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| HSC Pension Scheme - McCloud remedy: part two    Proposed changes to HSC  Pension Scheme  Regulations  Consultation Document & Explanatory Notes  Published on 07 April 2023  Closing on 30 June 2023 |

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8. **Introduction**

The Health and Social Care (HSC) Pension Scheme is designed to offer significant value in retirement to people who have chosen to dedicate part or all of their careers to serving the public through the HSC. Backed by the Exchequer, the HSC Pension Scheme offers the security of a guaranteed income in every year of retirement for all its members on some of the most generous terms available from a pension scheme.

On 10 March 2022 the Public Service Pensions and Judicial Offices Act 2022 ('the 2022 Act') gained Royal Assent. The 2022 Act put in place a legal framework to rectify the unlawful discrimination identified by the McCloud judgment, in which the Court of Appeal found that the transitional protections provided when reformed public service pension schemes were introduced in 2015 were discriminatory. These transitional protections allowed older workers to continue building pension benefits in legacy public service pension schemes, whereas younger workers without protection were moved into the reformed schemes.

The 2022 Act and the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions (Northern Ireland) 2023 require government departments to make amendments to public service pension scheme regulations to remedy the discrimination. The remedy for this discrimination, known as the ‘McCloud remedy,’ has 2 parts.

The first and prospective part:

1. closed the legacy public service pension schemes on 31 March 2022
2. ensured equal treatment for all public service pension scheme members by moving all active members into the reformed public service pension schemes on 1 April 2022.

Following a consultation, this part of the remedy was implemented for the HSC Pension Scheme through the Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022, which came into force on 1 April 2022. On that date all active members of the 1995/2008 HSC Pension Scheme (the 'legacy scheme') were moved to the 2015 HSC Pension Scheme (the '2015 scheme').

The second and retrospective part of the remedy will remove the effect of the transitional protections. For HSC Pension Scheme members impacted by the discrimination, the retrospective remedy primarily:

1. returns members who moved to the 2015 scheme back into the legacy scheme for their pensionable service ('remediable service') affected by the discrimination during the remedy period, from 1 April 2015 to 31 March 2022, which in this consultation is referred to as 'rollback'; and
2. offers a choice of whether to receive, legacy scheme benefits or 2015 scheme benefits for their remediable service benefits, both of which are payable from the legacy scheme.

The deadline set by the 2022 Act for the retrospective part of the McCloud remedy to come into effect is 1 October 2023.

The DoH is now consulting on a draft Statutory Rule (SR) which will make changes to the HSC Pension Scheme regulations to facilitate the retrospective part 2 of the McCloud remedy. This SR will impact the 51,066 HSC Pension Scheme members with remediable service. The Health and Social Care Pension Schemes (Remediable Service) Regulations (Northern Ireland) 2023 should allow eligible HSC Pension Scheme Members to make that retrospective choice and put them, as far as possible, in the pension position they would have been in had the discrimination not occurred.

1. **The McCloud remedy**
   1. **Public service reforms and the Court of Appeal judgment**

In 2010, the Chancellor of the Exchequer invited Lord Hutton of Furness to chair the Independent Public Service Pensions Commission (IPSPC). The IPSPC was tasked with undertaking a fundamental structural review of public service pension provision.

The IPSPC’s final report – [Independent Public Service Pensions Commission: final report by Lord Hutton](https://www.gov.uk/government/publications/independent-public-service-pensions-commission-final-report-by-lord-hutton) – was published in 2011, setting out recommendations to reform public service pensions so that they are sustainable and affordable in the long term, and were fair both to the public service workforce and the taxpayer. The government accepted the IPSPC’s recommendations as the basis for discussions with public service workers, trade unions and other representative bodies.

On 8 March 2012 the Northern Ireland Executive agreed to commit to the policy for a new career average revalued earnings (CARE) scheme model with pension age linked to State Pension Age to be adopted for general use in the devolved public service pension schemes, to adopt this approach consistently for each of the different public service pension schemes in line with their equivalent schemes in Great Britain and not to adopt different approaches for Northern Ireland.

In April 2015 (April 2014 in the case of the Local Government Pension Scheme in England and Wales) new schemes were introduced for each of the main workforces – local government, teachers, the health service, the armed forces, firefighters, police, judiciary and civil service. The reforms were implemented in NI by regulations made under the [Public Service Pensions Act (Northern Ireland) 2014](https://www.legislation.gov.uk/nia/2014/2/contents) (the PSPNI Act 2014’).

As part of the 2015 reforms, those within 10 years of retirement remained in their legacy pension schemes. This transitional protection was not a recommendation of the IPSPC but was agreed following discussions with member representatives on a UK wide basis.

In December 2018, the Court of Appeal found in [Lord Chancellor and Secretary of State for Justice versus McCloud, The Secretary of State for the Home Department versus Sargeant [2018] EWCA Civ 2844](https://www.judiciary.uk/wp-content/uploads/2018/12/lord-chancellor-v-mcloud-and-ors-judgment.pdf) (the McCloud judgment) that the transitional protection unlawfully discriminated against younger members of the judicial and firefighters’ pension schemes, and also gave rise to indirect sex and race discrimination. On 27 June 2019, the Supreme Court denied the government permission to appeal the Court of Appeal’s judgment.

On 15 July 2019, the [Chief Secretary to the Treasury's written ministerial statement](https://questions-statements.parliament.uk/written-statements/detail/2019-07-15/HCWS1725) set out that the government considered that the Court of Appeal’s judgment had implications for all of the public service pension schemes and planned to come forward with proposals to remedy the discrimination across all the schemes.

* 1. **The remedy**

On [19 August 2020, the Department of Finance consulted on two proposed options](https://www.finance-ni.gov.uk/consultations/consultation-proposed-changes-transitional-arrangements-2015-schemes) for retrospectively removing the discrimination suffered by members who were not eligible for transitional protection due to their age and proposed that the legacy schemes would be closed to all members on 31 March 2022.

It is normal practice in discrimination cases to remedy unequal treatment by reverting to the most beneficial option. However, the reforms that were introduced in 2015 were progressive and were in part intended to even out the value of pensions between some of the highest and lowest earners, resulting in some members, particularly lower and middle earners, being better off in the reformed schemes. Simply extending the transitional protection to all affected members would address the discrimination identified by the court but would also mean that some members would be placed in a worse position.

Instead, it was proposed that members should be given a choice of which scheme benefits they wish to receive for the remedy period – from the date the reformed schemes were introduced to the date that the legacy schemes were closed for further accrual. That consultation sought views on whether the choice should be made immediately (once the necessary legislative changes were made) or deferred until the point that a member’s pension benefits become payable.

In February 2021, the Department of Finance’s response was [published](https://www.finance-ni.gov.uk/publications/response-consultation-proposed-changes-transitional-arrangements-2015-schemes), confirming that the legacy schemes would close on 31 March 2022 and that affected members would be given a choice of which pension benefits they wish to receive when those benefits are paid. This choice of pension benefits when the pension becomes payable is referred to as a deferred choice underpin (DCU).

In response to their consultation, the Department of Finance explained that it preferred this approach as it would provide members with greater certainty about their decision and avoid the need for them to make assumptions about matters such as their future career and retirement age, which would increase the risk of members, particularly younger members, making decisions that may not be in their best interest. The response confirmed that affected members already receiving pension benefits would be given a choice as soon as possible after necessary changes to the schemes are implemented via legislation, or earlier if possible.

In the [Queen's Speech on 11 May 2021,](https://www.gov.uk/government/speeches/queens-speech-2021) the Westminster government announced its intention to bring forward legislation – the Public Service Pensions and Judicial Offices Act – to implement retrospective changes to remedy the discrimination that arose when transitional protection was afforded to older public service workers when reformed public service schemes were introduced in 2014 to 2015, and to ensure equal treatment for all members within each of the main public service pension schemes by moving all members into the reformed schemes on 1 April 2022.

The 2022 Act gained Royal Assent on 10 March 2022 and puts in place a framework to address the discrimination identified by the Court of Appeal, both retrospectively and prospectively, as well as the consequential effects of that remedy. Departments are required to make new pension scheme regulations to implement the remedy.

* 1. **Changing scheme rules to implement the remedy**

The HSC Pension Scheme is a statutory scheme. Its rules are set out in regulations, which are a form of secondary legislation. Those rules can be amended or replaced by new regulations drawn up in accordance with the powers under, and requirements of, relevant primary legislation.

The 2022 Act provides powers for making regulations to deliver the McCloud remedy. A number of the 2022 Act’s requirements were met for the HSC Pension Scheme through the Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022. Those regulations legislated for the prospective part 1 of the remedy by:

* facilitating the closure of the legacy 1995/2008 HSC Pension Scheme to future accrual from 1 April 2022
* moving all active 1995/2008 HSC Pension Scheme members into the 2015 scheme from 1 April 2022
* retaining a final salary link for relevant members who had moved into the 2015 scheme, so that their legacy scheme benefits are calculated using pensionable pay at the point of retirement rather than the point of transfer to the 2015 scheme and
* updating existing rules that made provision for the treatment and payment of legacy scheme benefits during or following a period of membership of the 2015 scheme.

This consultation presents the second set of scheme regulations, in draft, that will enable the HSC Pension Scheme to give effect to the retrospective part, in part 2 of the remedy. The 2022 Act requires this part of the remedy to be implemented from 1 October 2023 at the latest. The provisions in this set of regulations, upon coming into force, should enable the HSC Pension Scheme to:

* implement the rollback, which will have the effect of treating ‘unprotected’ and ‘taper protected’ members as if they had never left the legacy scheme for their remediable service
* introduce the retrospective remedy for around 51,066 HSC Pension Scheme members
* put in place provisions for a choice of 2015 scheme benefits or to have legacy scheme benefits for their remediable service
* offer an immediate choice election for those members whose benefit entitlement has already arisen, including members who have received benefits or died within the remedy period, estimated to be 10,989 members
* offer a deferred choice election to allow members to make an informed choice of the benefits they wish to receive at retirement or when benefits are brought into payment for their remediable service
* correct any overpayment or underpayment of pension benefits or member contributions already paid in relation to a member because of either rollback or a member’s choice
* manage the consequences of the rollback
* facilitate the payment of appropriate compensation to address financial losses arising from the discrimination or operation of the remedy.

* 1. **Transitional protection arrangements in the HSC Pension Scheme**

The reform of the HSC Pension Scheme in 2015 included discriminatory ‘transitional protection’ for members closer to retirement. Members with pensionable service before 1 April 2012 were divided into the following groups:

* unprotected members – a member who was not within 13 years 5 months of their normal pension age on 1 April 2012. Unprotected members moved to the 2015 scheme on 1 April 2015
* taper protected members – a member who was more than 10 years but within 13 years 5 months of their normal pension age on 1 April 2012. Taper protected members moved to the 2015 scheme during the remedy period
* fully protected members – a member who was within 10 years of their normal pension age on 1 April 2012. Fully protected members moved to the 2015 scheme on 1 April 2022.
  1. **Summary of eligibility for and the core elements of the retrospective remedy**

**Remedy members**

HSC Pension Scheme members must meet all 4 of the eligibility conditions set out in section 1 of the 2022 Act, in order to have remediable service and be in scope of the McCloud remedy. The 4 conditions are that:

* they had pensionable service during the remedy period, 1 April 2015 to 31 March 2022
* the pensionable service must be in the legacy scheme or the 2015 scheme that would have been service in the legacy scheme but for the discrimination
* they were in pensionable service under a legacy public service pension scheme on or before 31 March 2012; and they have not since had a disqualifying gap before starting any pensionable service during the remedy period
* where there is more than one period of pensionable service in the remedy period, there must not be a disqualifying gap between periods for subsequent periods to count as remediable service.

The disqualifying gap is:

* more than 5 years – where the gap is between another public service pension scheme and the HSC Pension Scheme
* 5 years or more – where the gap is between Health Service Pension Schemes, including those in England, Wales and Scotland.

**Rollback**

The first stage of the McCloud remedy is to return any remediable service that is in the 2015 Scheme back to the member's remedy section of the legacy scheme. The remedy section of the legacy scheme is the section of the HSC Pension Scheme the remedy member was a member of before their move to the 2015 scheme from 1 April 2015. This is 'rollback' which will take place when the draft Regulations come into force, on 1 October 2023.

**Choice election**

Remedy members will then be given a choice of benefits for their remediable service:

* legacy scheme benefits
* 2015 scheme equivalent benefits

Where the choice is for 2015 scheme equivalent benefits the rolled back remediable service remains in the legacy scheme, it doesn't move back to the 2015 scheme. The 2015 scheme equivalent benefits will be payable from the legacy scheme.

1. **Consultation Process**

The department welcomes views on the proposals set out in this document to amend HSC Pension Scheme Regulations.

Respondents are invited to consider the following questions:

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| **Question 1**  Do you agree or disagree that the draft Regulations deliver the policy objectives and requirements set by the Public Service Pensions and Judicial Offices Act 2022?  If your response is 'disagree' or 'don't know', please explain why.  **Question 2**  Do you agree or disagree that the draft Regulations allow members to be put as far as possible in the pension position they would have been in had the discrimination not occurred?  If your response is 'disagree' or 'don't know', please explain why.  **Question 3**  Do you have any comments on any of the individual draft Regulations?  If yes, please comment and tell us which of the draft Regulation(s) your comment refers to.  **Question 4**  Are there any further considerations and evidence that you think the department should take into account when assessing any equality issues arising as a result of the proposed changes?  If your response is 'yes' or 'don't know', please explain why. |

**How to respond**

Comments on the proposals and the draft Regulations can be submitted by email to: [modernisation@health-ni.gov.uk](mailto:modernisation@health-ni.gov.uk)

By post: DoH Pensions Policy Team, Room G33, Waterside House, 75 Duke Street, Derry/Londonderry, BT47 6FP.

**Please use email if possible, as mail will only be monitored periodically.**

The consultation will close at midnight on **30 June 2023.**

1. **The draft Regulations**
   1. **Scheme rules for the HSC Pension Schemes**

There are 2 HSC Pension Schemes:

* the newer 2015 scheme (also known as the ‘reformed scheme’)
* the older 1995/2008 scheme (the ‘legacy scheme’) which is divided into the 1995 section and the 2008 section

Accordingly, there are 3 sets of regulations under which entitlement to pension and other benefits under the HSC Pension Schemes are calculated:

* The Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (as amended) (SR 1995 No.95) (the ‘1995 Regulations’)
* The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008 (as amended) (SR 2008 No.256) (the ‘2008 Regulations’)
* The Health and Social Care Pension Scheme Regulations (Northern Ireland) 2015 (as amended) (SR 2015 No.120) (the ‘2015 Regulations’)

In this consultation document, the ‘legacy scheme regulations’ means the 1995 Regulations and the 2008 Regulations and the ‘new scheme regulations’ means the 2015 Regulations.

The ‘2022 Act’ means The Public Service Pensions and Judicial Offices Act 2022. The ‘2023 Directions’ means The Public Service Pensions (Exercise of Powers, Compensation and Information) (Northern Ireland) 2023.

