

**2023 No.**

**PUBLIC SERVICE PENSIONS**

**The Teachers' Pensions (Transitional Protection Remedy)  
(Scotland) Regulations 2023**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Scottish Ministers make these Regulations in exercise of the powers conferred by sections 1(1) and (2)(d), 2(1) (as read with paragraph 4(b) of Schedule 2) and 3(1) and (2)(c) of the Public Service Pensions Act 2013(a) (“the 2013 Act”) and sections 5(1) and (5), 6(1), 7(3), 8(1) and (3), 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), (4) and (5), 21, 22(1), (2) and (6), 24(1), 25(1) and (4), 26(1) and (2), and 29(1), (7) and (8) of the Public Service Pensions and Judicial Offices Act 2022(b) (“PSPJOA 2022”).

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

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

**PART 1**

**Introductory provisions**

**Citation, commencement and extent**

**1. These Regulations—**

- (a) may be cited as the Teachers' Pensions (Transitional Protection Remedy) (Scotland) Regulations 2023,
- (b) come into force on 1 October 2023,
- (c) extend to Scotland.

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(a) 2013 c. 25. Section 3(1) was amended by section 94(2) of PSPJOA 2022, and section 3(2)(c) was inserted by section 94(3) of that Act.  
(b) 2022 c. 7.

## Interpretation

2.—(1) In these Regulations—

“PSPJOA 2022” means the Public Service Pensions and Judicial Offices Act 2022,

“the 2005 Regulations” means the Teachers’ Superannuation (Scotland) Regulations 2005(a),

“the 2014 Regulations” means The Teachers’ Pension Scheme (Scotland) (No.2) Regulations 2014(b),

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

“deferred choice decision” has the meaning given in regulation 11(1),

“deferred choice decision-maker” means the person who may make a deferred choice election decision under regulation 11(2),

“deferred choice member” means a member with remediable teacher service who, immediately before 1 October 2023, was—

- (a) an active or deferred member in relation to that service, and
- (b) is not a pensioner member(d) in relation to that service,

“end of the section 10 election period”, in relation to a deferred choice member, means the end of the day determined in accordance with—

- (a) where the member is the deferred choice decision-maker, regulation 12(2)(b),
- (b) where a person other than the member is the deferred choice decision-maker, regulation 13(2)(b),

“immediate choice decision” has the meaning given in regulation 7(1),

“immediate choice decision-maker” means the person who may make an immediate choice decision under regulation 7(2),

“immediate choice member” means a member with remediable teacher service who, immediately before 1 October 2023, was—

- (a) a pensioner member in relation to that service, or
- (b) a deceased member,

the “legacy scheme”, in relation to a remedy member’s remediable teacher service, means the relevant Chapter 1 legacy scheme(e) for that service under the 2005 Regulations, and—

- (a) “legacy scheme benefits” means benefits under that scheme,
- (b) “legacy scheme service”, in relation to a remedy member, means the member’s remediable service in an employment or office that is pensionable service under the legacy scheme (whether or not by virtue of section 2(1) of PSPJOA 2022),

“member” means an active, deferred, deceased or pensioner member of a teacher pension scheme,

“opted-out service election” has the meaning given in regulation 5(1),

the “reformed scheme” means the pension scheme established by the 2014 Regulations, and—

- (a) “reformed scheme benefits” means new scheme benefits(f) under the reformed scheme,

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(a) S.S.I. 2005/393.

(b) S.S.I. 2014/292.

(c) Published on 15 December 2022 and accessible online at <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.

(d) See section 109(3) of PSPJOA 2022 for the meaning of “pensioner member”.

(e) See section 4 of PSPJOA 2022 for the meaning of “relevant Chapter 1 legacy scheme”.

(f) See section 34 of PSPJOA 2022 for the meaning of “new scheme benefits”.

(b) “reformed scheme service”, in relation to a remedy member, means the member’s remediable service in an employment or office that was, immediately before 1st October 2023, pensionable service under the reformed scheme,

“remediable teacher service”, in relation to a remedy member, means the member’s remediable service<sup>(a)</sup> in an employment or office that is pensionable service under a teacher pension scheme,

“remedy member” means a deferred choice member or an immediate choice member,

“section 6 election” has the meaning given in regulation 7(1)(a),

“section 10 election” has the meaning given in regulation 11(1)(a),

“surviving adult” means—

- (a) surviving spouse,
- (b) surviving civil partner,
- (c) surviving qualifying partner,

“teacher pension scheme” means the legacy scheme or the reformed scheme.

(2) 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 a teacher pension scheme.

(3) 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.

(4) A term used in these Regulations which—

- (a) is defined in the 2005 Regulations or the 2014 Regulations (“the relevant Regulations”), and
- (b) is not defined differently—
  - (i) in these Regulations, or
  - (ii) in, or for the purposes of, a provision in Chapter 1 of Part 1 of PSPJOA 2022,

has, in relation to the scheme established by the relevant Regulations, the meaning given in those Regulations.

(5) In these Regulations, a reference to a provision of the PSP Directions 2022 is a reference to that provision as amended from time to time.

## PART 2

### Remediable service statements

#### Requirements relating to remediable service statements

**3.**—(1) The scheme manager must provide a remediable service statement in respect of remedy member (“M”) in accordance with—

- (a) section 29 of PSPJOA 2022,
- (b) any Treasury directions made under section 29(6) of that Act, and
- (c) this regulation.

(2) A remediable service statement must be provided in respect of M—

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(a) See section 1 of PSPJOA 2022 for the meaning of “remediable service”.

- (a) before the relevant date<sup>(a)</sup>,
  - (b) where M is, in relation to their remediable teacher service, for the time being—
    - (i) an active member, at least once in each year ending with the anniversary of the relevant date,
    - (ii) a deferred member, within three months of receipt of a written request by the member<sup>(b)</sup>, and
  - (c) where M is a deferred choice member, as soon as is reasonably practicable following receipt of notification—
    - (i) that M intends to claim benefits in relation to their remediable teacher service, or
    - (ii) that M has died.
- (3) The remediable service statement must be provided—
- (a) to M, or
  - (b) where M is deceased, to the person who is for the time being the eligible decision-maker in relation to M’s remediable teacher service under the Schedule (unless the eligible decision-maker is the scheme manager).
- (4) The remediable service statement must include—
- (a) where the scheme manager has determined that any information to be provided in connection with M’s remediable service must be communicated in a particular form and manner, information about that form and manner,
  - (b) where M is an immediate choice member, information about the irrevocability of an immediate choice decision,
  - (c) where M is a deferred choice member, information about the revocability (or otherwise) of a deferred choice decision.
- (5) For further provision about—
- (a) what a remediable service statement must include, see—
    - (i) section 29(5) of PSPJOA 2022,
    - (ii) direction 20(1) of the PSP Directions 2022.
  - (b) when a remediable service statement must be combined with a benefit information statement provided under section 14 of the Public Service Pensions Act 2013, see direction 20(2) of the PSP Directions 2022.

## PART 3

### Decisions about the treatment of remediable service

#### CHAPTER 1

#### Opted-out service elections

#### **Application and interpretation of Chapter 1**

**4.—**(1) This Chapter applies to and in respect of a member (“M”) with opted-out service in an employment or office in relation to the legacy scheme<sup>(c)</sup>.

(2) In this Chapter—

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(a) See section 29(10) of PSPJOA 2022 for the meaning of “the relevant date”.  
 (b) In accordance with section 29(9) of PSPJOA 2022, only one request under regulation 38(3)(b)(ii) may be made during any period of 12 months.  
 (c) See section 36 of PSPJOA 2022 for the meaning of “opted-out service”.

“opted-out service decision-maker” means the person who may make an opted-out service election under regulation 5(2),

“relevant opted-out service” means the service referred to in paragraph (1).

### **Election in relation to relevant opted-out service**

**5.—**(1) An election (an “opted-out service election”) may be made in relation to M’s relevant opted-out service in accordance with this Part and section 5 of PSPJOA 2022.

(2) An opted-out service election may be made—

(a) by M, or

(b) where M is deceased, by the eligible decision-maker specified in Schedule 1.

(3) Where a person other than the scheme manager is the opted-out service decision-maker, an opted-out service election may only be made after the scheme manager determines an application which is—

(a) made by or behalf of M,

(b) in a form and manner determined by the scheme manager,

(c) received by the scheme manager during the period beginning on 1 October 2023 and ending at the end of 30 September 2024, and

(d) accompanied by such information—

(i) which is within P’s possession, or

(ii) which P may reasonably be expected to obtain,

that the scheme manager may by written notice require the person to provide in relation to the decision which caused the service in question to become opted-out service.

(4) As soon as is reasonably practicable after receipt of an application, the scheme manager must—

(a) determine whether an opted-out service election may be made in relation to M, and

(b) notify the person who made the application whether such an opted-out service election may be made.

(5) Where the scheme manager is the opted-out service decision-maker, the scheme manager must, as soon as is reasonably practicable after determining that they are the opted-out service decision-maker, determine whether to make an opted-out service election in relation to M.

(6) The scheme manager must refuse an application where either of the following conditions are not met—

(a) the decision by virtue of which the member’s service became opted-out service was communicated to the scheme manager on or after 10 March 2012,

(b) the decision by virtue of which the member’s service became opted-out service was made pursuant to a relevant breach of a non-discrimination rule(a).

(7) An opted-out service election to be made by—

(a) a person other than the scheme manager is made when the person confirms that an opted-out service election is to be made following receipt of the notification mentioned in paragraph (4)(b),

(b) the scheme manager is made at the time determined by the scheme manager.

(8) See section 5(2) to (4) of PSPJOA 2022 about the effect, timing and irrevocability of an opted-out service election.

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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”.

## CHAPTER 2

### Immediate choice decision for reformed scheme or legacy scheme benefits

#### Application and interpretation of Chapter 2

6. This Chapter applies in respect of the remediable teacher service of an immediate choice member (“M”).

#### Immediate choice decision for reformed scheme or legacy scheme benefits

7.—(1) A decision (an “immediate choice decision”) may be made in accordance with this Chapter—

- (a) to make an election (a “section 6 election”) by virtue of section 6 of PSPJOA 2022 in relation to M’s remediable teacher service, or
- (b) that no section 6 election is to be made in relation to that service.

(2) An immediate choice decision may be made—

- (a) by M, or
- (b) where M is deceased, by the eligible decision-maker specified in Schedule .

(3) An immediate choice decision made by—

- (a) a person other than the scheme manager is made when it is received by the scheme manager in a form and manner determined by the scheme manager,
- (b) the scheme manager is made at the time determined by the scheme manager.

(4) An immediate choice decision may only be made before the end of the section 6 election period<sup>(a)</sup>.

(5) An immediate choice decision is irrevocable.

(6) An immediate choice decision to make a section 6 election takes effect as a section 6 election (see sections 6(5) and (7), 7(1)(b) and 9 of PSPJOA 2022 about the effect of a section 6 election).

