary contributions to secure legacy scheme additional pension), and
  - (ii) the circumstances in which, and the process by which, such an arrangement may be entered into; and

- (c) so far as applicable to the member, the information mentioned in the following provisions of direction 20(1) of the 2022 Directions (remediable service statements)—
- (i) sub-paragraph (a);
  - (ii) sub-paragraph (c)(i), (ii), (v) and (vi) (disregarding the words “section 20(1) of” in the opening of that sub-paragraph);
  - (iii) sub-paragraph (f) (disregarding the words “and as a result of any election under section 5, 6 or 10 of PSPJOA 2022” in that sub-paragraph);
  - (iv) sub-paragraph (g);
  - (v) sub-paragraph (h);
  - (vi) sub-paragraph (i) (disregarding the words “where the condition in section 29(3) of PSPJOA 2022 is satisfied” in the opening text of that sub-paragraph); and
  - (vii) sub-paragraph (k).

### **Reimbursement of the NHS Business Services Authority**

**6.** The scheme manager must reimburse the scheme administrator the amount paid to an immediate detriment remedy member under section 32(1) of PSPJOA 2022 (whether an “immediate detriment remedy” has been obtained).

## **SCHEDULE 2**

Regulation 78

### **Amendments of the 1995 Regulations, the 2008 Regulations and the 2015 Transitional Regulations**

#### **Amendment of the 1995 Regulations**

**1.** In the 1995 Regulations, in regulation B3 (restriction on further participation in this Section of the scheme)(a), after paragraph (A2), insert—

“(A3) Nothing in paragraphs (8G) to (8U) 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 2008 Regulations**

**2.—(1)** The 2008 Regulations are amended as follows.

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

“(A3) Nothing in paragraphs (1A) and (1C) to (1LF) 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.2 (restrictions on eligibility: general)(c), after paragraph (A2), insert—

“(A3) Nothing in paragraphs (1A) and (1C) to (1L) of this regulation prevents a member’s remediable service within the meaning of section 1 of the Public Service

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(a) Regulation B3 was amended by S.I. 2008/654, 2009/381, 2009/1298, 2009/2446, 2014/570, 2015/95, 2016/245, 2022/327.  
(b) Regulation 2.B.2 was amended by S.I. 2008/2263, 2009/381, 2009/1298, 2009/2446, 2010/492, 2014/570, 2015/95, 2015/96, 2016/245, 2017/275, 2022/327.  
(c) Regulation 3.B.2 was amended by S.I. 2008/2263, 2009/381, 2009/2446, 2010/492, 2015/95, 2015/96, 2016/245, 2017/275, 2022/327.

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 “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 31st March 2022—
  - (i) that is pensionable service under that scheme by virtue of section 2(1) of PSPJOA 2022;
  - (ii) in respect of which an immediate choice election by virtue of regulation 9 of the National Health Service Pension Schemes (Remediable Service) Regulations 2023 (election for 2015 scheme benefits: immediate choice members 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 Form AW33E (or such other form as the Secretary of State accepted) together with supporting medical evidence (if not included in the form) for the purposes of 2015 regulation 90 before the transition date;
- (d) whose Form AW33E (or such other form as the Secretary of State accepted) and supporting medical evidence (“the member’s application for ill-health pension”) was received by the Secretary of State 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 pension comparison calculation”, for the full stop substitute a semicolon;
- (c) after that definition, insert ““the transition date” means 1st 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 Pension Scheme Regulations 1995 (S.I. 1995/300) (“the 1995 Regulations”), and the 2008 Section, established by the National Health Service Pension Scheme Regulations 2008 (S.I. 2008/653) (“the 2008 Regulations”) (together “the legacy scheme”), and the scheme established by the National Health Pension Scheme Regulations 2015 (S.I. 2015/94) (“the 2015 scheme”). The National Health Pension Scheme (Transitional and Consequential Provisions) Regulations (S.I. 2015/95) (“the 2015 Transitional Regulations”) provided for the treatment and payment of legacy scheme service and benefits to certain younger members who were required to join the 2015 scheme when reformed public service pensions were introduced in 2015. Transitional protections permitted older members to continue to accrue benefits in the legacy scheme beyond that date. Transitional protection of this kind was 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 are made in accordance with PSPJOA 2022 in relation to a member’s remediable service under 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, at regulations 3 to 5, makes provision in relation to the adjustment of member contributions due in respect of the remediable service of medical practitioners and non-GP providers. Contributions may be underpaid or overpaid depending on the decision made by the member regarding the treatment of remediable service. Deferred or active members have the option of delaying the adjustment until they become eligible to make an election to receive 2015 scheme benefits (“deferred choice election”) 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, in respect of the treatment of remediable service of a pensioner, deceased or incapable member as if it was pensionable service under the 2015 scheme (“an immediate choice election”). Regulation 10 provides for the adjustment of an underpayment or overpayment of benefits as a consequence of an immediate choice election. 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, in respect of the treatment of remediable service of an active or deferred member or a deceased or incapable member as if it were pensionable service under the 2015 scheme (a “deferred choice election”) and regulation 13 provides for the adjustment of any underpayment or overpayment of benefits as a consequence of a deferred choice election.