The Health and Social Care Pension Scheme (Transitional and Consequential Provisions) Regulations (Northern Ireland) 2015 (SR 2015 No.122) (the ‘transitional regulations’) put in place transitional arrangements for members of the new scheme who have pension rights accrued in the legacy scheme. These regulations make provision for the treatment and payment of legacy scheme benefits during or following a period of membership of the new scheme.

The HSC Pension Schemes Regulations have been amended over time to implement changes and clarifications to rules. The original and amending Statutory Rules can be found on the UK Legislation website: [Legislation.gov.uk](https://www.legislation.gov.uk/).

* 1. **Explanatory notes for the draft Regulations**

The department presents for consultation the draft Heath and Social Care Pension Schemes (Remediable Service) (Northern Ireland) Regulations 2023. This explanation section follows the structure of the draft SR, describing the proposed content and effect of the draft Regulations as they occur, part-by-part.

**PART 1: General provisions**

**Regulation 1 – Citation, commencement and extent**

Regulation 1 provides for the name, commencement date and extent of the regulations. It is expected that these regulations will come into force on 1 October 2023, meeting the statutory deadline of 1 October 2023 set by the 2022 Act. It also confirms that the regulations extend to Northern Ireland.

**Regulation 2 – Interpretation**

Regulation 2 provides some definitions for a number of key terms in the regulations.

**PART 2: Remediable service**

**Regulation 3 – Pension contributions of medical practitioners and non-GP providers: pensioner and deceased members**

For most HSC Pension Scheme members, the contribution rate they pay to accrue benefits does not vary between the 2015 scheme and the legacy scheme. However, the methodology for assessing which contribution rate tier a member belongs to does vary for a specific group of members. These are members who are general medical practitioners and non-GP providers who have a break in pensionable service during a scheme year.

In the legacy scheme, the contribution rate tier for these members for any given pension scheme year is determined on the basis of actual pensionable earnings within that year. In the 2015 scheme the tier is based on an annualisation of the pensionable earnings for that year.

Within this cohort, for protected members (or taper protected members who had breaks in pensionable service within scheme years before joining the 2015 scheme) who make an election to receive 2015 scheme benefits for the remedy period that contribution adjustment may mean that contributions were underpaid during the remedy period. This is because the amount they have already paid will have been determined on the basis of the contribution rate tier within which their actual earnings placed them. However, these members will have chosen benefits for the remedy period which requires amounts to be paid determined on the basis of the contribution tier rate within which their annualised earnings would have placed them.

Conversely, for unprotected members (or taper protected members who had breaks in pensionable service within scheme years after moving to the 2015 scheme) who decide to receive legacy scheme benefits for the remedy period, that contribution adjustment may mean they may have overpaid contributions during the remedy period. This is because the amount they have already paid will have been determined on the basis of the contribution rate tier within which their annualised earnings placed them. However, they have chosen benefits for the remedy period which requires amounts to be paid determined on the basis of the contribution tier rate within which their actual earnings would have placed them.

Regulation 3 facilitates the return or recovery of overpaid or underpaid contributions as a result of a pensioner or deceased member’s immediate choice election (see regulation 9). Where a member has overpaid contributions, the scheme must compensate the member by returning the overpaid contributions, net of an amount representing tax relief and with interest. Regulation 56 provides details of the calculation and application of interest on amounts owed to or from the scheme as a consequence of the remedy. Where contributions have been underpaid, the member must pay any shortfall to the scheme, either in one payment, via instalments, or through a deduction to benefits.

For members within this specific group who may have underpaid or overpaid contributions as a consequence of their immediate choice election, their remediable service statement (see regulation 6) will provide the details of the amounts that may become owed.

**Regulation 4 – Pension contributions of medical practitioners and non-GP providers: active and deferred members (immediate correction)**

Regulation 4 facilitates the return or recovery of overpaid or underpaid contributions for unprotected and taper protected members who had breaks in pensionable service within scheme years during the remedy period after joining the 2015 scheme. Again, this is relevant to members who are general medical practitioners and non-GP providers only.

This regulation applies to members who were active or deferred on 30 September 2023 and eligible to make a deferred choice election (see regulation 12). For these members a contribution adjustment may be required after the rollback of remediable service into the legacy scheme on 1 October 2023.

For these members the amount of contributions they will have already paid will have been determined on the basis of the contribution rate tier within which their annualised earnings placed them. However, the rollback will treat their remediable service, in advance of such a member making a deferred choice election for 2015 scheme equivalent benefits, as pensionable service in the legacy scheme. As such, they may be due a return of contributions as the amount they should have paid in the legacy scheme for the remedy period will be determined on the basis of the contribution tier rate within which their actual earnings would have placed them.

Regulation 4 also provides these members with an option to waive a return of contributions until their deferred choice election has been made. This will avoid compensation being paid for overpaid contributions as a consequence of the rollback becoming owed back to the scheme if the member then makes a deferred choice election for 2015 scheme equivalent benefits. Where a member takes up the option of a waiver and does not make a deferred choice election for 2015 scheme equivalent benefits, a return of contributions will become payable again.

**Regulation 5 – Pension contributions of medical practitioners and non-GP providers: active and deferred members (deferred correction)**

Regulation 5 applies to members who are eligible to make a deferred choice election who had breaks in pensionable service within scheme years during the remedy period after joining the 2015 scheme. Again, this is relevant to members who are general medical practitioners and non-GP providers only.

If any such member at deferred choice election, apart from those who waived a return of overpaid contributions, makes a deferred choice election for 2015 scheme equivalent benefits for their remediable service, they may have underpaid contributions. This is because the amount they have already paid may have been determined on the basis of the contribution rate tier within which their actual earnings placed them. However, they have chosen benefits for the remedy period which require amounts to be paid determined on the basis of the contribution tier rate within which their annualised earnings would have placed them.

Regulation 56 provides details of the calculation and application of interest on amounts owed to or from the scheme as a consequence of the remedy. Where contributions have been underpaid, the member must pay any shortfall to the scheme, either in one payment, via instalments, or through a deduction to benefits.

**Regulation 6 – Remediable service statements**

All remedy members will be provided with a remediable service statement ('RSS') by the scheme manager, ensuring that they have sufficient information to make an informed choice, whether this is an immediate choice election (see regulation 9) or a deferred choice election (see regulation 12), about which benefits they wish to receive for their remediable service. The scheme manager has latitude over the format and design of an RSS but it must comply with the requirements of the 2022 Act and the 2023 Directions.

The content, timing and frequency of an RSS will depend on whether the member may make an immediate choice election or a deferred choice election. The RSS will be tailored to the circumstances of particular members.

**Annual RSS for active and deferred members**

Active and deferred members will receive their first RSS by 1 April 2025 or such later date as the scheme manager considers reasonable after considering the circumstances of a particular member or class of members. This RSS will give benefit information based on remediable service in the member's remedy section of the legacy scheme and also for 2015 scheme equivalent benefits, both payable from the legacy scheme.

Active members will then receive an annual RSS as part of their Annual Benefit Statement until they make a deferred choice election. For members who are deferred (no longer contributing to their HSC pension but are not yet taking their HSC pension benefits), they can request an annual RSS where it is not provided in their Annual Benefit Statement.

Until the time comes for a remedy member to make their deferred choice election, the annual RSS provided will be for information only and will provide members with information to help them plan for their future retirement.

**Deferred choice election RSS for active, deferred and deceased members**

Where a member provides the scheme manager with a notification that they are intending to retire after these regulations come into force, they will be given a deferred choice election RSS ('DCE-RSS'). The information provided in the DCE-RSS will enable the active or deferred member to make a deferred choice election about which set of benefits they wish to receive in respect of their remediable service.

Where an active or deferred member dies after these regulations come into force the scheme manager will provide a DCE-RSS to a designated person (see regulation 7) and they will make the choice election in respect of the deceased member's remediable service.

The provision of a DCE-RSS upon retirement is not a requirement of the 2022 Act or the 2023 Directions but will enable members or a designated person - eligible to make a deferred choice election - to make an informed choice about which scheme's benefits to receive for the remedy period, for their remediable service. The department has agreed that the scheme manager will provide a DCE-RSS.

**Immediate choice election RSS for pensioner and deceased members**

The scheme manager will provide an immediate choice election RSS ('ICE-RSS') to remedy members who retired before 1 October 2023, within 18 months of 1 October 2023 or such later date as the scheme manager considers reasonable after considering the circumstances of a particular member or class of members.

The ICE-RSS will explain how taking benefits from the alternative scheme could affect the benefits that members are already receiving. Included will be details on any under or overpayments that would occur if an election for alternate scheme benefits is made for their remediable service (including the consequences of any adjustments in respect of benefits for voluntary contributions and transferred in benefits). The ICE-RSS will also contain information about how and when a pensioner member can make their immediate choice election and what happens if no choice election is made.

It may be a while before members are provided with an ICE-RSS and asked to make a choice due to the considerable number of members who have retired since 1 April 2015. It is anticipated that by 30 September 2023 there may be over 12,747 pensioner members or deceased members in respect of whom an ICE-RSS will be required. If the choice means that a member is owed extra pension benefits, the scheme manager will backdate the extra pension benefits to the date they retired or died and pay the difference (see regulation 10) with interest (see regulation 56).

Where a remedy member dies before these regulations come into force the scheme manager will provide an ICE-RSS to a designated person (see regulation 7) and they will make the choice election in respect of the deceased member's remediable service.

**Members who have taken partial retirement**

Remedy members who have taken partial retirement may fall into the immediate choice election or deferred choice election cohorts depending on when they partially retired. Where the partial retirement:

* was before the start of the remedy period and there has been no further retirement between 1 April 2015 and 30 September 2023, the pensioner member will be treated as an active member. This is because they have not taken any pension benefits in respect of their remediable service. They will be able to make a deferred choice election when they next retire, either another partial retirement or fully retire
* was on or after 1 April 2015 and they have not yet fully retired the pensioner member will be treated as a pensioner member. This is because they have taken benefits for part or all of their remediable service. The immediate choice election they make for their partial retirement remediable service will also mean that when they finally retire their benefits for any remaining remediable service will follow that choice.

**PART 3: Elections**

**Regulation 7 – Eligibility to make an election: designated persons**

A remedy member who is capable will make their own choice election for legacy scheme benefits or 2015 scheme equivalent benefits either when they retire or at a later date if they have already retired. This leaves the question of who would make a choice election where the remedy member is either deceased or incapable of making a choice at the relevant time.

The 2022 Act gives powers for scheme regulations to include a provision about who may make an immediate choice election and deferred choice election in relation to the remediable service of a deceased member. Regulation 7 applies where the remedy member is deceased and a designated person is to make an election on their behalf.

**Deceased pensioner remedy member**

In the circumstance where the remedy member died before 1 October 2023 and was a pensioner member when they died, the designated person is the deceased remedy member's personal representative (or one of the personal representatives if more than one). This is because the immediate choice election will determine whether the member's retirement benefits in respect of the remediable service are legacy scheme benefits or 2015 scheme equivalent benefits, and any pension and lump sum arrears will be payable to the estate of the deceased member. The personal representative will administer the estate.

**Deceased active or deferred remedy member**

In the circumstance where the member died while an active or deferred member and bereavement benefits are either already in payment or about to be paid, the designated person will be determined according to the member's surviving beneficiaries:

* where a member leaves a surviving adult dependant with entitlement to a surviving adult dependant's pension (a spouse, civil partner, or qualifying scheme partner), the designated person is the surviving adult dependant, unless they are incapable
* where there is no surviving adult dependant but there is a sole eligible child, aged 18 years or more, with an entitlement to a children's pension, the designated person is the eligible child, unless they are incapable
* where there is no surviving adult dependant or there is more than one eligible child or a sole eligible child under 18 years old, the designated person will be decided by the scheme manager. The scheme manager could decide that the designated person may be one of the following:
* a personal representative, or one of the personal representatives, of the remedy member
* a parent or guardian of a dependent or eligible child
* a dependent or eligible child

Regulation 7 also gives the scheme manager the authority to make themselves the designated person, for example this may be considered appropriate where a death lump sum is the only bereavement benefit either in payment or to be paid and the choice of which is most beneficial is clear.

**Capable or incapable of making an election**

A person is deemed to be capable and therefore able to be a designated person unless, in the opinion of the scheme manager, they are unable to look after their own affairs because of illness, mental disorder or another factor.

**Regulation 8 – Election for retrospective provision to apply to opted-out service**

The 2022 Act mandates that scheme regulations allow members to elect for opted-out service during the remedy period to be reinstated as pensionable service in order to become remediable service. Regulation 8 confers that right on members and sets out the process for making such an election.

A member who opted-out of the HSC Pension Scheme and meets the remedy eligibility criteria, or who would have met the eligibility criteria but for the opted-out service, will be able to apply to make an election to have the opted-out service during the remedy period reinstated in the legacy scheme. Only service within the remedy period can be reinstated.

For an application to be accepted, the scheme manager must be satisfied that the member’s decision to opt-out would have been different but for the discrimination, for instance, if they had been able to remain in the legacy scheme longer or join the 2015 scheme sooner. It is only then that opted-out service can be reinstated.

Where an application is accepted and the member elects to have the service reinstated into the legacy scheme, the member and their employers will owe pension contributions for the reinstated service. The amount of contributions owed will be net of an amount representing tax relief and interest. Once the opted-out service is reinstated, it will be treated as remediable service.

More information on how to apply to have opted-out service reinstated will be published on the HSC Pensions website when these regulations come into force. The intention is that the process to make an opted-out service election will be as follows:

* from 1 October 2023 the member or, where the member is deceased, a designated person can apply to the scheme manager to have opted-out service reinstated. The format and design of the application will be decided by the scheme manager. The member will be required to include details about their opted-out service and evidence to support their application
* the scheme manager then has 6 months to consider the application and respond to the member
* where an application is not accepted, the scheme manager will provide the reason for this and the member will be able to appeal this decision
* where an application is accepted, the scheme manager will send the member an RSS which will include details on the value of benefits that could have been accrued during the opted-out service in both the legacy scheme and the 2015 scheme and the amount of contributions that are owed if that service is to be reinstated
* the member will then have up to one year to make an election for that service to be reinstated
* where an election is made the opted-out service is treated as remediable service and the pension contributions become owed. The reinstated service will then be incorporated in any annual RSS, DCE-RSS or ICE-RSS (depending on the membership status of the member).

**Regulation 9 – Immediate choice election for 2015 scheme benefits: pensioner and deceased members**

Rollback applies to pensioner and deceased members with benefits in payment. However, the 2022 Act stipulates that members or their beneficiary won’t see a change to their benefits until an immediate choice election is made or the period for making such an election expires.

**Eligibility for an immediate choice election**

The 2022 Act provides for remedy members who have taken benefits for remediable service on or before 30 September 2023, or deceased remedy members on that date, to be able to make an immediate choice election over which HSC Pension Scheme benefits they wish to receive for their remediable service. The department has extended this group to include the small group of remedy members who have claimed legacy scheme benefits only and for whom the rollback of remediable service from the 2015 scheme to the member’s remedy section of the legacy scheme will mean an immediate change to those benefits. Therefore, an immediate choice election rather than a deferred choice election appears to be a better fit for legacy pensioner members in these circumstances.