(7) Where—

- (a) M has reformed scheme service, and
- (b) an immediate choice decision is made that no section 6 election is to be made in relation to M’s remediable teacher service,

section 6(4) of PSPJOA 2022 does not apply in relation to M’s reformed scheme service (and, accordingly, section 2(1) of PSPJOA 2022 has effect in relation to M’s reformed scheme service for the purposes mentioned in section 2(3)(b) of that Act from the time the immediate choice decision is made).

(8) The following provisions of PSPJOA 2022 have effect in relation to a decision that no section 6 election is to be made as they have effect in relation to a section 6 election—

- (a) section 6(7) (section 6 election has effect in respect of all remediable service in the employment or office),
- (b) section 7(1)(b) (provision about when a section 6 election is to be treated as having taken effect),
- (c) section 9 (provision about persons with remediable service in more than one Chapter 1 legacy scheme).

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(a) See section 7(2) of PSPJOA 2022 for the meaning of “the end of the section 6 election period”.

### **Immediate choice decision: additional requirements**

8.—(1) This regulation applies where the immediate choice decision-maker (“D”) is a person other than the scheme manager.

(2) An immediate choice decision may not be made unless a remediable service statement has been provided to D in accordance with regulation 3(2)(a).

(3) An immediate choice decision is to be treated as having been made only if D provides any information specified in a written request from the scheme manager that is—

- (a) information in D’s possession, or
- (b) information which D can reasonably be expected to obtain.

### **Immediate choice decision: deemed election**

9.—(1) Where—

- (a) the end of the section 6 election period in relation to M has passed,
- (b) no immediate choice decision has been made, and
- (c) it appears to the scheme manager that the monetary value of the remediable benefits would be higher if they were treated as benefits in the reformed scheme compared with if they were treated as benefits in the legacy scheme,

the scheme manager may treat an immediate choice election as having been made in relation to M’s remediable teacher service immediately before the end of the section 6 election period.

(2) In this regulation—

“monetary value of the remediable benefits” means the value of the remediable benefits as they would be assessed for the purposes of—

- (a) in relation to the legacy scheme, regulation J6B(a) of the 2005 Regulations,
- (b) in relation to the reformed scheme, regulation 176 of the 2014 Regulations,

“remediable benefits” means rights to benefits secured by virtue of M’s remediable teacher service.

## **CHAPTER 3**

### **Deferred choice decision for reformed scheme or legacy scheme benefits**

#### **Application and interpretation of Chapter 3**

10. This Chapter applies in respect of the remediable teacher service of a deferred choice member (“M”).

#### **Deferred choice decision for reformed scheme or legacy scheme benefits: general**

11.—(1) A decision (a “deferred choice decision”) may be made—

- (a) to make an election (a “section 10 election”) by virtue of section 10 of PSPJOA 2022 in relation to M’s remediable teacher service, or
- (b) that no section 10 election is to be made in relation to that service.

(2) A deferred choice decision may be made—

- (a) by M, or
- (b) where M is deceased, by the eligible decision-maker specified in Schedule .

(3) A deferred choice decision—

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(a) Regulation J6B was substituted by S.S.I. 2014/69.

- (a) to be made by a person other than the scheme manager is made when it is received by the scheme manager in a form and manner determined by the scheme manager,
- (b) to be made by the scheme manager is made at a time determined by the scheme manager.

(4) A deferred choice decision may only be made before the end of the section 10 election period.

(5) A deferred choice decision to make a section 10 election takes effect as a section 10 election (see sections 10(4) and (5), 11(3)(b), (4) and (7) and 13 of PSPJOA 2022 about the effect of a section 10 election).

(6) Where the deferred choice decision is that no section 10 election is to be made, the benefits payable to or in respect of M, so far as they are determined by reference to M's remediable teacher service, are legacy scheme benefits.

(7) The following provisions of PSPJOA 2022 have effect in relation to a decision that no section 10 election is to be made as they have effect in relation to a section 10 election—

- (a) section 10(5) (section 10 election has effect in respect of all remediable service in the employment or office),
- (b) section 11(3)(b), (4) and (7) (provision about when a section 10 election take effect, and the effect of lapse or revocation of a section 10 election),
- (c) section 13 (persons with remediable service in more than one Chapter 1 legacy scheme).

(8) No benefits are payable under the legacy scheme in respect of M's pensionable service under the scheme unless—

- (a) a deferred choice decision is made in relation to M's remediable teacher service,
- (b) a section 10 election is deemed to have been made under regulation 14(1) in relation to that service, or
- (c) paragraph (9) applies.

(9) Where M is deceased, the scheme manager may, before a deferred choice decision is made or a section 10 election is deemed to have been made in relation to M's remediable teacher service, pay to any person ("the beneficiary") who is, or is to be, entitled to receive death benefits in relation to M's pensionable service the lesser of—

- (a) such lump sum or pension benefits to which the beneficiary would be entitled if a section 10 election is made, or deemed to be made, in relation to M's remediable teacher service, or
- (b) such lump sum or pension benefits to which the beneficiary would be entitled if no section 10 election is made, or deemed to be made, in relation to M's remediable teacher service,

(10) Where, at the operative time—

- (a) the aggregate of the lump sum or pension benefits that have been paid pursuant to paragraph (9) to a beneficiary, is less than
- (b) the aggregate of the lump sum or pension benefits to which (after taking into account the effect, if any, of paragraph (6) of this regulation or section 10(4) of PSPJOA 2022) the beneficiary is entitled under a teacher pension scheme in respect of M's pensionable service,

the scheme manager must pay an amount equal to the difference to the beneficiary.

(11) In paragraph (10), "the operative time" means—

- (a) if—
  - (i) a deferred choice decision is made, or
  - (ii) a section 10 election is deemed to have been made,
 in relation to M's remediable teacher service, the time the decision or election is made,
- (b) otherwise, the end of the section 10 election period in relation to M.



### **Deferred choice decision to be made by M**

- 12.**—(1) This regulation applies where M is the deferred choice decision-maker.
- (2) A deferred choice decision must be made during the period—
- (a) beginning on the date a remediable service statement is issued under regulation 3(2)(c)(i), and
  - (b) ending—
    - (i) at the end of the day 12 months after the day the remediable service statement mentioned in sub-paragraph (a) was issued,
    - (ii) subject to paragraph (3), at the end of such other day as the scheme manager considers reasonable in all the circumstances.
- (3) The end of the period during which a deferred choice decision may be made must not be more than one year before the day on which it is reasonably expected that, if a section 10 election were made, reformed scheme benefits would become payable to or in respect of M.
- (4) A deferred choice decision made by M may be revoked—
- (a) at any time before the cancellation deadline, and
  - (b) by M communicating to the scheme manager notice of the revocation in a form and manner determined by the scheme manager.
- (5) Where the scheme manager receives, before the cancellation deadline, notice that M has died—
- (a) any deferred choice decision made by M lapses, and
  - (b) any period that has begun (whether or not it has also ended) in accordance with paragraph (3) is to be treated as if it had never begun (or ended).
- (6) In paragraphs (4) and (5), “the cancellation deadline” means—
- (a) the beginning of the day two weeks before the day (“the payment day”) on which the first payment under a teacher pension scheme is due to be made in relation to M’s remediable teacher service, or
  - (b) such later time before the payment day as the scheme manager considers reasonable in all the circumstances.
- (7) Where—
- (a) the period during which a deferred choice decision may be made (“the section 10 election period”) begins in accordance with paragraph (2)(a), and
  - (b) no deferred choice decision has been made before the end of the section 10 election period,

the section 10 election period is treated as never having begun or ended (and, accordingly, a new section 10 election period may begin in accordance with paragraph (2)(a)).

### **Deferred choice decision to be made by a person other than M**

- 13.**—(1) This regulation applies where a person other than M is the deferred choice decision-maker.
- (2) A deferred choice decision may only be made during the period—
- (a) beginning, where the deferred choice decision-maker is—
    - (i) a person other than the scheme manager, on the date a remediable service statement is issued under regulation 3(2)(c)(ii),
    - (ii) is the scheme manager, on the date the scheme manager receives notice that M has died, and
  - (b) ending—
    - (i) at the end of the day 12 months after that date,

- (ii) except where the scheme manager is the deferred choice decision-maker, at such later time as the scheme manager considers reasonable in all the circumstances,
  - (iii) if earlier than the time which applies under paragraph (i) or (ii), immediately after a deferred choice decision is made.
- (3) A deferred choice decision made by a person other than M is irrevocable.

#### **Deferred choice election: deemed section 10 election**

**14.**—(1) Where—

- (a) the deferred choice decision-maker is a person other than M or the scheme manager,
- (b) the end of the section 10 election period in relation to M has passed,
- (c) no deferred choice decision has been made, and
- (d) it appears to the scheme manager that the monetary value of the remediable benefits would be higher if they were treated as benefits in the reformed scheme compared with if they were treated as benefits in the legacy scheme,

the scheme manager may treat a section 10 election as having been made in relation to M's remediable teacher service immediately before the end of the section 10 election period.

(2) In this regulation—

“monetary value of the remediable benefits” means the value of the remediable benefits as they would be assessed for the purposes of—

- (a) in relation to the legacy scheme, regulation J6B(a) of the 2005 Regulations,
- (b) in relation to the reformed scheme, regulation 176 of the 2014 Regulations,

“remediable benefits” means rights to benefits secured by virtue of M's remediable teacher service.

#### **Deferred choice decision: additional requirements**

**15.** Where the deferred choice decision-maker (“D”) is a person other than the scheme manager, a deferred choice decision is to be treated as having been made only if D provides any information specified in a written request from the scheme manager that is—

- (a) information in D's possession, or
- (b) information which D can reasonably be expected to obtain.

## **PART 4**

### **Provision about divorce and dissolution arrangements**

#### **CHAPTER 1**

##### **Pension credit and pension debit members**

#### **SECTION 1**

##### *Application and interpretation of Chapter 1*

#### **Application and interpretation of Chapter 1**

**16.**—(1) This Chapter applies in relation to—

- (a) a pension credit member (“C”),

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(a) Regulation J6B was substituted by S.S.I. 2014/69.

- (b) the corresponding pension debit member (“D”), and
- (c) the pension sharing order by virtue of which C became a pension credit member in relation to D’s remediable teacher service (the “relevant pension sharing order”).