Part 4 makes provision about additional voluntary contributions made to purchase additional pension and an early retirement reduction buy-out arrangement (“buy-out contributions”). Regulation 15 makes provision for rights to additional pension purchased during the remedy period in the 2015 scheme to be extinguished and replaced by new rights to additional pension under a corresponding option in the legacy scheme. Regulation 16 provides members with an opportunity to cancel the corresponding option with effect from 1st April 2022 and, instead, continue with the purchase of additional pension in the 2015 scheme from that date. Regulation 17 provides for the treatment of additional pension purchased under a corresponding option under 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 a deferred choice election may be made by or in respect of a member. Regulation 19 makes provision for the treatment of such a member’s legacy scheme additional pension purchased in the remedy period where a deferred choice election is made, or treated as having been made, to have remediable service treated as if it was 2015 scheme service. Regulation 20 makes provision for the treatment of additional pension in respect of pensioners and deceased members of the legacy scheme who make an immediate choice election. Regulation 21 makes provision for the treatment of additional pension in respect of pensioners and deceased members of the 2015 scheme, or deceased, on 30th 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. Regulation 23 provides for when and how a remedy member may enter into an arrangement to pay retrospective voluntary contributions for additional pension under the legacy scheme. Regulation 24 provides for when and how a remedy member may revoke the cancellation of their arrangement to pay for additional years or of their option to purchase additional pension in the legacy scheme.

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 divorce or legal dissolution of a civil partnership. 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 1st 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 Finance Act 2004 (c. 12) (“FA 2004”), and the scheme manager becomes liable, jointly and severally with the member, in accordance with regulation 36 of the 2023 Tax Regulations. Regulation 59 allows the scheme manager to pay an amount to NHS England equal to a compensation amount paid from the 2019/20 Pensions Annual Allowance Charge Compensation Scheme (“PAACCS”) where regulation 8 of the 2023 Tax Regulations apply and the annual allowance charge arising in respect of tax year 2019-20 has reduced. Regulation 60 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 61 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 62 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 by 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 64 provides for the calculation of interest in accordance with the 2022 Directions. Regulation 65 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 66 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 67 and 68 set out, respectively, the payment processes where a person owes a net amount to the legacy scheme and vice versa.

Part 10 and Schedule 1 make special provision for a remedy member who has before these Regulations came into force already obtained an immediate detriment remedy (“IDR”). The effect of paragraphs 1 to 4 of Schedule 1 is to provide for further compensation of the member but only to the extent that the benefits already paid as the IDR fall short of the remedy the member would have received had the member not received the IDR. Schedule 1 also requires the provision of a remediable service statement to the IDR member (paragraph 5) and that the scheme manager reimburse the scheme administrator the amount paid to an IDR member (paragraph 6).

Part 11 permits, and sets out the process for, legacy scheme members who had service under 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 1995 Regulations is treated as if it were never such service under the 2008 Regulations.

Part 12 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 72), redundancy (regulation 73), partial retirement (regulations 74 and 75) and ill-health (regulations 76 and 77).

Part 13 and Schedule 2 provide for consequential amendments to the 1995 Regulations, the 2008 Regulations and the 2015 Transitional Regulations. The effect of the amendments to the 1995 Regulations and the 2008 Regulations in, respectively, paragraphs 1 and 2 of Schedule 2 is to make it clear that nothing in earlier amendments to those Regulations, as specified, prevents a member’s remediable service between 1st April 2015 and 31st March 2022 being treated as pensionable service under the member’s Section of the legacy scheme under PSPJOA 2022.



Paragraph 3 of Schedule 2 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 31st March 2022.

A full impact assessment has not been completed for these Regulations. An Explanatory Memorandum has been published alongside these Regulations on <http://www.legislation.gov.uk>.

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