We anticipate there will be at least 12,747 members who will be eligible to make an immediate choice election. Where a remedy member has died a designated person will make an immediate choice election on their behalf.

The immediate choice election for these members will be whether they wish to receive 2015 scheme equivalent benefits or legacy scheme benefits for any remediable service. Where members wish to receive legacy scheme benefits, they will receive benefits from the section of that scheme in which they most recently accrued benefits.

Members will not need to make an application to be able to make this choice. The scheme manager will send each member an ICE-RSS. That ICE-RSS will contain details on the choice of benefits the member has, as well as information as to how a choice can be made. A pensioner remedy member, or a designated person, will then have one year, or longer if the scheme manager considers reasonable, to make their choice about which benefits they wish to receive for their remediable service.

Where there has been no choice communicated to the scheme manager, by the end of the immediate choice election period, then legacy scheme benefits are to be paid by default.

Benefits will not be adjusted upward or downward until either an immediate choice election is made, or where the member does not communicate a choice, 12 months after the ICE-RSS is issued. The deadline for making an election and how the election is to be made will be set out as a call for action in the ICE-RSS.

Regulation 9 sets out who is eligible to make an immediate choice election and allows the scheme manager to set out how that choice is to be made. They also specify that once an immediate choice election has been made, it is irrevocable.

Where, by the end of the immediate choice election period, a pensioner member or a designated person has failed to communicate with the scheme manager, the scheme manager may decide on behalf of the member to choose 2015 scheme equivalent benefits, where the 2015 scheme benefits are determined to be more beneficial to the member or beneficiary. The scheme manager may consult with the scheme actuary concerning this decision.

**Taper protected members with mixed service**

Some remedy members were not automatically moved to the 2015 scheme on 1 April 2015 but moved to the 2015 scheme at a point during the remedy period, with the transition date dependent on age. These remedy members were taper protected members and because they have remediable service in both the legacy scheme and 2015 schemes have 'mixed service'.

In order to remedy the discrimination, members with mixed service must choose either legacy or 2015 scheme benefits for their remediable service, they are unable to keep benefits in payment based on mixed service. Their immediate choice election will ultimately always lead to different benefits being payable. Their benefits in respect of all their remediable service will be from one scheme only after their choice, rather than from the 2 schemes before that choice.

**Regulation 10 – Pension benefits and lump sum benefits: immediate choice election: pensioner and deceased member**

The immediate choice election by a pensioner member or a designated person may result in benefits having been retrospectively underpaid or overpaid. Retirement benefits may include annual pension benefits, lump sum benefits and benefits paid in respect of voluntary contributions and transfers into the scheme. Bereavement benefits may include a lump sum on death, an adult dependent's pension, and a children's pension. The potential for an underpayment or overpayment is because the 1995 and 2008 sections of the legacy scheme and 2015 scheme have different accrual rates, different retirement lump sum rules, different normal pension ages and different bereavement benefit amounts.

Furthermore, the 2015 scheme benefits are based on the career average revalued earnings of the member, whereas the legacy scheme benefits (for non-practitioner members) are based on the final salary of the member. The member has been paid benefits based on remediable service being accrued in one of these schemes but could choose for those benefits to be retrospectively paid (as well as any future benefit) as if that service were accrued in the alternative scheme.

This would be the case if a protected pensioner member makes an election for 2015 scheme benefits for their remediable service, or an unprotected pensioner member decides that they want legacy scheme benefits. Regulation 10 specifies that benefits must be corrected after an immediate choice election has been made and that a balancing payment must be made.

Where a member’s immediate choice election means their pension benefits increase in value, pension arrears will be owed. Pension arrears will be subject to income tax at the member’s marginal rate in the year the arrears are paid, where this means the tax deduction is greater than the amount they would have paid when those arrears were retrospectively due, the member can request a schedule of payments from the scheme manager to enable them to seek a refund from HMRC.

Interest will be applied, in accordance with the 2023 Directions, to those arrears at the rate of 8% (simple) until 28 days after the ICE-RSS is issued to the member, and at the National Savings and Investment (NS&I) Equivalent Savings rate (compound) thereafter until the arrears are paid. For retirement lump sum arrears, interest will be applied from the date the lump sum benefits were originally paid. For annual pension benefit arrears, interest will be applied to the aggregate arrears from the date halfway through the period between benefits first being underpaid and 28 days after the ICE-RSS is issued.

Where an immediate choice election means pension benefits decrease in value, the member will be required to repay the net overpaid amount to the scheme rather than the gross amount, as members will have already paid income tax on the pension payment. The member will not need to engage with HMRC.

Interest will be applied, in accordance with the 2023 Directions, on the overpaid benefits at the NS&I Direct Saver rate (compound) until payment. For overpaid retirement lump sum amounts, interest will be applied from the date the lump sum benefits were originally paid. For overpaid pension benefits, interest will be applied to each year’s aggregate overpayment separately, from the date half-way through the year, or the period during which benefits were underpaid if less than a year, until the date of payment.

**Regulation 11 – Continuation of pensions: immediate choice election: dependent and eligible children of a remedy member**

The 2022 Act allows schemes to make further provision relating to a child who is not living in the same household as an adult survivor of the remedy member. Regulation 11 prevents a reduction to children’s pensions that are already in payment as a consequence of an immediate choice election being made, or not being made, by a designated person of a different household.

A child's pension will continue in payment without change until either an immediate choice election is made, or if not made, until the end of the immediate choice election period. Where an election results in:

* an increase in children's pension - arrears of pension backdated to the original payable date will be payable to, or in respect of, the child beneficiary, irrespective of who the designated person is in relation to the child
* a reduction in children's pension and is made by a designated person who is:
* not in the same household as the child beneficiary, the amount already in payment will remain in payment
* in the same household as the child beneficiary the amount of children's pension will reduce. Regulation 11 allows the scheme manager to waive or reduce an overpayment of children's pensions under certain circumstances.

The department proposes to use the powers in section 22(6) of the 2022 Act to modify the provisions of section 22(2)(e) of the Act by protecting children's pensions where the child beneficiary is not in the same household as a designated person which is broader than the provision in section 22(2)(e) which only references not living in the same household as 'an adult survivor of the member'.

**Regulation 12 – Deferred choice election for 2015 scheme benefits: active, deferred and deceased members**

Rollback returns remediable service in the 2015 scheme to the member's remedy section of the legacy scheme for unprotected and taper protected members who are active or deferred on 30 September 2023.

The deferred choice election is a core component of the McCloud remedy. Remedy members will be able to make a deferred choice election for 2015 scheme equivalent benefits or legacy scheme benefits for their remediable service.

When a member notifies the scheme manager of their intention to retire, the scheme manager will provide them with a DCE-RSS (see regulation 6), this will include information on how and when the member must make their deferred choice election.

Regulation 12 sets out who is eligible to make a deferred choice election and allows the scheme manager to set out how that choice is to be made. They also specify that once a deferred choice election has been made, it is irrevocable.

The deferred choice election must then be made within 3 months of the DCE-RSS being issued, or such earlier or later date as the scheme manager considers reasonable. The deferred choice election is effective immediately before benefits become payable. Where a member is deceased, the deferred choice election becomes effective immediately before the member's death.

Where there has been no choice communicated to the scheme manager, by the end of the deferred choice election period, then legacy scheme benefits are to be paid by default. The scheme manager may decide on behalf of the member to choose 2015 scheme equivalent benefits, where the 2015 scheme benefits are determined to be more beneficial to the member or beneficiary. The scheme manager may consult with the scheme actuary concerning this decision.

If a deferred choice election member’s benefits become payable before they receive a DCE-RSS, they will still be able to make a deferred choice election. Any benefits that are already in payment would then be retrospectively adjusted (see regulation 13).

**Regulation 13** **– Pension benefits and lump sum benefits: deferred choice election: pensioner and deceased members**

There may be circumstances in which a remedy member retires or dies after 30 September 2023, and therefore they, or a designated person if they are deceased, should make a deferred choice election under regulation 12, but is unable to make their deferred choice election or does not receive a DCE-RSS before pension or bereavement benefits are put into payment.

Where a deferred choice election is made after a member becomes a pensioner member, or after a member dies and bereavement benefits are paid, the 2022 Act provides that an election will have retrospective effect. For this cohort of remedy members, they are retiring with an entitlement to the immediate payment of their legacy scheme benefits for their remediable service. Legacy scheme benefits will remain in payment unless a deferred choice election for 2015 scheme equivalent benefits is then made. The deferred election period commences when a scheme manager provides the belated DCE-RSS to the member or a designated person.

Section 14 of the 2022 Act is modified so that it can also apply to members who were active or deferred immediately before these regulations come into force. Regulation 13 therefore mirrors the provisions of regulation 10 for these members. To facilitate this, regulation 13 makes provision to allow benefits in payment to be corrected where a member, or a designated person, makes a deferred choice election for 2015 scheme equivalent benefits for the remediable service.

**Regulation 14 – Continuation of pensions: deferred choice election: dependent and eligible children of a remedy member**

In a similar situation to regulation 13, regulation 14 mirrors the provisions in regulation 11 to protect children's pensions that are already in payment from a reduction as a consequence of a deferred choice election being made by a designated person not in the same household as a child beneficiary.

**Part 4: Voluntary Contributions**

Regulations 15 to 24 in Part 4 of the draft SR make provision about additional pension and early retirement reduction buy-out contributions. They set out how the McCloud remedy will affect members who have made additional voluntary contributions to purchase those extra HSC Pension Scheme benefits during pensionable service in the remedy period. Note that some of the regulations for this part have not been explained in numerical order. This has been done for ease of comprehension.

**Regulation 15 – Interpretation**

This regulation sets out the meaning of terms used more than once in Part 4 of the draft SR. In particular, where references to other scheme regulations are abbreviated, regulation 15 sets out those references in full.

**Regulation 16 – Elections to pay contributions for additional pension: where they must be treated as if paid under a corresponding option exercised under the 1995 Regulations or the 2008 Regulations**

This regulation applies to unprotected members and taper protected members who have not yet retired and who took out an election to buy 2015 scheme additional pension during the remedy period.

From 1 October 2023, all 2015 scheme remediable service is returned to the last section of the legacy scheme in which a member had pensionable service, either the 1995 section or the 2008 section, the member’s 'remedy section of the legacy scheme'. Any extra 2015 HSC Pension Scheme benefits bought during that service will, in the first instance, also move back to the member’s remedy section of the legacy scheme. The contributions paid for the extra benefits will be treated as if they had been paid to the member’s remedy section of the legacy scheme in the year that they were paid to the 2015 scheme.

To achieve that outcome and as required by the 2022 Act, regulation 16 cancels the member’s rights to 2015 scheme additional pension bought during the remedy period. Those rights are replaced by new rights to additional pension under a corresponding option (either for a lump sum purchase made by the member or their employer or regular monthly contributions) in the member’s remedy section of the legacy scheme.

The additional pension under the member’s remedy section of the legacy scheme will be costed for payment at normal pension age 60 if the member’s remedy section of the legacy scheme is the 1995 section and normal pension age 65 if the member’s remedy section of the legacy scheme is the 2008 section.

The value of 2008 section additional pension increases if paid later than normal pension age. The value of 1995 section additional pension does not increase if paid after normal pension age but members will be able to claim 1995 section additional pension at age 60 without retiring or leaving HSC employment (please see further information at regulation 17 in respect of 'Transitional Arrangements').

**Limits on the purchase of Additional Pension**

Members may only buy additional pension up to certain limits in both the legacy and the 2015 scheme. Regulation 16 adjusts the limits that apply to the amount of additional pension a member can buy in the legacy scheme to accommodate the transfer of the purchase from the 2015 scheme to the member’s remedy section of the legacy scheme. However, the amount of additional pension purchased will still count in the 2015 scheme for the purposes of applying the limits that will apply to any future purchases in that scheme.

**Regulation 17 – Treatment of contributions paid after 31st March 2022 under a corresponding option exercised in accordance with regulation 16(2)(b)**

**Transitional arrangements**

Transitional arrangements introduced from 1 April 2015 allow members to continue with a purchase of legacy scheme additional pension (being made by regular monthly contributions) after joining the 2015 scheme. In addition, the same transitional arrangements (mentioned in connection with regulation 16) allow members to claim 1995 section additional pension at their chosen birthday (age 60) without retiring or leaving HSC employment.

Those arrangements apply automatically to members whose 2015 scheme additional pension is converted to legacy scheme additional pension under regulation 16. This means that any additional contributions paid after the end of the remedy period (from 1 April 2022) will be applied automatically to the member’s corresponding option to purchase additional pension in their remedy section of the legacy scheme with the exception of any additional contributions paid after normal pension age in the member’s remedy section of the legacy scheme. Those contributions less an amount representing tax relief will be returned with interest.

If the member wants to proceed on this basis, they do not need to take any action.

In summary:

* additional pension purchased by contributions to the 2015 scheme during the remedy period is converted to additional pension in the member’s remedy section of the legacy scheme and, where the member continued to pay those contributions after 1 April 2022, those contributions will also buy additional pension in the member’s remedy section of the legacy scheme
* members can claim 1995 section additional pension at age 60 without retiring or leaving
* 2008 section additional pension can be claimed in full on retirement from age 65, but will be increased for retirement after that age
* any additional contributions paid after the member reached normal pension age in their remedy section of the legacy scheme (age 60 or age 65) will be returned.

**An alternative option for members in respect additional contributions paid from 1 April 2022**

However, in recognition that not all members may have wanted to continue with a purchase of additional pension in their remedy section of the legacy scheme from 1 April 2022, regulation 17 provides the member with an alternative option in respect any additional contributions paid from that date.

The member may elect to cancel the corresponding legacy option from 1 April 2022 and, instead, continue with the purchase of additional pension in the 2015 scheme from that date. The original terms on which the purchase was made will apply.

**Information about making an election and what effect that would have**

The scheme manager will write to all members who have their 2015 scheme AP converted to legacy scheme additional pension under regulation 16. This letter will be sent to members before 1 July 2024, and it will set out the member’s options including:

* the amount of additional pension the member will be buying if they continue with the corresponding legacy purchase after 1 April 2022
* the amount of additional pension they will be buying if they cancel that option and elect to buy additional pension in the 2015 scheme from that date.

The member will have 3 months from receipt of the letter to notify the scheme manager of their decision.

Members who want the corresponding legacy scheme additional pension purchase to continue from 1 April 2022 do not need to respond. That arrangement will then remain in place regardless of any decision the member makes about the benefits to be paid in respect of their main scheme remediable service at their deferred choice election decision point.