(2) In this Chapter—

“appropriate person” means—

- (a) D, or
- (b) where D is deceased, D’s personal representatives,

“C” means the pension credit member mentioned in paragraph (1)(a),

“cash equivalent” means an amount calculated in accordance with regulations made under section 30 of WRPA 1999(a),

“corresponding pension debit member” means the member referred to in sub-paragraph (c) of the definition of “pension credit member”,

“D” means the corresponding pension debit member mentioned in paragraph (1)(b),

“pension credit member” means a member of a teacher scheme who has rights under the scheme—

- (c) which are attributable (directly or indirectly) to a pension credit(b),
- (d) which arise by virtue of a pension sharing order with a transfer day on or after 1st April 2015, and
- (e) the value of which was determined (to any extent) by reference to the value of benefits payable in respect of the remediable teacher service of another member,

“pension sharing order” means the order or provision by virtue of which section 29 of WRPA 1999 applies in relation to a pension credit member and the corresponding pension debit member,

“relevant pension sharing order” has the meaning given in paragraph (1)(c),

“remediable relevant benefits” means the benefits or future benefits described in section 29(4) and (5) of WRPA 1999 to which D is entitled by virtue of remediable shareable rights,

“remediable shareable rights” means D’s shareable rights secured by virtue of D’s remediable teacher service during the period beginning on 1 April 2015 and ending on the earlier of—

- (a) the day before the transfer date, or
- (b) the last day of D’s remediable teacher service,

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

“transfer day” means the day on which the relevant pension sharing order takes effect,

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

## SECTION 2

### *Pension sharing orders: information provided before 1 October 2023*

#### **Application and interpretation of Section 2**

**17.**—(1) This Section applies where, before 1 October 2023, the scheme manager has provided information for the purpose of determining amounts under section 29 of WRPA 1999 in respect of a remedy member’s remediable teacher service.

(2) In this Section—

“alternative amount” has the meaning given in regulation 18,

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(a) In accordance with section 110(1) of PSPJOA 2022, “WRPA 1999” means the Welfare Reform and Pensions Act 1999 (c. 30).

(b) See section 19(7) of PSPJOA 2022 for the meanings of “pension debit” and “pension credit”.

“alternative reduction amount” and “alternative reduction amounts” have the meanings given in, respectively, regulation 21(3) and (4),

“alternative scheme”, in relation to a pension sharing order that does not relate to mixed service, means—

- (a) where the initial scheme is D’s legacy scheme, the reformed scheme,
- (b) where the initial scheme is the reformed scheme, D’s legacy scheme,

“C’s pension account” has the meaning given in regulation 20(4),

“initial amount” means the total amount determined for the purposes of the relevant pension sharing order under section 29(2) and (3) of WRPA 1999 in relation to D’s remediable shareable rights,

“initial reduction amount” means the amount by which D’s remediable relevant benefits were reduced pursuant to the relevant pension sharing order,

“initial scheme”, in relation to a relevant pension sharing order that does not relate to mixed service, means the teacher pension scheme in respect of which an initial amount or an initial reduction amount was determined,

“remediable credit adjustment” has the meaning given in regulation 19(2).

(3) In this Section, a relevant pension sharing order relates to mixed service if it specifies an appropriate amount in accordance with section 29(2) or (3) of WRPA 1999 by reference to the value of remediable relevant benefits to which D is entitled by virtue of remediable shareable rights secured in both D’s legacy scheme and the reformed scheme (and, accordingly, a relevant pension sharing order does not relate to mixed service if it specifies an appropriate amount by reference to remediable shareable rights secured in only one of those schemes).

### **Meaning of “alternative amount”**

**18.**—(1) “Alternative amount” means—

- (a) in relation to a relevant pension sharing order that does not relate to mixed service, and—
  - (i) where the initial amount was determined under section 29(2) of WRPA 1999 in relation to a percentage value to be transferred from the initial scheme, the amount that would have been determined applying the relevant percentage value under section 29(2) on the valuation day if the remediable relevant benefits had been secured in the alternative scheme,
  - (ii) where the initial amount was determined under section 29(2) of WRPA 1999 in relation to an amount to be transferred from the initial scheme, the amount equal to the implied percentage of the cash equivalent of the remediable relevant benefits on the valuation day determined as if all of those benefits had been secured in the alternative scheme,
- (b) in relation to a relevant pension sharing order that relates to mixed service, the greater of—
  - (i) the legacy scheme amount, and
  - (ii) the reformed scheme amount.

(2) In paragraph (1)(b)—

“legacy scheme amount” means, where the initial amount was determined in relation to—

- (a) a percentage value to be transferred from both the legacy scheme and the reformed scheme, the amount that would have been determined applying—
  - (i) in relation to pre-taper remediable relevant benefits, the legacy scheme percentage value, and
  - (ii) in relation to post-taper remediable relevant benefits, the reformed scheme percentage value,

under section 29(2) on the valuation day if all of the remediable relevant benefits had been secured in the legacy scheme,

- (b) an amount to be transferred from both the legacy scheme and the reformed scheme, the amount equal to the implied percentage of the cash equivalent of the remediable relevant benefits on the valuation day determined as if all the remediable relevant benefits had been secured in the legacy scheme,

“reformed scheme amount” means, where the initial amount was determined under section 29(2) of WRPA 1999 in relation to—

- (c) a percentage value to be transferred from both the legacy scheme and the reformed scheme, the amount that would have been determined applying—
  - (i) in relation to pre-taper remediable relevant benefits, the legacy scheme percentage value, and
  - (ii) in relation to post-taper remediable relevant benefits, the reformed scheme percentage value,

under section 29(2) on the valuation day if all of the remediable relevant benefits had been secured in the reformed scheme,

- (d) an amount to be transferred from both the legacy scheme and the reformed scheme, an amount equal to the implied percentage of the cash equivalent of the remediable relevant benefits on the valuation day determined as if all the remediable relevant benefits had been secured in the reformed scheme.

(3) In this regulation—

“implied percentage”, in relation to the value of benefits under a teacher pension scheme, means the percentage that an initial amount determined under section 29(3) of WRPA represented of the cash equivalent of the remediable relevant benefits under that scheme on valuation day,

“legacy scheme percentage value” means the percentage value specified in a relevant pension sharing order in relation to D’s legacy scheme for the purpose of determining an amount under section 29(2) of WRPA 1999,

“post-taper remediable relevant benefits” means remediable relevant benefits to which a corresponding pension debit member (“D”) is entitled by virtue of remediable shareable rights secured by virtue of D’s remediable teacher service after D’s tapered protection closing date,

“pre-taper remediable relevant benefits” means remediable relevant benefits to which D is entitled by virtue of remediable shareable rights secured by virtue of D’s remediable teacher service on or before D’s tapered protection closing date,

“reformed scheme percentage value” means the percentage value specified in a relevant pension sharing order in relation to the reformed scheme for the purpose of determining an amount under section 29(2) of WRPA 1999,

“relevant percentage value” means—

- (a) where the relevant pension sharing order specifies a percentage value in relation to only the initial scheme for the purpose of determining an amount under section 29(2) of WRPA 1999, that percentage value,
- (b) otherwise, the percentage value that is specified in relation to the alternative scheme,

“tapered protection closing date”, in relation to D, has the meaning given in paragraph 4 of Schedule 3 to the 2014 Regulations.

### **Information provided before 1 October 2023: calculating a remediable credit adjustment**

**19.**—(1) The scheme manager must determine the alternative amount in relation to C’s pension credit—

- (a) as soon as reasonably practicable after 30th September 2023, and
- (b) having consulted the scheme actuary.

- (2) Where—
- (a) the alternative amount is greater than the initial amount, or
  - (b) the relevant pension sharing order relates to mixed service and the alternative amount is lower than the initial amount,

C's pension account is subject to an adjustment (a "remediable credit adjustment") equal to the difference.

(3) The scheme manager must, by the end of 30 September 2024, provide C with a statement setting out—

- (a) the alternative amount,
- (b) any remediable credit adjustment, and
- (c) where regulation 20(4)(b) applies in relation to C, an explanation of the request that may be in accordance with regulation 20(5) and the consequences of making, or not making, such a request.

### **Information provided before 1 October 2023: applying a remediable credit adjustment**

**20.**—(1) This regulation applies where C's pension credit account is subject to a remediable credit adjustment.

(2) The scheme manager must adjust C's pension account by an amount equal to the remediable credit adjustment.

(3) An adjustment made under paragraph (2) has effect as if it had been made on the transfer day.

(4) In paragraph (2), "C's pension account" means, where C has, in relation to the relevant pension sharing order—

- (a) a pension credit in only one teacher pension scheme, C's pension credit member account under that scheme,
- (b) a pension credit in both the legacy scheme and the reformed scheme—
  - (i) the pension credit member account identified by C in a request made in accordance with paragraph (5), or
  - (ii) if no request is made in accordance with paragraph (5), C's pension credit member account under whichever of the legacy scheme or the reformed scheme it appears to the scheme manager, having consulted the scheme actuary, would be most beneficial to C.

(5) A request is made in accordance with this paragraph if—

- (a) it is made in writing to the scheme manager for the purpose of paragraph (4)(b),
- (b) it is in a form determined by the scheme manager,
- (c) it unambiguously identifies only one of C's pension credit member accounts, and
- (d) it is received by the scheme manager by—
  - (i) the end of the day 6 months after the date of the statement required by regulation 19(3) was provided to C, or
  - (ii) the end of such later day that the scheme manager considers reasonable in all the circumstances.

(6) A request made in accordance with paragraph (5) is irrevocable.

(7) Section 14(3) to (6) of PSPJOA 2022 applies in relation to C as it applies in relation to a member described in section 14(1) as if—

- (a) a reference to M's remediable service in an employment or office were a reference to C's pension credit,
- (b) a reference to the effect, if any, of sections 2(1) and 6(4) were a reference to the effect, if any, of this regulation,

- (c) the term “operative time” means the time at which the adjustment mentioned in paragraph (2) is made (disregarding paragraph (3)).

**Information provided before 1 October 2023: recalculating D’s reduction of benefit**

**21.**—(1) This regulation applies where D’s remediable relevant benefits have been reduced by an initial reduction amount.

(2) The scheme manager must determine the alternative reduction amount or, where the relevant pension sharing order relates to mixed service, the alternative reduction amounts in relation to D’s remediable relevant benefits—

- (a) as soon as reasonably practicable after 30 September 2023, and
- (b) having consulted the scheme actuary.

(3) Where the relevant pension sharing order does not relate to mixed service, the “alternative reduction amount” is such amount as the scheme manager considers appropriate having regard to—

- (a) the cash equivalent of the remediable relevant benefits on the valuation day as if they had been secured in the alternative scheme,
- (b) the percentage value or the amount to be transferred specified in the relevant pension sharing order, and
- (c) the provisions of sections 29 and 31 of WRPA 1999.

(4) Where the relevant pension sharing order relates to mixed service, the “alternative reduction amounts” are such amounts as the scheme manager considers appropriate having regard to—

- (a) the cash equivalent of the remediable relevant benefits on the valuation day as if they had all been secured in—
  - (i) the legacy scheme, and separately
  - (ii) the reformed scheme, and
- (b) the matters mentioned in paragraph (3)(b) and (c).

SECTION 3

*Information provided on or after 1 October 2023*

**Application and interpretation of Section 3**

**22.**—(1) This Section applies where, on or after 1 October 2023, the scheme manager provides information for the purpose of determining amounts under section 29 of WRPA 1999 in respect of a remedy member’s remediable teacher service.