In summary:

* before 1 July 2024, members whose additional pension bought during the remedy period has been converted to additional pension in the member’s remedy section of the legacy scheme will receive a letter from the scheme manager
* the letter will set out the member’s options in respect of any additional contributions that the member continued to make after the remedy period ended on 31 March 2022
* if the member wants additional contributions paid on or after 1 April 2022 to buy additional pension in the member’s remedy section of the legacy scheme, they don’t need to do anything as this will happen automatically
* if the member wants those additional contributions to buy additional pension in the 2015 scheme on original terms, the member must notify the scheme manager of their decision within 3 months from receipt of the scheme manager’s letter
* depending on the member’s decision the member will either be in:
* Group 1 – buying legacy scheme additional pension by contributions paid during the remedy period and in respect of any additional contributions paid after the remedy period ended on 31 March 2022, that will then remain the position regardless of the member’s decision at the deferred choice election decision point
* Group 2 – have bought legacy scheme additional pension by contributions paid during the remedy period and 2015 scheme additional pension in respect of any additional contributions paid after the remedy period ended on 31 March 2022, the position for members in this group regarding the legacy scheme additional pension they bought during the remedy period may change depending on the decision made at the members deferred choice election decision point (see regulation 18).

**Regulation 18 – Treatment of a corresponding option exercised in accordance with regulation 16 on the making of a deferred choice election for 2015 scheme benefits under regulation 12**

Regulation 18 applies to members in Group 2 (described above) who have bought legacy scheme additional pension by lump sum or started to buy additional pension by regular monthly contributions during the remedy period (contributions paid from 1 April 2022 having bought additional pension in the 2015 scheme) with one exception. It does not apply if the member’s remedy period additional pension was in the 1995 section and has already come into payment separately at age 60.

Otherwise, if a member in this group elects for 2015 scheme equivalent benefits to be paid in respect of their main scheme remediable service, the scheme manager will vary the value of the legacy additional pension bought during the remedy period so that it is of an equivalent value to the additional pension those contributions would have bought in the 2015 scheme. The scheme manager will have regard to the advice of the scheme actuary when varying the member’s additional pension rights in this way.

**Regulation 22 – Voluntary contributions: pensioners and deceased members of the 2015 scheme**

Regulation 22 applies to 2015 scheme pensioners, legacy scheme pensioners and deceased members who started to buy 2015 scheme additional pension during the remedy period, or who made an additional pension purchase by lump sum during the remedy period, or whose employer made such a purchase. A 2015 scheme pensioner includes a pensioner who took partial retirement in the 2015 scheme and who claimed payment of 2015 Scheme additional pension at the same time.

**Conversion to a legacy scheme additional pension under a corresponding option**

The first step under regulation 22, is for the member’s additional pension in the 2015 scheme to be converted to additional pension in the member’s remedy section of the legacy scheme. This is done by treating the member’s additional contributions as if they had been made to purchase additional pension under a corresponding option in that section. Any contributions paid after the member’s normal pension age in their remedy section of the legacy scheme will be returned.

**Decision to have legacy benefits for remediable service**

If the member, or designated person if the member is deceased, decides to have legacy benefits paid for their remediable service, the member will be entitled to the converted legacy scheme additional pension described above.

**Decision to have 2015 scheme equivalent benefits for remediable service**

If the member, or designated person if the member is deceased, decides to have 2015 scheme equivalent benefits paid in respect of their remediable service, the scheme manager must, after having regard to the advice provided by the scheme actuary for this purpose, vary the member’s rights to the legacy additional pension purchased so that those rights are of an equivalent value to the additional pension rights the member would have secured if the contributions had been made under the 2015 Regulations.

**Protected members who bought additional pension in the legacy scheme during the remedy period**

Regulations 20 and 21 apply to protected members who made a purchase of additional pension by a lump sum contribution during the remedy period, or whose employer made such a purchase, or who began to make regular monthly contributions to buy additional pension in the legacy scheme during pensionable service in the remedy period.

They do not apply if the member’s 1995 section additional pension has already come into payment separately under the transitional arrangements introduced from 1 April 2015 (see further information at regulation 17).

**Regulation 20 – Treatment of additional contributions: active and deferred members of the legacy scheme**

Regulation 20 sets out what happens to the member’s legacy scheme additional pension if the member makes a deferred choice election for 2015 Scheme benefits to be paid in respect of their remediable service. In those circumstances the scheme manager must, after having regard to the advice provided by the scheme actuary for this purpose, vary the member’s rights to the legacy scheme additional pension purchased so that those rights are of an equivalent value to the additional pension rights the member would have secured if the contributions had been made under the 2015 Regulations.

**Regulation 21 – Treatment of additional contributions: pensioners and deceased members of the legacy scheme**

Regulation 21 sets out what happens to the member’s legacy scheme additional pension if a legacy scheme pensioner or a designated person makes an immediate choice election for 2015 scheme benefits to be paid in respect of remediable service. A legacy scheme pensioner includes a pensioner who took partial retirement in the 2008 section on or after 1 April 2015 and who claimed payment of additional pension at the same time.

As for protected deferred choice election members, in these circumstances the scheme manager must, after having regard to the advice provided by the scheme actuary for this purpose, vary the member’s rights to the legacy scheme additional pension purchased so that those rights are of an equivalent value to the additional pension rights the member would have secured if the contributions had been made under the 2015 Regulations.

**Early Retirement Buy-out contributions (ERRBO)**

Members of the 2015 scheme have an option to pay additional contributions to buy out the actuarial reduction that would normally apply on early retirement between age 65 and state pension age (SPA). This is known as an ERRBO agreement. A member’s employer may agree to pay some of the member’s ERRBO contributions. The contributions may also reduce any actuarial reduction that may otherwise apply if the member becomes entitled to redundancy benefits. If a member who has made ERRBO contributions retires later than SPA, benefits may be increased to take account of ERRBO contributions. ERRBO contributions do not earn the member any additional benefit if the member dies or retires on health grounds and ERRBO contributions are not returned in those circumstances.

Regulation 19 sets out what is to happen if a member has made ERRBO contributions in the remedy period and the member was an active or deferred member of the 2015 scheme on 30 September 2023.

Regulation 23 sets out what is to happen if a member has made ERRBO contributions in the remedy period and the member was a pensioner or deceased member of the 2015 scheme on 30 September 2023.

**Regulation 19 Treatment of buy-out contributions made under 2015 regulation 47: active and deferred members of the 2015 scheme**

Under regulation 19, all members who paid ERRBO contributions are entitled to be paid a compensation payment equal to the ERRBO contributions the member paid during the remedy period, reduced by an amount representing tax relief and increased by interest. The compensation payment will not include the value of any contributions that the employer paid instead of the member during that period.

**Option to waive the compensation payment until the member’s deferred choice election decision point**

A member who is entitled to an ERRBO compensation payment will have an option to defer the payment of that compensation until they make their deferred choice election about which set of main scheme benefits to receive in respect of their remediable service.

If the member chooses benefits from their legacy remedy section, then compensation will become payable again for ERRBO contributions paid by the member in the remedy period.

If the member chooses 2015 scheme equivalent benefits for their remediable service and the ERRBO contributions would add value to those benefits either because an actuarial reduction would otherwise apply, or the benefits would be increased for retirement after SPA, the member may choose to forego compensation and instead become entitled to a benefit from the legacy section of an equivalent value to that which the ERRBO contributions would have attracted in the 2015 Scheme.

**Information provided by the scheme manager**

The scheme manager will write to all members before 1 April 2024 setting out the right to claim compensation for ERRBO contributions, the amount due and how to make a claim. The scheme manager will also explain the member’s option to waive the compensation payment until they make a deferred choice election about their main scheme benefits, how to take up this option and the time limits for doing so.

**Action to be taken by members**

On receipt of the letter from the scheme manager, the member must decide whether to claim or defer the compensation payment.

If a member defers the compensation payment, the decision on whether to claim that payment or to claim benefits of equivalent value will be taken by the member at the same time as they make their deferred choice election about the benefits to be paid for their remediable service.

**Deceased members**

If a member who paid ERRBO contributions in the remedy period dies before they have an opportunity to make a deferred choice election about the benefits to be paid in respect of their remediable service, the scheme manager will automatically pay the compensation amount due to the member’s personal representative.

**Regulation 23 – Treatment of buy-out contributions made under 2015 regulation 47: pensioner and deceased members of the 2015 scheme**

Regulation 23 applies to ERRBO contributions paid during the remedy period by members who are 2015 Scheme pensioners, or legacy scheme pensioners on 30 September 2023, and members who are deceased on that day.

A compensation payment as described for regulation 19 will be available in respect of all members covered by regulation 23. However, where the following circumstances apply:

* a 2015 Scheme pension is in payment, or was in payment in respect of a deceased member
* the ERRBO contributions paid during the remedy period had reduced an actuarial reduction that would otherwise have applied to that pension or the pension was increased as a result of those contributions
* an immediate choice election is made for 2015 scheme equivalent benefits to be paid for remediable service.

The member or designated person may choose to forego compensation and instead allow the ERRBO contributions to continue to have the same effect through a benefit of equivalent value paid from the legacy scheme.

A compensation payment remains an option but, if claimed, the member’s benefits will have been overpaid and the scheme manager will seek to recover that overpayment.

**Regulation 24 – Remedial arrangements to pay voluntary contributions to secure legacy scheme additional pension**

The 2022 Act permits scheme regulations to allow members to enter into new voluntary contribution arrangements in the legacy scheme. Regulation 24 confers that right on members and sets out the process for making an application for entering into such an arrangement to purchase additional pension.

For an application to be accepted, the scheme manager must be satisfied that the member would have entered into that arrangement during their period of remediable service but for the discrimination.

Where an application is accepted and the member enters into an arrangement, the member will owe additional contributions net of tax relief (or where relevant an amount representing tax relief) and interest for that additional pension.

The intention is that the member will need to submit an application to enter into such an arrangement within 6 months of an RSS first being issued to them and, if that application is accepted, that the arrangement is entered into within 12 months of the RSS first being issued. More information on how to apply to enter into remedial arrangements to purchase additional pension will be published on the HSC Pensions website from 1 October 2023.

**Part 5: Divorce or the dissolution of a civil partnership**

Pension benefits can be one of the most valuable assets that individuals have. Consequently, the value of any pension benefits must be considered as part of a divorce settlement or on the dissolution of a civil partnership. A valuation of the pension benefits is calculated using a cash equivalent transfer value. Once pension assets have been identified and valued, the parties must agree, with the assistance of the court, how to use this value in any financial settlement.

One option available to the court is a pension sharing order. This is a legal order that allows a court to share pension benefits between 2 parties as part of a financial settlement, this means that a proportion of one party’s pension benefits can be 'transferred' to the other party. Where an HSC Pension scheme member is transferring a share of their pension benefits to an ex-spouse or ex-civil partner, they will have a pension debit on their pension benefits. The ex-spouse or ex-civil partner then becomes a member of the HSC Pension Scheme in their own right as a pension credit member, with a pension credit.

As a result of the remedy, it is possible that the valuation of the pension benefits, calculated on the 'transfer day', (the effective date of the relevant pension sharing order) might have been different had the member's remediable service always been in the alternate scheme. This means that the pension credit member might have been given a different amount of pension credit.

For the purposes of the McCloud remedy only pension sharing orders with an effective date after 1 April 2015 are affected. The 2022 Act does not give schemes the power to amend pension sharing orders, the sealed order is final, instead what the 2022 Act does is give schemes the power in their regulations to adjust the pension debit and pension credit as a consequence of the McCloud remedy.

The proposed McCloud remedy for pension credit members is detailed in the section headed 'Regulations for pension credit members where the corresponding pension debit member is a remedy member'.

**Regulation 25 – Interpretation**

Regulation 25 defines terms that are used on more than one occasion in Part 5.

Regulations 26 to 28 apply to a remedy member who is also a pension debit member in respect of remediable service shareable rights. In these regulations, 'remediable service shareable rights' means shareable rights under Article 24(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 ('the 1999 Order') in respect of remediable service.

**Calculation of a pension debit**

The percentage specified in the pension sharing order is used to reduce the member's benefits accrued up to the day before the effective date of the pension sharing order. The pension debit has increases applied, in line with the Pensions Increase Act (Northern Ireland) 1971, from the day after the effective date to the date the pension debit member retires, when it is deducted from their pension benefits before payment.

A remedy member might have pension debits in both the legacy scheme and the 2015 scheme, dependant on when the pension sharing order became effective.

**Unprotected members with a pension debit**

Where the pension sharing order was effective during the remedy period, unprotected members might have a pension debit in the 2015 scheme in respect of:

* remediable service shareable rights (relating to 2015 scheme service between 1 April 2015 and the day before the transfer day)

Where the pension sharing order was effective after the remedy period these members might also have a pension sharing order in the 2015 scheme in respect of:

* non-remediable service shareable rights (relating to 2015 scheme service between 1 April 2022 and the day before the transfer day)

and this pension debit will always remain in the 2015 scheme.

Where the pension sharing order was effective during, or after the remedy period, they might also have a pension debit in the legacy scheme in respect of:

* non-remediable shareable rights (relating to legacy scheme service before 1 April 2015)

and this pension debit will always remain in the legacy scheme.

**Taper protected members with a pension debit**

Taper protected members might have part of their remediable service shareable rights in the legacy scheme and part in the 2015 scheme, depending on the effective date of the pension sharing order.

Where the taper protected member moved to the 2015 scheme before the scheme manager provided a valuation of pension benefits, 2 valuations would have been provided:

* legacy scheme benefits up to the day before the move to the 2015 scheme
* 2015 scheme membership from the day of the move to the valuation day

The court had the following options in respect of their remediable service shareable rights, to share:

* the remediable service shareable rights between the 2 HSC schemes, shared by the same or different percentages
* the legacy scheme part of the remediable service shareable rights in the legacy scheme only
* the 2015 scheme part of the remediable service shareable rights in the 2015 scheme only.

Where the court decided to share all the remediable service shareable rights between the legacy scheme and the 2015 scheme, following rollback these members are not able to retain 2 separate pension debits in different HSC schemes in respect of their remediable service shareable rights, as this does not remove the age discrimination. Therefore, following rollback, a 2015 scheme pension debit, in respect of remediable service shareable rights up to 31 March 2022, is to be treated as a legacy scheme equivalent pension debit, by applying the same percentage specified in the 2015 scheme annex of the pension sharing order.

Where the pension sharing order was effective during or after the remedy period, taper protected members might also have a pension debit in the legacy scheme in respect of:

* non-remediable shareable rights (relating to legacy scheme service before 1 April 2015)

and this pension debit will always remain in the legacy scheme.

They might also have a pension debit in the 2015 scheme in respect of:

* non-remediable shareable rights (relating to 2015 scheme service between 1 April 2022 and the day before the transfer day)

and this pension debit will always remain in the 2015 scheme.

**Fully protected members with a pension debit**

Where the pension debit is effective during the remedy period, fully protected members might have a pension debit in the 2015 scheme in respect of:

* remediable service shareable rights (relating to legacy scheme service between 1 April 2015 and the day before the transfer day)

Where the pension sharing order was effective after the remedy period these members might also have a pension sharing order in the 2015 scheme in respect of:

* non-remediable service shareable rights (relating to 2015 scheme service between 1 April 2022 and the day before the transfer day)

and this pension debit will always remain in the 2015 scheme.