(2) In this Section—

“alternative reduction amount” has the meaning given in regulation 24(3),

“appropriate amount” means an amount calculated for the purposes of section 29(1) of WRPA 1999,

“immediate choice pensioner member” means an immediate choice member who is, immediately before these Regulations come into force, a pensioner member in relation to their remediable teacher service,

“legacy scheme cash equivalent” has the meaning given in regulation 23(2)(b),

“reformed scheme cash equivalent” has the meaning given in regulation 23(2)(a).

**Information provided on or after 1 October 2023: calculation of pension credits and debits**

**23.**—(1) This regulation applies where D is—

- (a) a deferred choice member and no pension benefits have become payable in relation to D’s remediable teacher service, or
  - (b) an immediate choice pensioner member, and—
    - (i) the end section of the section 6 election period in relation to D has not passed, and
    - (ii) no immediate choice decision has been made in relation to D’s remediable teacher service.
- (2) For the purpose of calculating the appropriate amount, the scheme manager must determine—
- (a) the cash equivalent of D’s remediable relevant benefits on the valuation day as if those remediable relevant benefits were in D’s legacy scheme (“the legacy scheme cash equivalent”), and
  - (b) the cash equivalent of those benefits on valuation day as if they were in the reformed scheme (“the reformed scheme cash equivalent”).
- (3) For the purpose of calculating the pension credit and the pension debit, the scheme manager must use the greater of—
- (a) the legacy scheme cash equivalent, or
  - (b) the reformed scheme cash equivalent.

**Information provided on or after 1 October 2023: recalculating D’s reduction of benefit**

- 24.**—(1) This regulation applies where D’s remediable relevant benefits are to be reduced in relation to a pension debit calculated under regulation 23(3).
- (2) The scheme manager must determine the alternative reduction amount in relation to D’s remediable relevant benefits—
- (a) as soon as reasonably practicable after the transfer date, and
  - (b) having consulted the scheme actuary.
- (3) The “alternative reduction amount” is such amount as the scheme manager considers appropriate having regard to—
- (a) the cash equivalent of the remediable relevant benefits on valuation day as if they had been remediable relevant benefits secured in—
    - (i) where the pension debit mentioned in paragraph (1) was calculated on the basis of the legacy scheme cash equivalent, the reformed scheme,
    - (ii) where the pension debit was calculated on the basis of the reformed scheme cash equivalent, the legacy scheme,
  - (b) the percentage value or the amount to be transferred specified in the relevant pension sharing order, and
  - (c) the provisions of sections 29 and 31 of WRPA 1999.

**CHAPTER 2**

Arrangements on divorce, annulment or dissolution other than a pension sharing order

**Arrangements other than a pension sharing order: calculating the value of pension benefits**

- 25.**—(1) This regulation applies where—
- (a) the value of the remediable rights of a member (“M”) must be determined for the purpose of proceedings connected to M’s divorce, annulment or the dissolution of M’s civil partnership,
  - (b) the divorce, annulment or dissolution is to take effect—
    - (i) on or after 1 October 2023, and



- (ii) before the earlier of—
    - (aa) a decision taking effect in relation to M’s remediable teacher service, or
    - (bb) the end of the relevant election period, and
  - (c) the value of M’s remediable rights is not to be subject to a pension sharing order.
- (2) The value of M’s remediable rights for the purpose of the proceedings is the greater of those rights valued by the scheme manager, having consulted the scheme actuary, as if they were—
- (a) secured in M’s legacy scheme, or
  - (b) secured in the reformed scheme.
- (3) In this regulation—
- “decision” means an immediate choice decision or a deferred choice decision,
- “pension sharing order” means an order or provision which attracts section 29 of WRPA 1999 in relation to M’s remediable rights,
- “relevant election period” means, where M is—
- (a) a deferred choice member, the section 10 election period in relation to M,
  - (b) an immediate choice pensioner member, the section 6 election period in relation to M,
- “remediable rights” means the rights secured by virtue of M’s remediable teacher service.

## PART 5

### Voluntary contributions

#### CHAPTER 1

##### General

### **Interpretation of Part 5**

**26.** In this Part—

- “additional pension” means rights to benefits secured by virtue of an election under—
- (a) in relation to the legacy scheme, paragraph 2 of Schedule 2A to the 2005 Regulations,
  - (b) in relation to the reformed scheme, paragraph 6 of Schedule 2 to the 2014 Regulations,
- “alternative reformed scheme additional pension value” means the value of additional pension determined pursuant to regulation 27(1)(a)(i),
- “bought out standard reduction” means rights to benefits secured by virtue of an election under paragraph 31 of Schedule 2 to the 2014 Regulations,
- “compensatable amount” means, where an amount by way of compensation relates to remediable voluntary contributions paid to secure—
- (c) additional pension under the legacy scheme, the amount determined pursuant to regulation 27(1)(a)(ii),
  - (d) reformed scheme flexibilities, the amount determined pursuant to regulation 27(1)(b)(ii),
- “faster accrual” means benefits secured by virtue of an election under paragraph 22 of Schedule 2 to the 2014 Regulations,
- “reformed scheme flexibility” means additional pension, bought out standard reduction or faster accrual secured under the reformed scheme,
- “relevant pension year” has the meaning given in direction 5(16)(c)(i) of the PSP Directions 2022,
- “remediable voluntary contribution” means a voluntary contribution paid pursuant to an arrangement which commenced during the period of M’s remediable teacher service,

“rights to alternative legacy scheme additional pension” means the rights to additional pension determined pursuant to regulation 27(1)(b)(i),

“RVC election” has the meaning given in regulation 28(4)(c),

“voluntary contribution” means a contribution paid by M to secure—

- (e) additional pension under the legacy scheme, or
- (f) a reformed scheme flexibility.

### **Requirement to determine the value of flexibilities in a member’s alternative scheme**

**27.**—(1) The scheme manager must, as soon as is practicable after 1 October 2023, determine—

- (a) where a remedy member paid remediable voluntary contributions to secure additional pension under the legacy scheme—
  - (i) the equivalent value of additional pension that would have been secured under the reformed scheme if the remediable voluntary contributions had been paid to that scheme, and
  - (ii) the amount which is equal to—
    - (aa) the aggregate of the remediable voluntary contributions paid to secure the additional pension under the legacy scheme, less
    - (bb) an amount in respect of the value of tax relief in accordance with directions 5(5) to (9) of the PSP Directions 2022,
- (b) where a remedy member paid remediable voluntary contributions to secure reformed scheme flexibilities—
  - (i) the rights to additional pension under the legacy scheme that would have been secured under that scheme if the remediable voluntary contributions had been paid to that scheme, and
  - (ii) the amount which is equal to—
    - (aa) the aggregate of the remediable voluntary contributions paid to secure the reformed scheme flexibility, less
    - (bb) an amount in respect of the value of tax relief calculated in accordance with direction 5(5) to (9) of the PSP Directions 2022.

(2) Where a determination is made in accordance with direction 5(8) of the PSP Directions 2022, the following apply—

- (a) direction 5(10) (provision of explanation),
- (b) direction 5(11) and (12) (appeals).

(3) In making a determination under paragraph (1)—

- (a) the scheme manager must consult the scheme actuary, and
- (b) the scheme manager must treat any remediable voluntary contribution paid to—
  - (i) the reformed scheme as if it was paid to the legacy scheme in the same relevant pension year in which it was paid to the reformed scheme,
  - (ii) the legacy scheme as if it was paid to the reformed scheme in the same relevant pension year in which it was paid to the legacy scheme.

### **Election in relation to remediable voluntary contributions**

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

- (a) M has paid remediable voluntary contributions to secure a reformed scheme flexibility, and
- (b) M is—

- (i) an immediate choice member and, at the time M made the election pursuant to which those remediable voluntary contributions were paid, M was under 65,
  - (ii) a deferred choice member.
- (2) This regulation applies separately in relation to each reformed scheme flexibility secured by M's remediable voluntary contributions.
- (3) The scheme manager must, as soon as is practicable after making the determinations mentioned in regulation 27(1)(b) in relation to M, give written notice to the relevant decision-maker.
- (4) The notice must set out—
- (a) the rights secured by virtue of any remediable voluntary contributions paid by M,
  - (b) the effect on those rights if, as the case may be—
    - (i) a section 6 election or a section 10 election is made in relation to M's remediable teacher service, or
    - (ii) no section 6 election or section 10 election is made in relation to M's remediable teacher service,
  - (c) the fact that the relevant decision-maker may make an election (an "RVC election") in accordance with paragraph (5), and the consequences of making or not making an RVC election,
  - (d) the form and manner by which the RVC election must be communicated to the scheme manager,
  - (e) the time by which the RVC election must be received by the scheme manager,
  - (f) the fact that the RVC election is irrevocable.
- (5) The relevant decision-maker may elect that—
- (a) rights to alternative legacy scheme additional pension are to be conferred,
  - (b) the scheme manager must pay to M or, if M is deceased, M's personal representatives an amount by way of compensation equal to the compensatable amount, or
  - (c) except where—
    - (i) M is an immediate choice member, or
    - (ii) M is a deferred choice member who has died,
 the scheme manager must pay to M an amount by way of compensation equal to the compensatable amount, but that payment is to be waived by virtue of an agreement under regulation 37(2).
- (6) An election may only be made—
- (a) during the period of six months beginning on the day after written notice is given in accordance with this regulation, or
  - (b) at such later time as the scheme manager considers reasonable in all the circumstances.
- (7) An election under paragraph (5) is irrevocable.
- (8) In this regulation—
- "relevant decision-maker" means—
- (a) where M is an immediate choice member, the immediate choice decision-maker,
  - (b) where M is a deferred choice member, the deferred choice decision-maker.

### **Disapplication of scheme rules where rights are determined, varied or conferred**

**29.** Where rights, or the value of rights, are determined, varied or conferred under Chapter 2 or 3, the following do not apply in relation to those rights—

- (a) any procedural requirement (such as the giving of a notice) imposed by the 2005 Regulations or the 2014 Regulations in connection with securing rights that are the same as, or similar to, the varied or conferred rights,
- (b) any provision contained in the 2005 Regulations or the 2014 Regulations limiting the amount of additional pension, bought out standard reduction or faster accrual that may be secured in a particular period.

**Variation of the period during which a buy-out election may be made**

**30.**—(1) In relation to a relevant member, paragraph 29(4) of Schedule 2 to the 2014 Regulations is to be read as if for “after P enters pensionable service under this scheme” there were substituted “of the beginning of 1st October 2023”.

(2) In paragraph (1), “relevant member” means a remedy member who, immediately before 1st April 2022, was not a full protection member within the meaning of paragraph 6 of Schedule 3 to the 2014 Regulations.

**CHAPTER 2**

**Immediate choice members**

**Application of Chapter 2**

**31.** This Chapter applies in relation to the remediable voluntary contributions of an immediate choice member (“M”).

**Treatment of legacy scheme additional pension where reformed scheme benefits chosen**

**32.**—(1) This regulation applies where M has paid remediable voluntary contributions to secure additional pension under the legacy scheme.

(2) When making an immediate choice decision, the immediate choice decision-maker may elect that—

- (a) the value of additional pension under the legacy scheme secured by virtue of M’s remediable voluntary contributions is to be varied so that it is equivalent to the alternative reformed scheme additional pension value, or
- (b) the scheme manager must pay to M or, if M is deceased, M’s personal representatives an amount by way of compensation equal to the compensatable amount.

(3) Paragraphs (4) and (5) apply where a section 6 election is made (or deemed to have been made) in relation to M’s remediable teacher service.

(4) Where either—

- (a) an election is made in accordance with paragraph (2)(a), or
- (b) no election is made in accordance with paragraph (2),

the scheme manager must vary the value of additional pension secured under the legacy scheme by virtue of M’s remediable voluntary contributions so that it is equivalent to the alternative reformed scheme additional pension value,

(5) Where an election is made in accordance with paragraph (2)(b)—

- (a) the scheme manager must pay to M or, if M is deceased, M’s personal representatives an amount by way of compensation equal to the compensatable amount, and
- (b) the rights that would have been secured by payment of the remediable contributions are extinguished.

**Treatment of reformed scheme flexibilities where legacy scheme benefits take effect**

**33.**—(1) This regulation applies where M has paid remediable voluntary contributions to secure a reformed scheme flexibility.

(2) This regulation applies separately in relation to each type of reformed scheme flexibility secured by M's remediable voluntary contributions.

(3) Where either—

- (a) the end of the section 6 election period in relation to M has passed and no section 6 election is made (or deemed to have been made) in relation to M's remediable teacher service, or
- (b) an immediate choice decision has been made that no section 6 election is to be made in relation to M's remediable teacher service,

the rights that would have been secured by the payment of the remediable voluntary contributions are extinguished.

(4) Where—

- (a) an RVC election is made under regulation 28(5)(a), or
- (b) the period mentioned in regulation 28(6) has expired and no RVC election has been made,

the scheme manager must confer the rights to alternative legacy scheme additional pension.

(5) Where—

- (a) an RVC election is made under regulation 28(5)(b), or
- (b) at the time M made the election pursuant to which the remediable voluntary contributions were paid, M was 65 or over,

the scheme manager owes to M or, where M is deceased, to M's personal representatives an amount equal to the compensatable amount.

## CHAPTER 3

### Deferred choice members

#### SECTION 1

#### *Application of Chapter 3*

### **Application of Chapter 3**

**34.** This Chapter applies in relation to the remedial voluntary contributions of a deferred choice member ("M").

#### SECTION 2

#### *Provision about remedial voluntary contributions on the entry into force of section 2(1) of PSPJOA 2022*

### **Application of Section 2**

**35.**—(1) This Section applies where M has paid remediable voluntary contributions to secure a reformed scheme flexibility.

(2) This Section applies separately in relation to each type of reformed scheme flexibility secured by M's remediable voluntary contributions.

### **Treatment of rights to reformed scheme flexibilities on the entry into force of section 2(1) of PSPJOA 2022**

**36.**—(1) Paragraph (2) applies in relation to rights to reformed scheme flexibilities in respect of which—

- (a) an RVC election is made under regulation 28(5)(a), or
- (b) the period mentioned in regulation 28(6) has expired and no RVC election has been made.

(2) Where this paragraph applies—

- (a) the scheme manager must confer rights to alternative legacy scheme additional pension,
  - (b) the rights to reformed scheme flexibilities mentioned in paragraph (1) are extinguished, and
  - (c) if the arrangement under which remediable voluntary contributions are paid to secure the reformed scheme flexibilities is continuing, any remediable voluntary contributions paid under that arrangement are to be treated as being paid to secure rights to legacy scheme additional pension.
- (3) Paragraph (4) applies in relation to rights to reformed scheme flexibilities in respect of which an RVC election is made under regulation 28(5)(b) or (c).
- (4) Where this paragraph applies—
- (a) the scheme manager owes to M or, where M is deceased, to M’s personal representatives an amount equal to the compensatable amount except in accordance with the terms of an agreement under regulation 37(2),
  - (b) the rights to reformed scheme flexibilities mentioned in paragraph (3) are extinguished, and
  - (c) if the arrangement under which remediable voluntary contributions are paid to secure the reformed scheme flexibilities is continuing, that arrangement is terminated.

**Agreement to waive payment of a compensatable amount**

- 37.**—(1) This regulation applies in relation to rights to reformed scheme flexibilities in respect of which an RVC election is made under regulation 28(5)(c).
- (2) The scheme manager and M may agree to waive the compensatable amount otherwise owed under regulation 36(4)(a).
- (3) Such an agreement—
- (a) must be in writing, and
  - (b) must provide that the waiver ceases to apply where—
    - (i) the end of the section 10 election period in relation to the remediable teacher service has passed without a deferred choice decision having been made in relation to that service, or
    - (ii) a deferred choice decision is made in relation to that service.
- (4) The agreement must provide that, where a waiver ceases to apply by virtue of the circumstances mentioned in paragraph (3) and the benefits payable in relation to M’s remediable teacher service are—
- (a) legacy scheme benefits, the scheme manager owes M or, where M is deceased, M’s personal representatives the compensatable amount mentioned in paragraph (2),
  - (b) reformed scheme benefits—
    - (i) the scheme manager must, having consulted the scheme actuary, confer rights under the reformed scheme equivalent to the reformed scheme flexibilities mentioned in paragraph (1), and
    - (ii) any right to payment of the compensatable amount is extinguished.
- (5) An agreement under this regulation may not be varied.

SECTION 3

*Provision about remediable voluntary contributions on a deferred choice decision*

**Variation of legacy scheme additional pension where reformed scheme benefits chosen**

- 38.**—(1) This regulation applies where M has paid remediable voluntary contributions to secure additional pension under the legacy scheme.

(2) When making a deferred choice decision, the deferred choice decision-maker may elect that—

- (a) the value of additional pension under the legacy scheme secured by virtue of M's remediable voluntary contributions is to be varied so that it is equivalent to the alternative reformed scheme additional pension value, or
- (b) the scheme manager must pay to M or, if M is deceased, M's personal representatives an amount by way of compensation equal to the compensatable amount.

(3) Paragraphs (4) and (5) apply where a section 10 election is made (or deemed to have been made) in relation to M's remediable teacher service.

(4) Where either—

- (a) an election is made in accordance with paragraph (2)(a), or
- (b) no election is made in accordance with paragraph (2),

the scheme manager must vary the value of additional pension under the legacy scheme secured by virtue of M's remediable voluntary contributions so that it is equivalent to the alternative reformed scheme additional pension value.

(5) Where an election is made in accordance with paragraph (2)(b)—

- (a) the scheme manager must pay to M or, if M is deceased, M's personal representatives an amount by way of compensation equal to the compensatable amount, and
- (b) the rights that would have been secured by payment of the remediable voluntary contributions are extinguished.

#### **Reinstatement of reformed scheme flexibilities where reformed scheme benefits chosen**

**39.**—(1) Paragraph (2) applies—

- (a) in relation to—
  - (i) rights to alternative legacy scheme additional pension conferred under regulation 36(2)(a), together with
  - (ii) any rights treated as being rights to legacy scheme additional pension by virtue of regulation 36(2)(c), and
- (b) where a section 10 election is made (or deemed to have been made) in relation to M's remediable teacher service.

(2) The scheme manager must, having consulted the scheme actuary, vary the rights mentioned in paragraph (1)(a) so that they are equivalent to the rights to reformed scheme flexibilities that would have been secured had regulation 36(2) never taken effect in relation those rights.

(3) Paragraph (4) applies—

- (a) in relation to rights which were extinguished under regulation 36(4)(b),
- (b) where payment of a compensatable amount in respect of those rights was waived in accordance with the terms of an agreement under regulation 37(2), and
- (c) where a section 10 election is made (or deemed to have been made) in relation to M's remediable teacher service.

(4) Where this paragraph applies—

- (a) the scheme manager must, having consulted the scheme actuary, confer rights under the legacy scheme that are equivalent to the extinguished rights mentioned in paragraph (3)(a), and
- (b) the right to payment of the compensatable amount is extinguished.

#### **Treatment of waived compensatable amount where legacy scheme benefits take effect**

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

- (a) payment of a compensatable amount was waived in accordance with the terms of an agreement under regulation 37(2),
  - (b) the waiver under that agreement has ceased to apply, and
  - (c) the benefits payable in relation to M's remediable teacher service are legacy scheme benefits.
- (2) The scheme manager owes M or, where M is deceased, M's personal representatives the compensatable amount.

## CHAPTER 4

### Remedial arrangements to pay voluntary contributions to the legacy scheme

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

- 41.**—(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—
- (a) Schedule 2A of the 2005 Regulations, and
  - (b) this regulation.
- (3) M may only enter into a remedial arrangement—
- (a) in respect of a period of M's remediable teacher service,
  - (b) if the scheme manager is satisfied that it is more likely than not that, but for a relevant breach of a non-discrimination rule, M would, during the period of M's remediable teacher service, have entered into the same or a similar arrangement,
  - (c) before—
    - (i) the end of the period of one year beginning with the day on which a remediable service statement is first provided in respect of M, or
    - (ii) such later time as the scheme manager considers reasonable in all the circumstances, and
  - (d) after an application made in accordance with paragraph (4) is approved by the scheme manager.
- (4) An application is made in accordance with this paragraph where—
- (a) it is in writing in a form and manner determined by the scheme manager,
  - (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 Schedule 2A of the 2005 Regulations in connection with making an election to pay voluntary contributions for additional pension, and
  - (c) it is received by the scheme manager—
    - (i) before 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.
- (5) The scheme manager may treat an application made in accordance with paragraph (4) as if it were a notice under paragraph 2 of Schedule 2A to the 2005 Regulations.
- (6) Where M enters into a remedial arrangement, M owes to the scheme manager an amount equal to—



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

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

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

## PART 6

### Transfers

#### CHAPTER 1

##### General

#### **Interpretation of Part 6**

**42.**—(1) In this Part—

“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<sup>(a)</sup>,
- (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 club transfer value”, in relation to a member, means the payment or acceptance by the scheme manager of a club transfer value under—

- (d) Chapter 2 of Part G of the 2005 Regulations,
- (e) Chapter 3 of Part 10 of the 2014 Regulation,

so far as the club 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 under—

- (f) Chapter 4 of Part G of the 2005 Regulations,
- (g) Chapter 2 of Part 10 of the 2014 Regulations,

so far as the 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 club transfer value or a transfer value (including a remediable club transfer value or a remediable transfer value) in relation to rights secured in a teacher pension scheme, that value is to be calculated in accordance with—

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(a) See section 33 of PSPJOA 2022 for the meaning of “Chapter 1 scheme”.