Where the pension sharing order was effective during, or after the remedy period, they might also have a pension debit in the legacy scheme in respect of:

* non-remediable shareable rights (relating to legacy scheme service before 1 April 2015)

and this pension debit will always remain in the legacy scheme.

**Regulation 26 – Pension debits: active and deferred members (immediate alternative debit of appropriate amount)**

Regulation 26 applies to unprotected members and taper protected members who are active or deferred members immediately before the rollback of their remediable service from the 2015 scheme into their remedy section of the legacy scheme on 1 October 2023.

This regulation applies where, before 1 October 2023, the scheme manager:

* Provided a valuation of pension benefits for divorce or dissolution purposes that included remediable service shareable rights (remediable service between 1 April 2015 and 31 March 2022)
* A pension sharing order was effective before or on or after 1 October 2023
* The pension sharing order resulted in a 2015 scheme pension debit.

Following rollback, the 2015 scheme pension debit in respect of remediable service shareable rights is retrospectively treated as a legacy scheme pension debit. This means that the percentage share specified in the pension sharing order is applied to the member's legacy scheme benefits in relation to the same remediable service.

A pension debit in respect of non-remediable shareable rights either in:

* legacy scheme (relating to legacy service before 1 April 2015)
* 2015 scheme (relating to 2015 scheme service on or after 1 April 2022)

will remain unchanged in the respective HSC scheme.

**Effective date of a pension debit adjustment**

The effective date of the legacy pension debit is the effective date of the pension sharing order.

The scheme manager will write to all pension debit members who have their 2015 scheme pension debit adjusted to a legacy pension debit under regulation 26. This letter will be sent to members before1 July 2024.

**Regulation 27 – Pension debits: immediate choice election: pensioner and deceased members**

Rollback will see the remediable service of pensioner and deceased members returned to the relevant section of the legacy scheme. However, the benefits in payment including any 2015 scheme pension debit are not adjusted until either an immediate choice election is made or the end of the immediate choice election period. The pension debit in respect of their remediable service shareable rights must reflect the debit member's, or designated person's, immediate choice election.

**Immediate choice election – 2015 scheme equivalent benefits for remediable service**

Where a pensioner remedy member, or a designated person, makes an immediate choice election to have 2015 scheme equivalent benefits paid in respect of their remediable service, this will have the following effect on any 2015 scheme pension debit in respect of remediable service shareable rights that they might have:

* Unprotected members – an original 2015 scheme pension debit in respect of remediable service shareable rights (remediable service between 1 April 2015 and 31 March 2022) remains in the 2015 scheme.

A legacy pension debit in respect of non-remediable service shareable rights (relating to legacy scheme service before 1 April 2015) remains unchanged in the legacy scheme.

* Taper-protected members – as they are not able to retain 2 separate pension debits in respect of remediable service shareable rights (remediable service between 1 April 2015 and 31 March 2022), a legacy scheme pension debit in respect of remediable service shareable rights must be adjusted to a 2015 scheme pension debit.

This means that the percentage share specified in the pension sharing order is applied to the member's 2015 scheme benefits in relation to the same remediable service. Consequently, all remediable service shareable rights will be a 2015 scheme pension debit.

A legacy pension debit in respect of non-remediable service shareable rights (relating to legacy scheme service before 1 April 2015) remains unchanged in the legacy scheme.

* Fully protected members – the legacy scheme pension debit in respect of remediable service shareable rights (remediable service between 1 April 2015 and 31 March 2022) is adjusted to a 2015 scheme pension debit

This means that the percentage share specified in the pension sharing order is applied to the member's 2015 scheme benefits in relation to the same remediable service.

A legacy pension debit in respect of non-remediable service shareable rights (relating to legacy scheme service before 1 April 2015) remains unchanged in the legacy scheme.

**Immediate choice election – legacy scheme benefits for remediable service**

Where a pensioner remedy member, or designated person, decides to have legacy scheme benefits paid in respect of their remediable service this may have the following effect on their pension debit in respect of remediable service shareable rights, for:

* unprotected members – the 2015 Scheme pension debit in respect of remediable service shareable rights (remediable service between 1 April 2015 and 31 March 2022) is adjusted to a legacy scheme pension debit

This means that the percentage share specified in the pension sharing order is applied to the member's legacy scheme benefits in relation to the same remediable service.

A 2015 scheme pension debit in respect of non-remediable service shareable rights (relating to 2015 scheme service on or after 2022) remains in the 2015 scheme.

* taper-protected members – as they are not able to retain 2 separate pension debits in respect of remediable service shareable rights (remediable service between 1 April 2015 and 31 March 2022) a 2015 scheme pension debit in respect of remediable service shareable rights must be adjusted to a legacy scheme pension debit.

This means that the percentage share specified in the pension sharing order is applied to the member's legacy scheme benefits in relation to the same remediable service. Consequently, all remediable service shareable rights will be a legacy scheme pension debit.

A 2015 scheme pension debit in respect of non-remediable service shareable rights (relating to 2015 scheme service on or after 2022) remains in the 2015 scheme:

* fully protected members – the original legacy scheme pension debit remains in place and unadjusted.

**Effective date of the pension debit adjustment**

The effective date of the adjustment is the effective date of the pension sharing order.

An adjustment to the remediable service shareable rights pension debit will take place when the immediate choice election is made or, where a decision is not communicated to the scheme member, at the end of the immediate choice election period.

**Regulation 28 – Pension debits: deferred choice election for 2015 scheme benefits: active and deferred members**

Regulation 28 applies to active or deferred members on 30 September 2023 who have a pension debit in respect of remediable service shareable rights. After 1 October 2023, all the pension debits in respect of remediable service shareable rights should be in the legacy scheme, either because the member was:

* fully protected and the pension debit was always a legacy scheme pension debit
* unprotected or taper protected and the 2015 scheme pension debit was adjusted to a legacy scheme pension debit following rollback on 1 October 2023.

**Deferred choice election – 2015 scheme equivalent benefits for remediable service**

Where a member, or designated person, makes a deferred choice election to have 2015 scheme equivalent benefits paid in respect of their remediable service this will have the following effect on any legacy scheme pension debit in respect of remediable service shareable rights:

* unprotected members – the original 2015 scheme pension debit in respect of remediable service shareable rights (remediable service between 1 April 2015 and 31 March 2022) is re-established in the 2015 scheme

A legacy pension debit in respect of non-remediable service shareable rights (relating to legacy scheme service before 1 April 2015) remains unchanged in the legacy scheme.

* taper-protected members – as they are not able to retain 2 separate pension debits in respect of remediable service shareable rights (remediable service between 1 April 2015 and 31 March 2022) a legacy scheme pension debit in respect of all remediable service shareable rights must all be adjusted to a 2015 scheme pension debit

Where there were 2 different percentages specified in the pension sharing order then each percentage is applied to the 2015 scheme benefits in relation to the same remediable service as the pension sharing order. Consequently, all remediable service shareable rights will be a 2015 scheme pension debit.

A legacy pension debit in respect of non-remediable service shareable rights (relating to legacy scheme service before 1 April 2015) remains unchanged in the legacy scheme.

* fully protected members – the legacy scheme pension debit in respect of remediable service shareable rights (remediable service between 1 April 2015 and 31 March 2022) is adjusted to a 2015 scheme pension debit.

This means that the percentage share specified in the pension sharing order is applied to the member's 2015 scheme benefits in relation to the same remediable service.

**Deferred choice election – legacy scheme benefits for remediable service**

Where a member, or designated person, decides to receive legacy scheme benefits paid in respect of their remediable service this may have the following effect on their pension debit in respect of remediable service shareable rights:

* unprotected member – under regulation 26 any 2015 scheme pension debit in respect of remediable service shareable rights (remediable service between 1 April 2015 and 31 March 2022) will have been adjusted to a legacy scheme pension debit and this legacy pension debit remains unchanged.

A 2015 scheme pension debit in respect of non-remediable service shareable rights (relating to 2015 scheme service on or after 2022) remains in the 2015 scheme.

* Taper-protected member – under regulation 26 any 2015 scheme pension debit in respect of remediable service shareable rights (remediable service between 1 April 2015 and 31 March 2022) will have been adjusted to a legacy scheme pension debit and this legacy pension debit remains unchanged.

Consequently, all remediable service shareable rights will be a legacy scheme pension debit.

A 2015 scheme pension debit in respect of non-remediable service shareable rights (relating to 2015 scheme service on or after 2022) remains in the 2015 scheme.

* Fully protected member – the original legacy scheme pension debit in respect of remediable service shareable rights (remediable service between 1 April 2015 and 31 March 2022) remains unchanged.

A 2015 scheme pension debit in respect of non-remediable service shareable rights (relating to 2015 scheme service on or after 2022) remains in the 2015 scheme.

**Effective date of the pension debit adjustment**

The effective date of the adjustment is the effective date of the pension sharing order.

An adjustment to the remediable service shareable rights pension debit will take place when the deferred choice election for 2015 scheme benefits is made, or where a decision is not communicated by the scheme member, at the end of the deferred choice election period.

**Regulation 29** **– Valuation of pension benefits on or after 1 October 2023**

On or after 1 October 2023, where the scheme manager receives a request for a valuation of pension benefits, for divorce or dissolution purposes, the valuation that will be provided will be dependent on whether the member has made a choice election or not.

In the circumstance where the scheme manager has not received a member's choice election, the scheme manager will calculate 2 valuations with the member's remediable service in:

* the member's remedy section of the legacy scheme
* the 2015 scheme

the higher of the 2 valuations will be provided to be used as part of the divorce or dissolution's financial settlement.

In the circumstance where a pensioner member has made either an immediate choice or deferred choice election the scheme manager will calculate one valuation that reflects the members choice. Here the pension sharing order will be sharing the pensioner member's pension benefits in payment at the effective date of the pension sharing order.

**PART 6: Transfers**

Regulations 30 to 49 in Part 6 of the draft SR make provision about benefits transferred into and out of the HSC Pension Scheme that are affected by the McCloud remedy. They cover transfers in and out from schemes that participate in the Public Sector Transfer Club ('the Club') and schemes that do not participate in the Club. They also cover transfers between UK Health Service Schemes and internal transfers between the legacy scheme and the 2015 Scheme.

**Regulation 30 – Interpretation**

Regulation 30 defines terms that are used on more than one occasion in Part 6, and especially where references to other scheme regulations are abbreviated, regulation 30 sets out those references in full.

**Regulation 31 – Treatment of transfer and transfer value payments made to the 1995 section or the 2008 section that are not made under Public Sector Transfer Arrangements**

Regulation 31 applies to protected members or tapered protected members who transferred benefits into the legacy scheme during the remedy period in circumstances where Club terms did not apply. As a result of the transfer payment, the member will have been credited with transfer rights of either a period of pensionable service or an earnings credit (if the member is a practitioner). Where the member subsequently makes a deferred or an immediate choice election to have 2015 scheme equivalent benefits paid for their remediable service, the scheme manager must vary the member's transfer rights so that they are of an equivalent value to the rights the member would have secured if the transfer had been made to the 2015 Scheme. The scheme manager must have regard to advice provided by the scheme actuary for that purpose.

**Regulation 32 – Transfer value payments made to the 2015 scheme that are not made under Public Sector Transfer Arrangements: where they must be treated as transfer payments under the 1995 section or transfer value payments under the 2008 section**

Regulation 32 applies to unprotected members or tapered protected member who transferred benefits into the 2015 scheme during the remedy period in circumstances where Club terms did not apply. As a result of the transfer payment the member will have been credited with transfer rights or an earnings credit in the 2015 scheme. On rollback of the member's remediable service to the member's remedy section of the legacy scheme, the member's transfer rights in the 2015 Scheme are extinguished. The scheme manager must treat the transfer payment as if it had been received by the member's remedy section of the legacy scheme and the member will receive either a service credit or an earnings credit (if the member is a practitioner) in that section.

The scheme manager will write to the member before 1 October 2024 setting out the member's new entitlement in respect of the transfer. Regulation 33 will apply if the member subsequently makes a deferred choice election to have 2015 scheme equivalent benefits paid for their remediable service.

**Regulation 33 – Transfer value payments treated in accordance with regulation 32; variation of the member’s rights on the making of a deferred choice election**

Regulation 33 applies to members whose 2015 scheme transfer rights are replaced by transfer rights in the member's remedy section of the legacy scheme under regulation 32.

Where the member subsequently makes a deferred choice election to have 2015 scheme equivalent benefits paid for their remediable service, the scheme manager must vary the member's transfer rights so that they are of an equivalent value to the rights the member would have secured if the transfer had been made to the 2015 Scheme. The scheme manager must have regard to advice provided by the scheme actuary for that purpose.

**Regulation 34 – Transfer and Transfer value payments made to the 2015 scheme treated as if they have been accepted under the legacy scheme: pensioner and deceased members**

Regulation 34 applies to members who:

* are unprotected and tapered protected members who transferred benefits into the 2015 scheme during the remedy period in circumstances where Club terms did not apply
* are members who are pensioner or deceased remedy members on 30 September 2023
* are eligible to make an immediate choice election to have 2015 scheme equivalent benefits paid for their remediable service

In these circumstances, the member's 2015 scheme transfer rights will be extinguished, and the member will be credited with either a service credit or an earnings credit (if a practitioner member) in respect of the transfer payment in the member's remedy section of the legacy scheme. This will be calculated having regard to the advice of the scheme actuary and as if the transfer payment had been made to the member's remedy section of the legacy scheme instead of the 2015 scheme.

A further step will then be required if an immediate choice election to have 2015 scheme equivalent benefits paid for their remediable service is made. The scheme manager must vary the member's legacy scheme transfer rights so that they are of an equivalent value to the rights the member would have secured if the transfer had been made to the 2015 scheme.

**Regulation 35** **– Treatment of transfer or transfer value payments or statements from other and corresponding health service schemes**

Regulation 35 applies to members who have transferred remediable service between health service schemes in England, Northern Ireland, and Scotland.

If a period of remediable service in the Health Service Scheme for England and Wales or Scotland is transferred to the Health Service Scheme for Northern Ireland, it will be treated as a period of remediable service in the scheme for Northern Ireland. For such service that was transferred to the 2015 scheme, this will mean the service will roll back to the member's remedy section of the legacy scheme along with any other remediable service.

**Regulation 36 – Transferred out remediable service statements**

Regulation 36 requires the scheme manager to send a transferred-out RSS in accordance with direction 6 of the 2023 Directions to members who have transferred out rights in respect of remediable service.

**Regulation 37 – Remediable transfer value payments before 1st October 2023**

Regulation 37 applies in respect of transfer payments made before 1 October 2023 in respect of a member's remediable rights to an external scheme where the payment was not made on Club terms.

In these circumstances the scheme manager will calculate 2 transfer values:

* calculated with the member’s remediable service in the member's remedy section of the legacy scheme
* calculated with the member's remediable service in the 2015 scheme

the highest of those 2 transfer values will be compared to the original transfer value that was paid.

If the original transfer value was underpaid and a 'top-up' payment is due, this will be offered to the original receiving scheme. If the receiving scheme is not a public service scheme and cannot accept the transfer top-up payment, the member may nominate another registered scheme to receive the payment or the member may be paid an amount of compensation equal to the top-up payment less an amount representing tax relief plus interest. Information on these options will be included in the member's transferred out remediable service statement referred to under regulation 36.

In a small number of cases the original transfer value may have been overpaid. In those circumstances final scheme regulations will make provision for recovery to be waived (we are able to do this using the powers in the 2022 Act).

**Regulation 38 – Remediable transfer value payments on or after 1st October 2023**

Regulation 38 applies in respect of transfer payments made on or after 1 October 2023 in respect of a member's remediable rights to an external scheme where the payment was not made on Club terms. The scheme manager must calculate 2 transfer values:

* calculated with the member’s remediable service in their remedy section of the legacy scheme
* calculated with the member's remediable service in the 2015 scheme

the highest of the 2 transfer values will be paid.

**Regulation 39 – Transfers of remediable rights in the legacy scheme to the 2015 scheme before 1st October 2023**

Regulation 39 applies in respect of members who have transferred their service in the 1995 section or the 2008 section to the 2015 scheme on return from a break of 5 years or more on cash equivalent terms.

Where the transfer was completed before 1 October 2023 and service that occurred before the 5-year break is remediable service, the scheme manager will calculate 2 transfer values:

* calculated with the member’s remediable service in the member's remedy section of the legacy scheme
* calculated with the member's remediable service in the 2015 scheme

the highest of those 2 transfer values will be compared to the original transfer value that was paid. Where a top-up amount is due in respect of the difference, the scheme manager must use that amount to acquire further rights for the member in the 2015 Scheme.

**Regulation 40 – Transfers of remediable rights in the legacy scheme to the 2015 scheme on or after 1st October 2023**

Regulation 40 applies in respect of members who transfer their service in the 1995 section or the 2008 section to the 2015 scheme on return from a break of 5 years or more on cash equivalent terms.

Where the transfer is to be completed on or after 1 October 2023 and includes any remediable service in the legacy scheme, the scheme manager will calculate 2 transfer values:

* calculated with the member’s remediable service in the member's remedy section of the legacy scheme
* calculated with the member's remediable service in the 2015 scheme

the highest of those 2 transfer values will be used to acquire rights for the member in the 2015 Scheme.

**Regulation 41 – Remediable transfer values**

Regulation 41 applies in respect of members who have transferred remediable rights in their last public service scheme into the HSC Pension Scheme where the transfer was not subject to Club terms. This may happen where the transfer is outside of the time limits that apply to Club transfers.

The scheme manager will calculate the value of the member's remediable HSC benefits in respect of the transfer as:

* benefits in the member's remedy section of the legacy scheme
* benefits in the 2015 scheme

These benefits will include any further remediable rights secured by a top-up transfer payment for transfers that were competed before 1 October 2023.

The dual calculation means the member does not have to make a decision about which benefits to have on transfer. The member will be able to compare the value of the 2 benefits to inform their decision at deferred choice.

**Regulation 42 – Remediable club transfer value payments before 1st October 2023**

Regulation 42 applies to transfers out of HSC Pension Scheme remediable rights on Club terms that were finalised before 1 October 2023.

The scheme manager will recalculate the transfer value in respect of the member's remediable benefits as:

* benefits in the member's remedy section of the legacy scheme
* benefits in the 2015 scheme

The scheme manager will provide the receiving Club scheme manager with the result of the calculation. This will be provided along with any further information that scheme may need in order to provide the member with an immediate choice election or a deferred choice election about the remediable rights that have been transferred into that scheme.

Generally, although the member's remediable rights resulting from a Club transfer will be revised, it has been agreed across unfunded schemes that the transfer value paid in respect of that service will not be revisited. However, if remediable rights (including such rights in the HSC Pension Scheme) were transferred to the funded Local Government Pension Scheme, and the recalculated transfer value is higher than that originally paid, the scheme manager will make a further payment to the Local Government Pension Scheme.

**Regulation 43 – Remediable club transfer value payments on or after 1st October 2023**

Regulation 43 applies to transfers out of HSC Pension Scheme remediable rights on Club terms on or after 1 October 2023.

The scheme manager will calculate 2 transfer values in respect of the member's HSC Pension Scheme remediable benefits:

* transfer value with remediable benefits in the member's remedy section of the legacy scheme
* transfer value with remediable benefits in the 2015 scheme

The scheme manager will pay the highest of the 2 transfer values and will provide the receiving Club scheme manager with any further information needed in order to provide the member with an immediate choice election or deferred choice election about the remediable rights that have been transferred into that scheme.

**Regulation 44 – Remediable club transfer value payments accepted before 1st October 2023**

Regulation 44 applies to transfers into the HSC Pension Scheme of remediable rights on Club terms completed before 1 October 2023. The scheme manager will revisit the transfer taking into account further information about the member's remediable rights provided by the sending scheme. The scheme manager will recalculate the amount of the member's remediable HSC Pension Scheme benefits in respect of the transfer as:

* benefits in the member's remedy section of the legacy scheme
* benefits in the 2015 scheme

The member will be able to compare the value of the 2 benefits to inform their decision at immediate choice or deferred choice.

**Regulation 45 – Remediable club transfer value payments accepted on or after 1st October 2023**

Regulation 45 applies to transfers into the HSC Pension Scheme of remediable rights on Club terms after 1 October 2023. The scheme manager will calculate the amount of the member's remediable HSC Pension Scheme benefits in respect of the transfer as:

* benefits in the member's remedy section of the legacy scheme
* benefits in the 2015 scheme

The dual calculation means the member does not have to make a decision about which benefits to have on transfer. The member will be able to compare the value of the 2 benefits to inform their decision at immediate choice or deferred choice.

**Regulation 46 – Application and interpretation of regulations 47 to 49**

Regulation 46 confirms that regulations 47 to 49 apply to all remediable rights transferred into the HSC Pension Scheme whether on Club or non-Club terms.

**Regulation 47 – Transferred in remediable rights treated as being the legacy scheme**

Regulation 47 provides that any remediable rights transferred into the 2015 scheme are instead treated as having transferred into the relevant section of the legacy scheme. This will usually be the 2008 section but, may be the 1995 section if the member has pensionable service in that section.

**Regulations 48 and 49 – Varying the value of benefits secured by virtue of transferred in remediable rights**

Deferred and active members on 30 September 2023

In relation to members in this group, effective from 1 October 2023, regulation 48 requires the scheme manager to vary the value of benefits for remediable rights treated as transferred into the legacy scheme under regulation 47 so that they are of an equivalent value to the benefits the member would have secured if the benefits had originally transferred to that scheme.

**Pensioner remedy members and remedy members who died on or before 30 September 2023 (Immediate choice members) who do not make an election for equivalent 2015 scheme benefits**

In relation to members in this group, effective from the end of the immediate choice election period (usually one year from a remediable service statement being issued) regulation 48 requires the scheme manager to vary the value of benefits for remediable rights treated as transferred into the legacy scheme under regulation 47 so that they are of an equivalent value to the benefits the member would have secured if the benefits had originally transferred to that scheme.

**Members who make a deferred or immediate choice for 2015 scheme equivalent benefits**

In relation to members in this group, regulation 48 requires the scheme manager to vary the value of benefits for remediable rights in the legacy scheme so that they are of an equivalent value to the benefits the member would have secured if the benefits had transferred to the 2015 scheme.

**Varying transferred in remediable rights**

Where the scheme manager is required to vary transferred in remediable rights as if they had been applied to a different scheme or section of the scheme ('the alternative scheme or section'), the scheme manager must have regard to the advice of the scheme actuary and calculate the varied rights as if the transfer payment had been made to the alternative scheme in the scheme year it was paid.

Regulation 49 provides for any benefits being paid in respect of a member's transferred in remediable rights to be treated as being paid and always having been paid from the legacy scheme.

**PART 7: Taxation**

The Westminster government laid [The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023](https://www.legislation.gov.uk/uksi/2023/113/contents/made) (the '2023 Tax Regulations') before Parliament on 6 February 2023 and will come into force on 6 April 2023. Pensions tax legislation provides an individual with tax relief on their pension saving in the current tax year and generally does not allow for changes to pension saving in earlier tax years. However, the remedy as set out in the 2022 Act makes retrospective changes to the public service pension provision, creating tax issues in relation to that provision.

The 2023 Tax Regulations modify existing pensions tax legislation to make a number of technical changes to the tax treatment of those impacted by the remedy only. They aim to put individuals, as far as possible, in the tax position they would have been in had the discrimination not happened. They do not amend pensions tax legislation and so do not apply more widely.

The 2023 Tax Regulations address the tax position following the introduction of the remedy. They:

* ensure that members remain entitled to tax relief on their pension contributions made in relation to the pension provision being remedied
* make changes to how public service schemes calculate a member’s pension input amount for the remedy period tax years
* give public service schemes extra time to provide members with the information they need to calculate, or recalculate, their annual allowance charge
* allow members extra time to make a request for their public service scheme to pay an additional annual allowance charge and set out how public service schemes deal with lifetime allowance charges that are underpaid or overpaid as a result of the remedy for those members with benefits in payment before 1 October 2023. The provisions exempt compensation payable under the 2022 Act from income tax or capital gains tax

HMRC confirmed as part of its public consultation [Guidance on the Public Services Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023](https://www.gov.uk/government/publications/the-public-services-pension-schemes-rectification-of-unlawful-discrimination-tax-regulations-2023/guidance-on-the-public-services-pension-schemes-rectification-of-unlawful-discrimination-tax-regulations-2023) that it will provide more details on how to claim a repayment or report and pay extra tax due because of changes to a member’s annual allowance or lifetime allowance as a result of the public service pension schemes remedy in due course.

The consultation guidance also specified that further tax legislation is still to come on a handful of topics; voluntary contributions; ill health retirement; divorce; transfers and opt-outs. Guidance on the tax treatment of the issues listed is to be published alongside the draft legislation dealing with them. The department expects there to be a similar public consultation.

Owing to the overarching nature of pension tax legislation, across all registered pension schemes, the department routinely only includes those tax provisions in the regulations where a member's HSC Pension Scheme benefits are to be reduced as a consequence of the scheme administrator paying a tax charge on behalf of the member.

**Regulation 50 – Interpretation**

Regulation 50 defines terms that are used on more than one occasion in Part 7.

**Regulation 51 – HSC pension scheme to be liable where private sector scheme discharged**

Where the percentage of lifetime allowance used in the pensioner member’s original HSC benefit crystallisation event ('BCE') increases, because their HSC benefits in payment increases as a result of their immediate choice election, the member or their personal representative must notify the scheme administrator of any other registered pension schemes, where they have had a subsequent BCE, of their revised percentage of lifetime allowance. This will include private sector schemes as well as public service schemes.

The scheme administrator of the registered pension scheme must then determine whether a lifetime allowance charge is due as a consequence of the revised HSC BCE, or whether an existing lifetime allowance charge is increased. Where a lifetime allowance charge is due or is increased and the pension scheme is a private sector scheme, the private sector scheme administrator can either pay the charge for which they have become jointly liable to or make an application to HMRC to be discharged from being liable for the charge.

Regulation 51 specifies that where HMRC discharges the private sector scheme administrator's liability then the HSC Pension Scheme's scheme administrator becomes liable to pay the charge. Once paid, the pensioner member's pension must be reduced in order for the HSC Pension Scheme to recoup this payment for the scheme. The reduction will be from a current date and is not retrospective back to the HSC BCE. To pay the charge and not reduce benefits would cause an unauthorised payment and further tax liabilities on the member and the HSC Pension Scheme's scheme administrator.

**Regulation 52 – Voluntary scheme pays**

The 2023 Tax Regulations modify the deadline for mandatory scheme pays, under section 237B(3) of the Finance Act 2004. Members who may find themselves with an annual allowance charge or a higher annual allowance charge for the remedy period tax years, can make a mandatory scheme pays election to the scheme administrator.

The HSC Pension Scheme provides for voluntary scheme pays by reference to regulation 2 of The Registered Pension Schemes (Modification of Scheme Rules) Regulations 2011 with the scheme manager having the latitude to accept or not accept such elections, unlike the section 237B mandatory scheme pays elections.

The 2023 Directions require scheme regulations to be made by virtue of the 2022 Act so that schemes must offer voluntary scheme pays when the extended mandatory deadline under the 2023 Tax Regulations has passed.

Regulation 52 gives remedy members the assurance that a scheme pays election on a voluntary basis after the mandatory scheme deadline has passed will be accepted and the annual allowance charge paid by the scheme. Unlike with mandatory scheme pays, the scheme would not be jointly liable for the annual allowance charge. As such the member remains responsible for the charge and any interest charges where it is paid later than HMRC's normal self-assessment tax return deadline.

Due to the method of recouping a scheme pays payment from a member's pension benefits before or after payment, members who are deceased are not covered in this voluntary scheme pays provision.

**Part 8: Compensation**

**Regulation 53 – Applications for compensation or indirect compensation**

In some cases, the remedy alone may not put the member back to the financial position they would have been in had the discrimination not occurred. As such, the 2022 Act permits the scheme manager to pay amounts to members, or to the personal representatives of deceased members, as compensation for compensatable losses.

Regulation 53 sets out that compensation may be paid under the 2022 Act and in accordance with the 2023 Directions. These directions stipulate that scheme managers must comply with the directions in exercising their powers to pay compensation. They set out that compensation may be paid to remedy any financial loss suffered as a result of the discrimination or as a consequence of the steps taken under the 2022 Act to remedy the discrimination. Scheme managers can also provide compensation for any overpaid tax that cannot be corrected via the tax system as a result of the statutory time limits for correction of tax in previous years.

The 2023 Directions also require that compensation can only be paid once an application is made to the scheme manager. The 2023 Directions also set out the high-level process for seeking compensation for overpaid annual allowance and lifetime allowance charges.

Regulation 53 also confirms that compensation can only be paid if an application is made in accordance with the 2023 Directions, and that any compensation decision must be explained and appealable. More details on the application process for compensation will be made available via the HSC Pensions website in advance of 1 October 2023, the date from which we intend to accept applications. All applications will be considered on a case-by-case basis.

**Regulation 54 – Indirect Compensation**

Direction 10 of the 2023 Directions requires scheme regulations to include provisions for indirect compensation where a tax charge has been paid by the scheme on behalf of the member. In the HSC Pension Scheme this might be relevant where a member has paid a tax charge through the scheme pays facility. The scheme pays facility – at the member’s request – pays an annual allowance charge on behalf of the member and reduces the member’s pension by an appropriate amount.

Where a member has paid an annual allowance charge amount through the scheme pays facility, and that amount has been overpaid following the implementation of the remedy, regulation 54 stipulates that the scheme manager must correct that overpayment by altering the reduction that was made to the member’s pension benefits. This alteration should reflect the lower tax charge.