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

### **Transferred out remediable service statements**

**43.** Where a remedy member has transferred any rights in respect of remediable service out of a teacher pension scheme, the scheme manager must provide a transferred out remediable service statement in accordance with direction 6(2) to (4) of the PSP Directions 2022 (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 3).

## CHAPTER 2

### Transfers on a cash equivalent basis

#### SECTION 1

#### *Transfers before 1 October 2023*

### **Transfers out before 1 October 2023**

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

(2) The scheme manager, having consulted the scheme actuary, must calculate the transfer value of M’s remediable rights as if they were secured in—

- (a) M’s legacy scheme,
- (b) the reformed scheme.

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

(4) Where—

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

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

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

### **Transfers in before 1 October 2023**

**45.**—(1) This regulation applies in relation to each payment of a remediable transfer value in respect of a member (“M”) which was accepted by the scheme manager before 1 October 2023.

(2) The scheme manager, having consulted the scheme actuary, must determine the amount of pension M is entitled to count if the remediable transfer value together with any payment accepted under paragraph (3) were applied in respect of rights in—

- (a) M’s legacy scheme,
- (b) the reformed scheme.

(3) Where the sending scheme was a reformed public service pension scheme, the scheme manager may accept a payment—

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

(4) A payment accepted under paragraph (3) is to be used for the purpose of determining the amount of pension M is entitled to count under a teacher pension scheme on the same terms as the remediable transfer value.

## SECTION 2

### *Transfers on or after 1 October 2023*

#### **Application of Section 2**

46. This Section applies in respect of a member (“M”) who is a deferred choice member, and no pension benefits have become payable in relation to M’s remediable teacher service.

#### **Transfers out on or after 1 October 2023**

47.—(1) This regulation applies to a remediable transfer value payment to be made in relation to M by the scheme manager on or after 1 October 2023.

(2) The scheme manager, having consulted the scheme actuary, must calculate the transfer value of M’s remediable rights as if those rights had been in—

- (a) M’s legacy scheme,
- (b) the reformed scheme.

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

## CHAPTER 3

### Transfers on a club basis

#### SECTION 1

### *Club transfers before 1 October 2023*

#### **Club transfers out before 1 October 2023**

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

(2) The scheme manager, having consulted the scheme actuary, must calculate the following amounts—

- (a) the club transfer value of M’s rights under a teacher pension scheme as if M’s remediable rights had been secured in M’s legacy scheme,
- (b) the club transfer value of M’s rights under a teacher pension scheme as if M’s remediable rights had been secured in the reformed scheme.

(3) The scheme manager must provide to the receiving scheme the result of the calculations mentioned in paragraph (2).

(4) Where the receiving is a local government 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 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.

#### **Club transfers in before 1 October 2023**

49.—(1) This regulation applies in relation to each remediable club transfer payment value in respect of a member (“M”) which was accepted by the scheme manager before 1 October 2023.

(2) 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 relates, and
- (b) which is made by the sending scheme pursuant to, or to provision made under, PSPJOA 2022.

(3) An adjustment accepted under paragraph (2) is to be used for the purpose of determining the amount of pension M is entitled to count under a teacher pension scheme on the same terms as the remediable club transfer value mentioned in paragraph (1).

(4) The scheme manager, having consulted the scheme actuary, must determine the amount of pension M is entitled to count if the remediable transfer value together with any adjustment accepted under paragraph (2) were applied in respect of rights in—

- (a) M's legacy scheme,
- (b) the reformed scheme.

## SECTION 2

### *Club transfers on or after 1 October 2023*

#### **Application of Section 2**

**50.** This Section applies in respect of a member (“M”) who is a deferred choice member, and no pension benefits have become payable in relation to M's remediable teacher service.

#### **Club transfers out on or after 1 October 2023**

**51.**—(1) This regulation applies in relation to a remediable club transfer value payment to be made by the scheme manager on or after 1 October 2023.

(2) The scheme manager, having consulted the scheme actuary, must calculate the following amounts—

- (a) the club transfer value of M's rights under a teacher pension scheme as if M's remediable rights had been secured in M's legacy scheme,
- (b) the club transfer value of M's rights under a teacher pension scheme as if M's remediable rights had been secured in the reformed 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 the result of the calculations mentioned in paragraph (2).

#### **Club transfers in on or after 1 October 2023**

**52.**—(1) This regulation applies in relation to a remediable club transfer value payment which is accepted by the scheme manager on or after 1 October 2023.

(2) The scheme manager, having consulted the scheme actuary, must determine the amount of pension M is entitled to count if the remediable club transfer value were applied in respect of rights in—

- (a) M's legacy scheme,
- (b) the reformed scheme.

## CHAPTER 4

### Variation of transfer application periods

#### Variation of transfer application periods

- 53.**—(1) Regulations 198(2)(a) and 206(2)(a) of the 2014 Regulations apply in relation to—
- (a) the relevant remediable teacher service of a relevant member as if, in each of those provisions, for “after the day on which P enters pensionable service under this scheme” there were substituted “from 1 October 2023”,
  - (b) the local government pension scheme service of a remedy member with relevant excess teacher service as if, in each of those provisions, for “after the day on which P enters pensionable service under this scheme” there were substituted “from the day on which the remediable service statement mentioned in regulation 3(2)(a) of the Teachers’ Pensions (Transitional Protection Remedy)(Scotland) Regulations 2023 is issued in respect of the relevant member”.
- (2) In this regulation—
- “local government pension scheme service” means service in an employment or office which is pensionable service under a scheme described in section 86 of PSPJOA 2022,
- “relevant member” means a remedy member who is not a full protection member within the meaning of paragraph 6 of Schedule 3 to the 2014 Regulations,
- “relevant excess teacher service” means excess teacher service which is, by virtue of sections 2(1) and 4(4) of PSPJOA 2022, treated as being pensionable service in the local government new scheme mentioned in section 110(2) of PSPJOA 2022,
- “relevant remediable teacher service” means the remediable teacher service of a relevant member that is not relevant excess teacher service.

## CHAPTER 5

### Treatment of rights secured by virtue of a remediable value

#### Application and interpretation of Chapter 5

- 54.**—(1) This Chapter applies in relation to the following accepted by the scheme manager in respect of a member (“M”)—
- (a) a remediable transfer value payment, together with any payment accepted under regulation 45(3),
  - (b) a remediable club transfer value payment, together with any adjustment accepted under regulation 49(2).
- (2) In this Chapter, “transferred in remediable rights” means M’s remediable rights in a teacher pension scheme secured by virtue of a remediable value together with any payment or, as the case may be, adjustment under regulation 45(3) or 49(2).

#### Transferred in remediable rights treated as being in the legacy scheme

- 55.**—(1) Where M’s transferred in remediable rights would, apart from this regulation, be rights to benefits under the reformed scheme, the rights—
- (a) are not, and are treated as never having been, rights under the reformed scheme, and
  - (b) are treated as being, and as always having been, rights under M’s legacy scheme.
- (2) Paragraph (1) has effect—
- (a) for the purposes of determining which teacher pension scheme is (or at any time was) required to pay benefits to or in respect of M’s transferred 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

56.—(1) Where—

- (a) M is a deferred choice member, and
- (b) M's transferred in remediable rights are treated as rights to benefits under the legacy scheme by virtue of regulation 55,

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

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

(3) Where M is—

- (a) an immediate choice member, and
  - (i) an immediate choice decision has been made that no section 6 election is to be made in relation to M's remediable teacher service, or
  - (ii) the section 6 election period in relation to M has passed and no section 6 election has been made (or deemed to have been made) in relation to M's remediable teacher service, and
- (b) M's transferred in remediable rights are treated as rights to benefits under M's legacy scheme by virtue of regulation 55,

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

(4) A variation under paragraph (3) is to be treated as having taken effect on the earlier of—

- (a) the time that an immediate choice decision (including a deemed section 6 election) is treated as having taken effect in relation to M's remediable teacher service,
- (b) the end of the section 6 election period in relation to M.

(5) Where—

- (a) the benefits payable to or in respect of M's remediable teacher service are reformed scheme benefits by virtue of a section 6 election or a section 10 election (including, in either case, a deemed election), and
- (b) the benefits payable in relation to M's transferred in remediable rights would otherwise be legacy scheme benefits,

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

(6) A variation under paragraph (5) is to be treated as having taken effect when the election (or deemed election) is treated as having taken effect in relation to M's remediable teacher service.

(7) 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—

- (a) first consult the scheme actuary, and
- (b) calculate the varied rights as if the remediable transfer value which originally secured rights under a teacher pension scheme were transferred into the alternative scheme in the relevant pension year that the transfer occurred.

(8) In paragraph (7), "relevant pension year" has the meaning given by direction 4(14)(f)(i) of the PSP Directions 2022.

### **Benefits already paid in relation to transferred in remediable rights**

**57.**—(1) Paragraph (2) applies in relation to any benefits (“the paid benefits”) that the reformed scheme has at any time paid to a person (“P”) 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 55(1)(a), P was not entitled to receive from the scheme.

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

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

### **Pension benefits and lump sum benefits in relation to transferred in remediable rights**

**58.**—(1) This regulation applies in relation to any benefits that have been paid to or in respect of the transferred in remediable rights of an immediate choice member.

(2) Where, at the operative time—

- (a) the aggregate of benefits that (after taking into account the effect, if any, of regulation 55) have been paid under the legacy scheme to any person (“the beneficiary”) in respect of M’s transferred in remediable rights, exceeds
- (b) the aggregate of the benefits to which (after taking into account the effect, if any, of regulation 56(3) or (5) in relation to the rights) the beneficiary is entitled under the scheme in respect of the rights,

the beneficiary 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 mention in paragraph (2)(b),

the scheme manager must pay an amount equal to the difference to the beneficiary.

(4) In this regulation, “the operative time” means—

- (a) if an immediate choice decision is made in relation to M’s remediable teacher service, the time the decision is made,
- (b) otherwise, the end of the section 6 election period in relation to M.

## **PART 7**

### **Provision about special cases**

#### **CHAPTER 1**

##### **Child pensions in payment**

### **Protection of the amount of pension payable to an eligible child**

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

- (a) immediately before 1 October 2023, a child pension is in payment to an eligible child (“E”) in respect of the remediable teacher service of a deceased member (“M”),
- (b) there is a surviving adult (“S”) in relation to the deceased member,
- (c) E does not live in the same household as S, and

- (d) S makes an immediate choice decision which would (disregarding this regulation) result in a decrease in the rate of child pension payable to E in respect of M’s remediable teacher service.
- (2) Where this regulation applies—
  - (a) E does not owe the scheme manager a liability under section 14(3) of PSPJOA 2022 in respect of the child pension, and
  - (b) the rate of child pension continues to be the rate that was payable before the decision was made.