This regulation also invokes the 2023 Directions which state that the decision to provide indirect compensation be determined taking a principles-based approach and the amount of indirect compensation to be provided must be decided in consultation with the scheme actuary. The 2023 Directions also require the scheme manager, when calculating the indirect compensation, to apply actuarial factors that were in force when the original reduction to the member’s pension was calculated. This will make sure that the member’s indirect compensation, through the alteration of a pension reduction, puts them into the position they would have been in – in terms of the tax charge – had the discrimination not occurred.

**Part 9: Interest and the payment, reduction or waiver of liabilities**

**Regulation 55 – Application and interpretation of this Part**

Regulation 55 introduces the part of the regulations that considers the calculation and application of interest and the process of paying amounts owed from the HSC Pension Scheme to a member, or from a member to the HSC Pension Scheme as a consequence of the remedy.

**Regulation 56 – Interest and Process**

As a consequence of the remedy there will be a number of scenarios, detailed in the explanations to the regulations above, where either the scheme will owe an amount to the member, or the member will owe an amount to the scheme. For instance, this might occur where a member who is eligible to make an immediate choice election chooses alternative scheme benefits and as a result is owed an additional lump sum amount or annual pension benefit arrears.

Where there have been underpayments or overpayments, the scheme will apply and calculate interest on the amount owed, net of tax relief where applicable. Regulation 56 requires the scheme manager to apply and calculate interest in accordance with the 2023 Directions. For these amounts interest will not be calculated in accordance with existing HSC Pension Scheme Regulations.

The interest rate to be applied to each amount is determined by the 2023 Directions and is broadly as follows:

Where a member owes an amount to the scheme, compound interest should be calculated daily, using the National Savings & Investments (NS&I) Equivalent Savings Rate.

Where the scheme owes an amount to the member, simple interest should be calculated daily using section 17 of the Judgement Act, that rate is currently 8%, up to 28 days after a remediable service statement is issued. Interest should then be calculated using the NS&I Equivalent Savings Rate thereafter.

Where the scheme owes an amount to the member for recurring underpayments, interest will be calculated on the aggregate amount from the mid-point between the date of the first underpayment and the date 28 days after an RSS is issued at 8%, and at the NS&I Equivalent Savings Rate thereafter. Where the scheme owes the member for a one-off underpayment interest will be applied from the date of the initial underpayment to the date 28 days after the RSS is issued at 8%, and at the NS&I Equivalent Savings Rate thereafter.

The scheme manager may apply an average where the interest rate has varied over the period the amount was underpaid or overpaid.

Where interest is owed on overpaid annual allowance by the scheme, interest must be calculated on that amount in accordance with the provisions of the Taxes (Interest Rate) Regulations 1989. This is the rate which HMRC use for refunds or late payments. For more information on the interest rates that HMRC apply see [HMRC interest rates for late and early payments](https://www.gov.uk/government/publications/rates-and-allowances-hmrc-interest-rates-for-late-and-early-payments/rates-and-allowances-hmrc-interest-rates).

If there are any overpayments or underpayments not covered by the 2023 Directions, the scheme manager may determine the rate and method of calculation. This must be communicated to the relevant member and the member has a right of appeal about how the interest has been calculated. This only applies where interest rates are determined by the scheme manager and not amounts covered by the 2023 Directions.

This regulation also ensures that where compensation for an Early Retirement Reduction Buy-Out is owed but is waived until a member makes a deferred choice election, interest on that amount is treated as if it were an equivalent waived contribution amount, for which the application of interest is set out in the 2023 Directions.

**Regulation 57 – Netting off of liabilities**

Regulation 57 sets out that the scheme manager must net off amounts of underpayments and overpayments created by remedy (and any interest owed on them) in accordance with direction 19 of the 2023 Directions. The 2023 Directions set out that where different amounts in relation to the remedy fall to be paid at approximately the same time, the scheme manager may aggregate those amounts, and the balance will then be payable from the scheme or to the scheme as appropriate.

The 2023 Directions provide that the scheme manager must provide the appropriate person with an explanation of the calculation and make provision for members to appeal the determination where they believe the calculation is incorrect. The 2023 Directions avoid multiple payments to and from the schemes in relation to remedy.

**Regulation 58 – Payments of amount owed to the scheme**

Regulation 58 sets out the high-level payment process where a member owes a net amount related to the remedy to the scheme. In such circumstances, the scheme manager must inform the member that an amount is owed. The member may then agree with the scheme manager as to how that amount might be paid, either by a single payment, via an instalment plan, or via a deduction to future benefits.

This regulation also sets out that the scheme manager and member may agree to vary such an agreement. Where the member fails to pay the net amount owed, the scheme manager may deduct amounts from future benefits as considered reasonable, after notifying the member, until that net amount is fully paid.

**Regulation 59 – Payments of amounts owed to a person**

Regulation 59 sets out the high-level payment process where the scheme manager owes the member a net amount related to the remedy. In such circumstances, the scheme manager must pay the amount to the member in a single payment as soon as reasonably practical after either the amount owed is determined, or where the scheme manager requires additional information from the member, as soon as reasonably practicable after the scheme manager receives that information.

**Regulation 60 - Power to reduce or waive amounts owed by a person to the legacy scheme**

Regulation 60 sets out the provision whereby amounts owed by a person - remedy member, personal representative, or beneficiary - to the legacy scheme may be reduced or waived. Liabilities include, but are not restricted to, repaying overpaid benefits, under regulations 10 and 13, or paying an amount in respect of underpaid member contributions, under regulations 3 and 5.

The use of powers to waive or reduce liabilities, under the 2022 Act and 2023 Directions, is expected to be limited to those situations where the liability has arisen from an unavoidable operation of the McCloud remedy. For example, this could arise where benefits in respect of remediable service all being in either the legacy scheme or 2015 scheme are lower than the mixed service pension benefits in payment as a consequence of having tapered protection. Amounts owed to the scheme are also likely to arise in limited situations as a result of an immediate choice election where the immediate choice election for alternative scheme benefits in respect of their remediable service causes lower benefits being retrospectively payable, for a fully protected or unprotected member.

In these circumstances an overpayment of benefits will occur meaning that the pensioner member or beneficiary owes money to the legacy scheme.

The 2023 Directions specify that scheme regulations must include certain provisions under which the scheme manager may exercise any powers to waive or reduce such a liability. These include:

* having regard to the particular circumstances of the person whom the liability is owed by
* applying a presumption in favour of recovering the liability unless uneconomic to do so
* considering, where appropriate, to apply interest, which could be in addition to, or instead of a waiver or reduction (see regulation 58)

The department has included all the required provisions in regulation 60.

The scheme manager, when determining whether monies owed to the legacy scheme are to be waived or reduced, will use existing overpayment policy which incorporates the government's Managing public money (NI) ([MPMNI - Final version](https://www.finance-ni.gov.uk/publications/managing-public-money-ni-final-version)) guidance. This will provide consistency with existing practice and policy governing overpayments made by the HSC Pension Scheme. Within this policy the scheme manager may agree to an individual repayment plan where it is considered that immediate payment of the liability, in full or in part, would result in unreasonable hardship to the individual owing the money to the scheme.

A pensioner member, or a designated person, will be notified in the ICE-RSS of any liabilities that would arise as a consequence of a choice election they make.

**PART 10: Revocation of election to convert pensionable service in the legacy scheme**

**Regulation 61 – Revocation of elections to convert pensionable service in the 1995 section of the legacy scheme to 2008 section.**

In 2015, active legacy scheme members who had service in the 1995 section of the legacy scheme, and who were unprotected or taper protected, were given the opportunity to elect to move their previous accrual in the 1995 section to the 2008 section. Where a member made such an election, known as a ‘Choice 2’ election it took effect immediately before they joined the 2015 scheme.

The rationale behind the Choice 2 exercise was that some members who would be joining the 2015 scheme on or after 1 April 2015 and expected to be working closer to the 2015 scheme normal pension age could be better off with their previous accrual in the 2008 section rather than the 1995 section. This was because the 2008 section has a higher accrual rate and includes late retirement factors. 270 1995 section members made a Choice 2 election to move their 1995 section accrued benefits into the 2008 section.

It is anticipated that some of the members who made a Choice 2 election may not have done so had they had a different transitional protection status. Regulation 61 confers a right to members who made the Choice 2 election to retract that election and sets out the process for invoking that right.

Where a member retracts their election, the benefits accrued before the remediable service period will be returned to the 1995 section, and for all purpose will be treated as if it was never converted to 2008 section benefits. In addition, any remediable service will be rolled back to the 1995 section upon the coming into force of section 2(1) of the 2022 Act on 1 October 2023.

Where a member retracts their Choice 2 election, at immediate or deferred choice (whichever is applicable), the member will have the choice of benefits being accrued during the remediable service period being treated as either 2015 scheme benefits or 1995 section benefits. Where a member does not revoke their election that choice will be between 2015 scheme benefits and 2008 section benefits.

Given that the original Choice 2 exercise saw the scheme administrator proactively write to eligible members to offer them the opportunity to convert service, the intent is that the scheme administrator will write to all members who made a Choice 2 election to notify them of their right to retract their original decision and inform them about how to do this. Where a member is to make an immediate choice election, it is the intention for information on retracting the Choice 2 election to be provided alongside the immediate choice election remediable service statement. Where a member is to make a deferred choice election the scheme administrator will provide this information in a notification by 1 April 2024.

All members who made a Choice 2 election are to be provided with the same or a similar level of information, as they had when they made their original election decision. Members will have 3 months, from the date the notification is provided, to notify the scheme administrator if they want to make a revocation, or longer where the scheme administrator considers it reasonable.

**PART 11: Retirement pensions**

**Part 11 makes additional provision in respect of certain retirement categories. In particular, this provision is made to supplement or to vary the automatic effect remedy would otherwise have in relation to benefits already in payment.**

**Regulation 62 – Premature retirement in the interests of efficiency**

Regulation 62 applies in respect of the employer costs associated with retirements that are in the interests of the efficiency of the service. For this retirement category, the member's employing authority pays the full cost of the early payment of HSC Pension Scheme benefits before normal pension age.

Where the member makes a decision regarding the benefits to be paid in respect of their remediable service which increases the retirement cost to the employer, payment of the further costs will be waived.

**Regulation 63 – Premature retirement on grounds of redundancy**

Regulation 63 applies in respect of the costs associated with premature retirement due to redundancy.

Members retiring early because of redundancy who meet certain eligibility criteria, may claim early payment of scheme benefits. However, the scheme does not meet the costs of paying benefits up to normal pension age. Responsibility for meeting those costs is determined by the member's terms and conditions of employment.

In the majority of cases, the costs are met at least in part by the payment of the member's redundancy pay to the scheme by the employer. Where this payment is insufficient, an actuarial reduction is applied to the member's benefits, or in some circumstances, a member may make an additional contribution from their own funds to make up part or all of the shortfall. Where the redundancy payment is more than is needed to meet the costs, the balance is paid by the employer to the member.

Where a redundancy pension was in payment before 1 October 2023, the associated costs may change depending on which scheme is paying the benefits and the immediate choice the member makes about their remediable service. Where benefits from a different section or scheme are chosen for remediable service, the associated costs will change because of the different accrual rates and normal pension ages that will apply.

Where the alternate scheme or section is the member’s remedy section of the legacy scheme, costs are likely to decrease due to the lower normal pension age. Adjustments will be automatic as part of the administration process and any overpaid amount of additional contribution or redundancy payment will be returned to the employing authority. The employer, in turn, will return any element of the overpaid cost due to the member.

Where the alternate scheme is the 2015 scheme, costs are likely to increase because of the later normal pension age and higher accrual rate in that scheme. In these circumstances, regulation 63 provides for an actuarial reduction to be applied to the member's benefits or, alternatively, for the member to pay an additional contribution to make up part or all of the shortfall.

If the member's terms and condition require the employer to meet any or part of the costs directly, payment in respect of any increases to those costs will be waived.

A deferred choice will be available to members affected by redundancy after 30 September 2023. Where a member takes early retirement upon redundancy after this date but before making a deferred choice, it is possible that additional costs will be required to meet the pension costs of the redundancy if the member later chooses 2015 scheme benefits.

**Regulation 64 – Partial retirement**

Members of the 2008 section and the 2015 scheme who meet certain qualifying criteria are entitled to take a reduced pension for part of their service without leaving HSC employment. The member elects to take a percentage of their benefits, known as 'partial retirement' or 'draw down'.

Regulation 64 applies to partial retirement members where the automatic effect of either the roll back of the member's service from the 2015 scheme to the 2008 section, or the choice the member makes regarding the benefits to be paid for that service, changes the amount of partial retirement pension in payment. In these circumstances the member may vary the original percentage of the benefits claimed to a percentage determined by the scheme manager as being necessary in order to maintain the level of partial retirement pension already in payment.

**Regulation 65 – Determining whether a member meets the ill-health criteria in each scheme**

This regulation applies to members who made an application for ill health benefits during their remediable service and whose HSC employment was also terminated during the remedy period. It applies in respect of applications for ill health benefits on retirement from the HSC and also to applications from deferred scheme members for the early payment of benefits on health grounds. It applies whether or not the member qualified for an ill health pension as a result of their application.

The scheme manager, with the consent of the member, is required to review such applications (along with supporting medical evidence where applicable) and make a decision on whether the member would have qualified for an ill health pension in their alternative scheme or section. Where the member’s original application was assessed under the 2015 Regulations, the alternative scheme or section is the member’s remedy section of the legacy scheme, and where the member’s original application was assessed under the member’s remedy section of the legacy scheme the alternative scheme or section is the 2015 scheme.

The scheme manager will write to members to tell them the outcome of the review. For immediate choice election members, this must be before the remediable service statement is sent that will inform the member’s choice. For deferred choice election members, this must be as soon as practicable after 1 October 2023.

**Immediate choice election members**

If an immediate choice election member is an ill health pensioner who meets the ill health criteria in both the legacy scheme and the 2015 scheme, the member will be able to choose which benefits to claim at immediate choice election.

If an immediate choice election member has claimed actuarially reduced benefits because they did not meet the ill health criteria, but they meet the ill health criteria in the alternative scheme, the member will be able to choose ill health benefits in their alternative scheme in place of their actuarially reduced benefits.

**Deferred choice election members**

Deferred choice election members who left the HSC in the remedy period but whose application for early payment of deferred benefits has not been accepted but who are accepted under the rules of their alternative scheme, will be able to claim those benefits and a deferred choice election will be deemed to have been made.

**Regulation 66 – Ill-health benefits; acceptance of retrospective applications**

This regulation provides that the scheme manager may consider an application for ill health retirement made under the 2015 Regulations on or after 1 October 2023 as having been made during the remedy period under legacy scheme regulations if the scheme manager is satisfied that the member would have made such an application at that time were it not for the discrimination. If the scheme manager agrees to treat the member’s application in this way and it is accepted, transitional regulation 27 will apply to the member’s ill health benefits. This would mean that the member and their dependants would not be placed in a less beneficial position than they would have been had the outcome of the application been determined under legacy scheme regulations and the member’s retirement on health-grounds taken place from the legacy scheme on 31 March 2022. The member’s benefits would not be paid until the member leaves all HSC employment.

**Paragraph 3 of the schedule- amends the transitional regulation 27 (Ill-health benefits: continuity of existing applications)**

Regulation 27 makes transitional arrangements for how ill health applications are treated when a member’s ill health retirement process spans the date on which a member leaves the legacy scheme and joins the 2015 scheme.

Amendments were made to regulation 27 effective from 1 April 2022 in relation to protected members who made an application for ill health retirement under legacy scheme regulations that was received by the Department before 1 April 2022 (the date on which the legacy scheme closed to further accrual for all members) but who did not become entitled to a legacy pension before joining the 2015 scheme on 1 April 2022.

In those circumstances, regulation 27 ensured that the member and their dependants were not placed in a less beneficial position than they would have been had the outcome of the application been determined under legacy scheme regulations and the member’s retirement on health-grounds taken place from the legacy scheme on 31 March 2022. For example, where a member did not meet the ill health criteria in the 2015 scheme but met the legacy tier 1 ill health criteria, the ill health benefit paid from the 2015 scheme was equal to the legacy tier 1 ill health pension the member would have received had they retired on 31 March 2022.

Where a member met both the ill health qualifying criteria in the legacy scheme and the 2015 scheme, the member becomes entitled to the higher benefits. A full explanation of ill health retirement criteria and how transitional regulation 27 works can be found in the <https://www.health-ni.gov.uk/consultations/consultation-mccloud-remedy-hsc-pension-scheme>.

The new amendments made to regulation 27 ensure that members whose service is rolled back into their remedy section of the legacy scheme and who made an ill health application during the remedy period are treated consistently with the way protected members were treated.

Therefore, the amendments extend regulation 27's scope so that it will also apply to members who applied for ill health retirement under the 2015 Regulations during their remediable service, and whose application was either accepted or rejected after the end of their remediable service on 31 March 2022.

In those circumstances the member will be entitled to have their applications re-considered under the regulations relating to their remedy section's regulations. If the member meets any of the legacy scheme ill health criteria, the member and their dependants will be entitled to a minimum of the benefits they would have received from the legacy scheme had they retired on health grounds from the legacy scheme on 31 March 2022. If, as a result of the comparison calculation, the 2015 Scheme pension is higher, 2015 scheme benefits provided for under transitional regulation 28 will be paid to the member and the member’s dependants.

Regulation 27 will not apply if the member makes an immediate choice election for 2015 scheme equivalent benefits for remediable service because that would mean their application could only be considered under 2015 scheme ill health criteria.

The scheme manager will automatically reconsider qualifying ill health applications and inform the member of the outcome as soon as reasonably practicable after 1 October 2023.

**PART 12: Amendments**

Regulation 67 points to the amendments made by paragraphs 1 to 3 of the Schedule (Amendments of the 1995 Regulations, the 2008 Regulations and the 2015 Transitional Regulations).

**SCHEDULE: Paragraphs 1 and 2- Amendments of the 1995 Regulations and the 2008 Regulations**

From 1 April 2015, amendments were made to the 1995 Regulations and the 2008 Regulations that closed the scheme to unprotected members and tapered protected members at dates falling between 1 April 2015 and 31 March 2022.

The further amendments to those regulations at paragraphs 1 and 2 of the Schedule make it clear that nothing in the earlier amendments prevents a member’s remediable service between those dates (currently in the 2015 scheme) becoming pensionable service in the member’s remedy section of the legacy scheme.

(Please see explanations relating to ill health retirement following regulations 65 and 66 for an explanation of the amendments made by paragraph 3 of the Scheduleto transitional regulation 27(Ill-health benefits: continuity of existing applications).

**Regulations for pension credit members where the corresponding pension debit member is a remedy member**

The final version of the draft Regulations that are to be laid before the Northern Ireland Assembly will, subject to responses to this consultation, include regulations that set out when and how pension credits are to be adjusted where the pension credit is attributable to the remediable service shareable rights of a corresponding pension debit member.

The provisions that are to be included in the Regulations are outlined in the following paragraphs.

Pension credit members do not have remediable service and therefore can't be remedy members, as such at rollback they are not required to move any 2015 scheme pension credits. Pension credit members might have pension credits in the legacy scheme and/or the 2015 scheme, depending in which HSC scheme the corresponding pension debit member had shareable rights and when the pension sharing order became effective.

**Pension sharing order effective before 1 October 2023**

The scheme manager must determine whether there is an adjusted pension credit as soon as is reasonably practicable after the draft Regulations come into force, having first consulted with the scheme actuary. To do this the scheme manager calculates the value of the corresponding remediable service shareable rights in the alternative scheme, applying the percentage(s) specified in the pension sharing order, where the pension credit member is a member of:

* the legacy scheme - a valuation in the 2015 scheme is calculated
* the 2015 scheme - a valuation in the legacy scheme is calculated

The pension credit is adjusted where the alternative valuation is higher than the original valuation. The scheme manager will calculate the adjusted pension credit by applying the percentage in the pension sharing order to the higher valuation. The original pension credit is then retrospectively 'topped-up' to the adjusted pension credit amount.

Where the alternative valuation is the same or lower than the original valuation the pension credit is unchanged and remains at the same amount, subject to the below position regarding corresponding pension debit members with mixed service.

Where the corresponding pension debit member had mixed service, as a consequence of having tapered protection, and the pension credit member is a member of both the legacy scheme and the reformed scheme, as a consequence of the pension sharing order splitting the remediable service shareable rights, any 'top-up' must be applied to one scheme only.

The scheme manager will calculate 2 'comparison valuations':

* the pension debit member’s remediable service shareable rights in the remedy section of the legacy scheme
* the pension debit member's remediable service shareable rights in the 2015 scheme

Where one or both of the comparison valuations are higher than the mixed service valuation a top up will be applied to one scheme only based on the higher valuation following consultation with the scheme actuary.

Where both of the comparison valuations are lower than the mixed service valuation there will be no top up.

In the case of a corresponding pension debit member with mixed service a pension credit adjustment will always be necessary. The 2022 Act provides that remedy members are not allowed to retain mixed service benefits in payment as this does not remove the age discrimination, this also applies to pension credit benefits in payment. In circumstances where a pension credit benefit in payment is reduced pension credit members are covered by regulation 60, which allows the scheme manager to waive or reduce an overpayment under certain circumstances.

Where a pension credit is in payment and compensation is given because a top-up is due, the higher pension credit will be paid retrospectively from the payable date and any arrears of pension credit paid to the pension credit member with interest, calculated and paid in line with the provisions of Part 9 of these regulations

**Pension sharing order effective on or after 1 October 2023**

Where the original valuation was provided before the corresponding pension debit member made either an immediate choice or deferred choice election then a pension credit must be calculated based on the higher of the comparison calculations. The scheme manager will calculate 2 comparison valuations:

1. the pension debit member’s remediable service shareable rights in the remedy section of the legacy scheme
2. the pension debit member's remediable service shareable rights in the 2015 scheme

Where the original valuation was provided after the corresponding pension debit member had made either an immediate choice or deferred choice election then a pension credit is calculated based on the pension debit member's choice of schemes for their remediable service.

1. **Public sector equality duty**

**Purpose**

**Public sector equality duty**

The Public Sector Equality Duty is set out in section 149 of the Equality Act 2010 and requires public authorities, in the exercise of their functions, to have due regard to the need to:

1. eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the 2010 Act
2. advance equality of opportunity between people who share a protected characteristic and those who do not
3. foster good relations between people who share a protected characteristic and those who do not
4. This involves having due regard, in particular to the need to:
5. remove or minimise disadvantages suffered by people due to their protected characteristics
6. take steps to meet the needs of people from protected groups where these are different from the needs of other people.

The equality duty covers the 9 protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) and sexual orientation.

This section records the initial equality analysis of the scheme-level policy choices included in these draft Regulations to enable ministers to fulfil the requirements placed on them by the Public Sector Equality Duty. DOH invites respondents to help refine this initial analysis by contributing further perspectives or identifying where there might be other equality impacts to consider.

The majority of the policy content of these draft Regulations is set by either the 2022 Act or the Treasury Directions. HM Treasury have published separate Equality Impact Assessments for the measures introduced by the Act and the measures introduced by the Directions. This assessment considers the additional impacts of the consequential policy choices included in the draft Regulations that have been made at a scheme level. Where the draft Regulations make minor modifications to provisions in the 2022 Act to ensure the provisions works in the HSC Pension Scheme context, these are out of scope of this Equality Impact Assessment as the consequential policy choices behind these provisions and their impacts are included in the HM Treasury assessments.

**Department of Finance**

The Department of Finance (DoF) carried out an equality impact screening on proposed options for dealing with the discrimination identified by the McCloud judgment, those options were published for consultation in August 2020. The screening concluded that the transitional protection policy proposals would address the unlawful inequality identified in the McCloud judgement since 2015, by providing affected members with appropriate options to have their pension entitlements in the remedy period calculated as if the discrimination had not occurred. The screening identified that some younger members could benefit from the option to have their pension entitlements in the remedy period calculated under the terms of the legacy schemes. Alternatively, some older members could benefit from the option of having their entitlements in the remedy period calculated under the reformed schemes. The screening also noted that the Northern Ireland public service workforce, which includes the HSC workforce, contains a proportionately greater female representation, although this varies across departments and employment types. As a consequence, the transitional protection policy revision may apply to more females, but this was an incidental effect of its purpose. DoF’s assessment concluded that the revision of policy proposals provided a positive policy outcome in the targeted area without any adverse differential effects on gender groups and that these age-based effects are minor, incidental to the imperative to remove unlawful age-based discrimination and do not constitute an adverse differential impact on any of the Section 75 groups.

The equality screening analysis will be reviewed based on responses received during the consultation.

**Policy impact assessment**

HM Treasury’s impact assessment for the Act explains that by implementing the measures, the government’s intention is to avoid any uncertainty which might otherwise result from relying simply upon any automatic effect equality legislation may have, or from leaving it to courts or tribunals to make orders in respect of individual cases. The Act ensures that the provisions apply to all in scope members equally, whether they received full protection or not or were claimants and non-claimants. The core measures in the Act mean all public service workers eligible for a pension would accrue benefits from 1 April 2022 under their respective new schemes. Therefore, from this point, there will be a single pension scheme for all active members in each workforce group, thereby ensuring equal treatment. None of the public service pension reform measures in the Act, or the consequential amendments to schemes regulations proposed in this consultation, have a regulatory impact on businesses.

This is because the core measures of the Act limit the scope strictly to public service pensions, although the measures may have an impact on:

• administrators as certain pension schemes are administered by private companies • private sector employers that participate in public service pension schemes

Any increase in costs to the private sector would be because of fulfilling government procured contracts and not because of any imposed regulatory change.

**Department of Health**

Section 75 of the Northern Ireland Act 1998 requires the Department of Health, in carrying out its functions, powers and duties, to have due regard to the need to promote equality of opportunity: between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; between men and women generally; between persons with a disability and persons without; and between persons with dependants and persons without.

The Department’s Equality Screening initial conclusion has determined that these proposed changes do not differentially impact on any of the Section 75 groups.

1. **Conclusion, how to respond and next steps**

The changes to HSC Pension Schemes Regulations (Northern Ireland) proposed in this consultation are necessary to facilitate implementation of the requirements of the Public Service Pensions and Judicial Offices Act. Taking account of feedback from this consultation, the department expects to lay finalised regulations before the Northern Ireland Assembly in time for the provisions to come into force on 1 October 2023. The scheme administrator will write to all members who are affected by these changes. There is no action that members need to take in advance.

* 1. **How to respond**

Comments on the proposals and draft legislation can be submitted:

By email to:

[modernisation@health-ni.gov.uk](mailto:modernisation@health-ni.gov.uk)

By post:

HSC Pensions Policy Team Department of Health

Waterside House

75 Duke Street

Derry/Londonderry

BT47 6 FP

The consultation will close at midnight on **30 June 2023.**

* 1. **Confidentiality of information**

For this consultation, we may publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full. For more information about what we do with personal data please see our consultation privacy notice. Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the UK Information the Department receives, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 26 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004(EIR); however all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation (UK GDPR) (EU) 2016/679. If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why you regard the information you have provided as confidential, so that this may be considered if the Department should receive a request for the information under the FOIA or EIR.

**ANNEX A**

**CONSULTATION RESPONSE FORM**

**CONSULTATION**

**HSC Pension Scheme – proposed amendments to scheme regulations - The Health and Social Care Pension Schemes (Remediable Service) Regulations (Northern Ireland) 2023.**

(Please complete and return to the address at the end of the form to ensure that we handle your response appropriately).

**1. Name/Organisation**

**Organisation Name**

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**Title**

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|  |

**Surname**

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|  |

**Forename**

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***2.* Postal Address**

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|  | | |
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|  | | |
| **Postcode** | **Phone** |  |
| **Email** | | |

***3*. Permissions - I am responding as…** (Please complete either sections (a), (b) and (d) or sections (c) and (d):

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  | **Individual** | | | | **or** | **Group/Organisation** | | | |  |  |  |
|  |  |  |  |  |  | | | | |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **(a)** | Do you agree to your response being made available to the public (in the Assembly library and/or on the Assembly web site)?  ***Please state yes or no:*** | | | | | |  | **(c)** | The name and address of your organisation ***will be*** made available to the public (in the Assembly library and/or on the Assembly web site). | | | | | |
| **(b)** | Where confidentiality is not requested, we will make your responses available to the public on the following basis | | | | | |  |  | Are you content for your ***response*** to be made available? | | | | | |
|  | ***Please state yes to one of the following:*** | | | | | |  |  | ***Please state yes or no: ……………*** | | | | | |
|  | Yes, make my response, name and address all available | | | | | **..........** |  |  |  | | | | |  |
|  |  | | | | | ***or*** |  |  |  | | | | |  |
|  | Yes, make my response available, but not my name and address | | | | | **……...** |  |  |  | | | | |  |
|  |  | | | | | ***or*** |  |  |  | | | | |  |
|  | Yes, make my response and name available, but not my address | | | | | **………** |  |  |  | | | | |  |
|  |  | | | | |  |  |  |  | | | | |  |
| **(d)** | We may share your response internally with other Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Department of Health to contact you again in relation to this consultation exercise?  ***Please state yes or no: ……………………………………….*** | | | | | | | | | | | | | |

ABOUT YOU

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| I am responding …  as a scheme member  on behalf of an Employer Organisation  on behalf of a Trade Union/Staff Association  other (please specify) |

|  |
| --- |
| What is your gender?    Female  Male  Other  Do not wish to say |

|  |
| --- |
| I am employed as…  an administrator  a dentist  a doctor  a general practitioner  a junior doctor  a manager  a nurse  I’m retired  other (please specify) |

|  |
| --- |
| What is your working pattern?  I work part-time  I work full- time  Not applicable |

**CONSULTATION COMMENTS**

Please use this space to provide any comments on the amendments.

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| --- |
| Comments: |