## CHAPTER 2

### Ill-health retirement

#### **Interpretation of Chapter 2**

**60.**—(1) In this Chapter—

“ill-health retirement benefits”—

- (a) in relation to the legacy scheme, means benefits payable in accordance with regulation E6(5) of the 2005 Regulations,
- (b) in relation to the reformed scheme, has the meaning given in regulation 3 of the 2014 Regulations,

“ill-health retirement criteria” means the criteria contained in a teacher pension scheme by which it is determined whether a person is eligible for ill-health retirement benefits under that scheme,

“M’s alternative scheme” means, where M’s eligibility for ill-health retirement benefits was assessed under—

- (c) M’s legacy scheme, the reformed scheme,
- (d) the reformed scheme, M’s legacy scheme.

(2) For the purposes of this Chapter, an application for ill-health retirement benefits is “finally determined” in relation to a teacher pension scheme when—

- (a) it has been determined that the member in respect of whom the application is made meets the ill-health retirement criteria of that scheme, or
- (b) it has been determined that the member does not meet the ill-health retirement criteria of that scheme, and any route for disputing that determination has been exhausted (including where any deadline for initiating a dispute has passed and no dispute has been initiated).

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

**61.**—(1) Paragraph (2) applies where, during the period beginning on 1 April 2015 and ending at the end of 30 September 2023, an application by a remedy member (“M”) for ill-health retirement benefits was finally determined.

(2) The scheme manager must take reasonable steps to determine whether M would have met the ill-health retirement criteria in M’s alternative scheme at the “relevant time”, being—

- (a) where the application was initially determined—
  - (i) under the reformed scheme, or
  - (ii) under the legacy scheme on or before 31 March 2022,
 at the time the application was first determined,
- (b) where the application was initially determined under the legacy scheme on or after 31 March 2022, on 31 March 2022.

(3) Whether a step is reasonable for the purposes of paragraph (2) depends on, among other things, the difficulty of obtaining information or evidence (including by interviewing or examining



M) relevant to the question of whether M would have met the ill-health retirement criteria in M's alternative scheme at the relevant time.

- (4) Paragraph (5) applies where a remedy member ("M")—
- (a) makes an application for ill-health retirement benefits which—
    - (i) was received by the scheme manager before 1 April 2022, and
    - (ii) is finally determined on or after 1 October 2023, or
  - (b) is a deferred member of a teacher pension scheme, who—
    - (i) before 1 April 2022, left all service in an employment or office which is capable of being pensionable service under a teacher pension scheme,
    - (ii) makes an application for ill-health retirement benefits which is received by the scheme manager on or after 1 April 2022, and
    - (iii) the application has not been finally determined by 1 October 2023.
- (5) The scheme manager must determine—
- (a) whether M would have met the ill-health retirement criteria in the legacy scheme if the application had been determined on 31 March 2022, and
  - (b) whether M meets the ill-health retirement criteria in the reformed scheme.

### **Provisions about ill-health retirement benefits following reassessment**

- 62.**—(1) This regulation applies where—
- (a) a remedy member's ("M's") application for ill-health retirement benefits was determined under a teacher pension scheme before 1 October 2023,
  - (b) it was determined that M did not meet the ill-health retirement criteria in that teacher pension scheme,
  - (c) the scheme manager determines in accordance with regulation 61 that M would have met the ill-health retirement criteria in M's alternative scheme at the time the application was first determined, and
  - (d) M is a deferred choice member.
- (2) The scheme manager must, as soon as reasonably practicable following the determination mentioned in paragraph (1)(c), send to M a written notice setting out—
- (a) that an election (an "immediate IHR election") may be made,
  - (b) the time by which an immediate IHR election must be received by the scheme manager, and
  - (c) the consequences of making (or not making) an immediate IHR election.
- (3) M may make an immediate IHR election by sending notice of the election to the scheme manager—
- (a) in a form and manner determined by the scheme manager, and
  - (b) so that it is received by the scheme manager no later than the end of the period of three months beginning on the day the notice mentioned in paragraph (2) is issued.
- (4) Where an immediate IHR election is made, M is to be treated—
- (a) for all purposes as if a deferred choice decision has been made—
    - (i) where M's alternative scheme is M's legacy scheme, that no section 10 election is to be made in relation to M's remediable teacher service (and, accordingly, the benefits payable in relation to M's remediable teacher service are legacy scheme benefits),
    - (ii) where M's alternative scheme is the reformed scheme, that a section 10 election is to be made in relation to M's remediable teacher service, and

- (b) as if M is entitled to the payment of ill-health retirement benefits under M's alternative scheme from the day after M's last day of service in an employment or office which is capable of being pensionable service in a teacher pension scheme.

(5) Where M does not leave all service in an employment or office which is capable of being pensionable service in a teacher pension scheme before—

- (a) the end of the period of three months beginning on the day the immediate IHR election is received by the scheme manager, or
- (b) such later time as the scheme manager considers reasonable in all the circumstances,

M is to be treated as if the immediate IHR election had not been made (and no subsequent immediate IHR election may be made).

(6) An immediate IHR election is irrevocable.

(7) The provisions of Chapter 1 of Part 1 of PSPJOA 2022 and of these Regulations about the timing and effect of, as the case may be, a deferred choice decision and a section 10 election apply subject to this regulation.

### **Ill-health retirement benefit payable in transitional cases**

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

- (a) a remedy member's ("M's") application for ill-health retirement benefits was received by the scheme manager before 1 April 2022,
- (b) that application is finally determined on or after 1 April 2022, and
- (c) M has service in an employment or office which is pensionable service under the reformed scheme on or after 1 April 2022.

(2) Paragraphs (3) and (4) apply where, by virtue of regulation 61 or otherwise, it has been determined that—

- (a) M would have met the ill-health retirement criteria in the legacy scheme if the application had been determined on 31 March 2022 ("the legacy scheme condition"), and
- (b) M meets the ill-health retirement criteria in the reformed scheme ("the reformed scheme condition").

(3) The scheme manager must, as soon as reasonably practicable after the date of the latest determination mentioned in paragraph (2), determine—

- (a) the amount of the ill-health retirement benefits that would have been payable under the legacy scheme if the application had been determined under the legacy scheme on 31 March 2022 (the "legacy scheme IHR benefits"), and
- (b) the amount of the ill-health retirement benefits under the reformed scheme (the "reformed scheme IHR benefits") calculated up to the later of—
  - (i) if M is no longer in any service in an employment or office that is capable of being pensionable service under a teacher pension scheme, the last day of such service,
  - (ii) otherwise, the date on which the determination under this sub-paragraph is made.

(4) Where—

- (a) the reformed scheme IHR benefits payable to a person ("P") are less than
- (b) the legacy scheme IHR benefits payable to P,

an amount is payable to P under the reformed scheme which is equal to the difference between the reformed scheme IHR benefits and the legacy scheme IHR benefits.

(5) Paragraphs (6) and (7) apply where, by virtue of regulation 61 or otherwise, it has been determined that—

- (a) M meets the legacy scheme condition, but
- (b) M does not meet the reformed scheme condition.

(6) An amount is payable to a person by way of ill-health retirement benefits under the reformed scheme which is equal to the amount that would have been payable to that person under the legacy scheme had M's application been determined under that scheme on 31 March 2022.

(7) A person may receive under the reformed scheme ill-health retirement benefits in relation to M's pensionable service irrespective of any provision that would otherwise require M to meet the ill-health retirement criteria of the reformed scheme before receiving such benefits.

## CHAPTER 4

### Premature retirement

**64.** No annual compensation or lump sum compensation to which M is eligible under regulation 5 of the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996(a) is to be treated as a pension benefit or a lump sum benefit for the purposes of section 14 of PSPJOA 2022.

## PART 8

### Liabilities and payment

#### CHAPTER 1

#### Application of Part 8

**65.** This Part applies in relation to a relevant amount(b) owed in respect of the remediable teacher service of a remedy member.

#### CHAPTER 2

### Interest, compensation and netting off

#### Interest

**66.**—(1) The scheme manager must calculate interest on a relevant amount described in direction 15 of the PSP Directions 2022 in accordance with the provisions of directions 14 and 15 which apply to that description of the relevant amount.

(2) In relation to a relevant amount not described in direction 15 of the PSP Directions 2022, the scheme manager must determine whether interest is paid and, if so, what rate of interest applies and how it is calculated.

(3) The following provisions of the PSP Directions 2022 apply in relation to a determination under paragraph (2) as if it were a determination under direction 16(1) of those Directions—

- (a) direction 16(2) (provision of explanation),
- (b) direction 16(3) and (4) (appeals).

#### Indirect compensation

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

- (a) pursuant to an application under regulation 68, the scheme manager determines that an immediate choice member (“M”) has incurred a compensatable loss(c) that is a Part 4 tax loss(d) (a “relevant loss”), and
- (b) the relevant loss is a reduction of benefit under—

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(a) S.I. 1996/2317.

(b) See section 26(3) of PSPJOA 2022 for the meaning of “relevant amount”.

(c) See section 23 of PSPJOA 2022 and direction 11 of the PSP Directions 2022 for the meaning of “compensatable loss”.

(d) See section 23(9) of PSPJOA 2022 for the meaning of “Part 4 tax loss”.

- (i) regulation J6B of the 2005 Regulations, or
- (ii) regulation 176 of the 2014 Regulations.

(2) M is not to be paid an amount under section 23 of PSPJOA 2022 by way of compensation in respect of the relevant loss.

(3) Instead, the amount of benefit payable under a teacher pension scheme is to be increased to reflect the amount of the relevant loss in such manner as determined by the scheme manager in accordance with direction 10(2) to (4) of the PSP Directions 2022.

### **Applications for compensation or indirect compensation**

**68.**—(1) This regulation applies in relation to—

- (a) the payment of a relevant amount by way of compensation under section 23(1) of PSPJOA 2022,
- (b) the increase of benefits by way of indirect compensation under regulation 67.

(2) The relevant amount is not payable, or (as the case may be) the benefits are not to be increased, except where—

- (a) an application is made in accordance with direction 18(1) and (2) of the PSP Directions 2022,
- (b) the application is accompanied by such information that the scheme manager may by written notice require the person making the application (“P”) to provide in relation to the proposed compensation which is—
  - (i) information within P’s possession, or
  - (ii) information which P may reasonably be expected to obtain, and
- (c) the scheme manager makes a determination in accordance with direction 18(3) of those Directions.

(3) The following apply in relation to a determination under direction 18(3) of the PSP Directions 2022—

- (a) direction 18(4) (provision of explanation),
- (b) direction 18(5) and (6) (appeals).

### **Netting off**

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

- (a) relevant amounts owed by and to a person (“P”) fall to be paid at the same time or similar times, and
- (b) the scheme manager has—
  - (i) determined the interest (if any) that is to be paid on the relevant amounts in accordance with regulation 66, and
  - (ii) reduced the relevant amounts by tax relief amounts in accordance with regulation 70.

(2) The scheme manager may determine, in accordance with direction 19(2) to (5) of the PSP Directions 2022, that the relevant amounts (and any interest on them) must be aggregated and that the difference must be paid by P to the scheme or (as the case may be) by the scheme to P.

(3) The following provisions of the PSP Directions 2022 apply in relation to a determination under paragraph (2) as if it were a determination under direction 19(1) of those Directions—

- (a) direction 19(6) (provision of explanation),
- (b) direction 19(7) and (8) (appeals).

## CHAPTER 3

### Reduction and waiver of liabilities

#### **Requirement to reduce liabilities by tax relief amounts**

- 70.**—(1) This regulation applies where—
- (a) a person owes a liability to pay pension contributions in relation to the remediable teacher service of a remedy member, or
  - (b) the scheme manager owes a liability to pay compensation in relation to such service,
- under section 15, 16 or 17 of PSPJOA 2022.
- (2) The scheme manager must reduce the liability by tax relief amounts<sup>(a)</sup>—
- (a) determined in accordance with direction 4(5) to (9) of the PSP Directions 2022, and
  - (b) before the liability is netted off in accordance with regulation 69.
- (3) The following provisions of the PSP Directions 2022 apply where the scheme manager makes a determination under direction 4(8)—
- (a) direction 4(10) (provision of explanation),
  - (b) direction 4(11) and (12) (appeals).

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

- 71.**—(1) The scheme manager may reduce or waive an amount owed by a person to the scheme under—
- (a) section 14, 15, 16 or 17 (“the corrections provisions”) of PSPJOA 2022, or
  - (b) these Regulations.
- (2) When reducing or waiving an amount under paragraph (1), the scheme manager must comply with the requirements set out in direction 4(1)(a) to (c) of the PSPJOA Directions 2022 (and the reference in direction 4(1)(c) to “any scheme regulations made by virtue of section 26(1)(b) of PSPJOA 2022” is to be read as a reference to regulation 74.

#### **Agreement to waive a liability owed by the scheme manager in respect of an immediate correction**

- 72.**—(1) This regulation applies where the scheme manager owes a liability to pay compensation to a person (“P”) under section 16(3) of PSPJOA 2022.
- (2) The scheme manager and P may agree to waive the liability.
- (3) Such an agreement—
- (a) must be in writing,
  - (b) may only be made during the period—
    - (i) beginning with the day after the day on which P receives the most recent notice sent under paragraph 74(2), and
    - (ii) ending at the end of the day six months after that date,
  - (c) may be rescinded with the agreement of the scheme manager and P, and
  - (d) in any event ceases to apply where—
    - (i) the end of the section 10 election period in relation to the remediable teacher service has passed, and

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<sup>(a)</sup> See section 18(4) of PSPJOA 2022 for the meaning of “tax relief amounts” for the purposes of a liability mentioned in regulation 51(1)(a) and section 18(7) of that Act for the meaning of that term for the purposes of a liability mentioned in regulation 51(1)(b).

(ii) no section 10 election is made.

(4) Where an agreement is rescinded or otherwise ceases to apply, the scheme manager owes P the liability mentioned in paragraph (1).

## CHAPTER 4

### Payment of net liabilities

#### Application of Chapter 4

**73.** This Chapter applies in respect of a relevant amount (together with any interest on that relevant amount) owed after taking into account the effect, if any, of regulations 66 to 72 (a “net liability”).

#### Payment of amounts owed to the scheme manager

**74.**—(1) This regulation applies where a person (“P”) owes a net liability to the scheme manager.

(2) The scheme manager must send notice in writing to P setting out—

- (a) how the net liability has been calculated,
- (b) an explanation of the circumstances in which the net liability may be reduced or waived under regulation 71,
- (c) where the net liability has been calculated by reference to an amount by way of compensation under section 16(3) of PSPJOA 2022, an explanation of the agreement that may be made under regulation 72,
- (d) when and how the net liability must be paid, and
- (e) the consequences of not paying the net liability.

(3) Where—

- (a) the scheme manager has sent a notice under paragraph (2), and
- (b) the amount of the net liability is subsequently adjusted,

the scheme manager must send another notice in writing to P under paragraph (2).

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

- (a) before the end of the period of six months beginning with the day after the day on which P receives the most recent notice under paragraph (2), or
- (b) in accordance with an agreement under paragraph (5).

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

- (a) by way of instalments, or
- (b) by way of deductions from any benefits (including a lump sum benefit) to which P is entitled under a teacher pension scheme.

(6) P and the scheme manager may agree to vary an agreement under paragraph (5).

(7) Where P does not pay any amount that falls due by virtue of paragraph (4)(a) or an agreement under paragraph (5), the scheme manager may deduct such sums from benefits payable to P under a teacher pension scheme as seem reasonable to the scheme manager for the purpose of discharging P’s liability.

#### Payment of amounts owed to a person

**75.**—(1) This regulation applies where the scheme manager owes a net liability to a person (“P”).

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

- (a) as soon as reasonably practicable after the scheme manager determines the amount of the net liability, or
- (b) where the scheme manager requires P to provide information in accordance with paragraph (3), as soon as reasonably practicable after receipt of that information.

(3) Before paying the amount of a net liability owed to P, the scheme manager may, by written notice given as soon as reasonably practicable after the scheme manager determines the amount of the net liability, require P to provide information in relation to the payment of the net liability which is—

- (a) information within P's possession, or
- (b) information which P may reasonably be expected to obtain.

*Name*  
Authorised to sign by the Scottish Ministers

Date  
St Andrew's House  
Edinburgh

We consent to the making of these Regulations

*Name*  
*Name*  
Two of the Lords Commissioners of Her Majesty's Treasury

Date

## SCHEDULE 1 Regulations 5(2), 7(2) and 11(2)

### Eligible decision-makers for deceased members

#### Interpretation

1.—(1) In this Schedule—

“beneficiary” means a person who has become entitled to receive any death benefit,

“child”, except in the term “eligible child”, means a person under the age of 18,

“death benefit” means a benefit payable under a teacher pension scheme following the death of a member of that scheme,

“election” means an opted-out service election, an immediate choice election or a deferred choice election decision,

“eligible decision-maker” means the person who may make—

(a) an opted-out service election as mentioned in regulation 5(2)(b),

(b) an immediate choice election as mentioned in regulation 7(2)(b),

(c) a deferred choice election decision as mentioned in regulation 11(2)(b).

(2) In this Schedule, a reference to—

(a) a beneficiary is a reference to a beneficiary of death benefits in relation to M’s remediable teacher service,

(b) an eligible child is a reference to an eligible child of M,

(c) a surviving adult is a reference to a surviving adult in relation to M.

#### Sole beneficiary: an adult

2. Where a person is—

(a) the sole beneficiary, and

(b) an adult,

the eligible decision-maker is that person.

#### Sole beneficiary: a child

3. Where a person (“C”) is—

(a) the sole beneficiary, and

(b) a child,

the eligible decision-maker is C’s guardian.

#### Sole beneficiary: M’s estate

4. Where M’s estate is the sole beneficiary, the eligible decision-maker is M’s personal representative.

#### Multiple beneficiaries: including a surviving adult

5. Where—

(a) two or more adults are the only beneficiaries, and

(b) one of those adults is a surviving adult (“A”),

the eligible decision-maker is A.



**Multiple beneficiaries: including adult eligible children**

6.—(1) Where—

- (a) two or more adults are the only beneficiaries,
- (b) none of those adults is a surviving adult, and
- (c) two or more of those adults are eligible children,

the eligible decision-maker is determined in accordance with sub-paragraph (2).

(2) The eligible decision-maker is—

- (a) the person agreed upon by the adult eligible children, or
- (b) where no decision about whether to make an election has been received by the scheme manager by the day four weeks before an election must, in accordance with these Regulations, be received by the scheme manager, the scheme manager.

**Multiple beneficiaries: nominated individuals only**

7.—(1) Where—

- (a) two or more adults (the “nominated adults”) are beneficiaries of a lump sum death benefit, and
- (b) none of the following are beneficiaries—
  - (i) a surviving adult, or
  - (ii) an eligible child (whether or not an adult),

the eligible decision-maker is determined in accordance with sub-paragraph (2).

(2) The eligible decision-maker is—

- (a) M’s personal representative,
- (b) where M has no personal representative, the person agreed upon by the nominated adults,
- (c) where—
  - (i) M has no personal representative, and
  - (ii) no decision about whether to make an election has been received by the scheme manager by the day four weeks before an election must, in accordance with these Regulations, be received by the scheme manager,

the scheme manager.

**Multiple beneficiaries: non-adult eligible children**

8. Where the only beneficiaries are children, two or more of which are eligible children, the eligible decision-maker is—

- (a) where one person has parental responsibility for all the eligible children, that person,
- (b) otherwise—
  - (i) M’s personal representative, or
  - (ii) where M has no personal representative, the scheme manager.

**Multiple beneficiaries: nominated children only**

9. Where the only beneficiaries of lump sum death benefits are two or more children who are not eligible children, the eligible decision-maker is—

- (a) where one person has parental responsibility for all the children, that person,
- (b) otherwise—
  - (i) M’s personal representative, or

- (ii) where M has no personal representative, the scheme manager.

**Multiple beneficiaries: one or more adults and one or more children**

- 10.**—(1) Where the beneficiaries include one or more adults and one or more children—
- (a) M’s personal representative is the eligible decision-maker,
  - (b) where M has no personal representative, and—
    - (i) one of the beneficiaries is a surviving adult, that surviving adult is the eligible decision-maker,
    - (ii) none of the beneficiaries is a surviving adult and—
      - (aa) one or more of the beneficiaries is an eligible child, or
      - (bb) none of the beneficiaries is a surviving adult or an eligible child,the eligible decision-maker is determined in accordance with sub-paragraph (2).
- (2) Where sub-paragraph (1)(b)(ii) applies, and—
- (a) all relevant children are under 18 and—
    - (i) have the same guardian, the eligible-decision maker is that guardian,
    - (ii) do not have the same guardian, the eligible decision-maker is the scheme manager,
  - (b) all relevant children are 18 or over, the eligible decision-maker is—
    - (i) the person agreed upon by those relevant children, or
    - (ii) no decision about whether to make an election has been received by the scheme manager by the day four weeks before an election must, in accordance with these Regulations, be received by the scheme manager, the scheme manager,
  - (c) one or more relevant children are under 18 and one or more of the relevant children are 18 or over, the eligible decision-maker is the person agreed upon by—
    - (i) the relevant children who are 18 or over, and
    - (ii) the guardian (or guardians) of the relevant children who are under 18.
- (3) In sub-paragraph (2), a relevant child is—
- (a) where sub-paragraph (1)(b)(ii)(aa) applies, an eligible child,
  - (b) where sub-paragraph (1)(b)(ii)(bb) applies, a person who—
    - (i) has never married or formed a civil partnership, and
    - (ii) meets any of conditions 1, 2 or 3 as set out in regulation 134(2), (3) and (4) of the 2014 Regulations.

**Other cases**

- 11.** In any case not covered by paragraphs 2 to 10, the eligible decision-maker is the scheme manager.

**EXPLANATORY NOTE**

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