



Department  
for Education

# **Teachers' Pension Scheme Transitional Protection Regulations Consultation**

**Launch date 27 March 2023**

**Respond by 4 June 2023**

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## Introduction

1. The Teachers' Pension Scheme (TPS) provides pension and other benefits to teachers in England and Wales. There is a legacy final salary scheme with two sections, with normal pension ages of 60 and 65 (depending on when the member joined), and a reformed career average scheme with a normal pension age equal to State Pension Age or 65 (whichever is higher).
2. The legacy scheme closed to any further accrual by any members on 31 March 2022. All active members of the TPS are now in the reformed scheme and it is this scheme that all new members will join.
3. As well as an annual pension payable from when a member reaches their scheme pension age, there are other provisions such as ill-health pension, death benefits including payment of a death grant in respect of those who die whilst they are still teaching and ongoing survivor pensions regardless of when the member dies. There are various scheme flexibilities which allow members to accrue more pension, convert some pension entitlement to a lump sum, retire early etc.
4. If an individual is employed by a participating employer in a predominantly teaching role (and roles akin to teaching such as lecturing), and is between the ages of 16-75, they are likely to be eligible for enrolment into the TPS.
5. The scheme covers a range of establishments in the education sector which includes academies, maintained schools, further education colleges and certain universities ('post-1992' universities). Independent schools do not automatically participate in the TPS, but they are eligible to apply to join.
6. Member and employer contributions fund the TPS, with the rules set out in regulations. The legacy scheme rules are set out in the Teachers' Pensions Regulations 2010 (the 2010 regulations) ([SI 2010/990](#)). The reformed scheme rules are set out in the Teachers' Pension Scheme Regulations 2014 (the 2014 regulations) ([SI 2014/512](#)).

7. The Department for Education (the Department) is consulting on a draft statutory instrument, referred to in this document as the draft regulations, which would introduce changes to the rules of the England and Wales TPS.

## Who this is for?

8. This consultation focuses on the TPS, which provides a pension for participating teachers and other eligible staff working in the education sector in England and Wales.
9. The Department has a published list of organisations that it would expect to consult with on proposed scheme changes and those on the list will be contacted. The list includes member representatives, TPS employers and other sector bodies.

## Issue Date

10. The consultation was issued on 27 March 2023.

## Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team by emailing [tps.consultations@education.gov.uk](mailto:tps.consultations@education.gov.uk).

11. If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email :-

[Consultations.Coordinator@education.gov.uk](mailto:Consultations.Coordinator@education.gov.uk) or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

## Additional Copies

12. Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

## Background and context

13. When reformed public service pension schemes were introduced in 2015, transitional protection arrangements allowed older workers to continue building pension in the legacy final salary schemes whilst younger workers were moved into reformed career average schemes. Following a legal challenge in the McCloud case, the Court of Appeal found that this difference in treatment in the transitional arrangements amounted to age discrimination. The Government has enacted the [Public Service Pensions and Judicial Offices Act 2022](#) (the Act) to implement changes to remedy the age discrimination that was identified.
14. The remedy consists of two parts or phases. The first part ensures equal treatment of all members from the end of the remedy period which was achieved by moving all remaining active members of the legacy scheme into the reformed scheme on 1 April 2022.
15. The second part of the remedy seeks to remove the difference in treatment that was caused by the transitional protection provisions by rolling back reformed scheme service during the remedy period to the legacy scheme and providing eligible members with a choice over the set of benefits (those that would have been accrued in the legacy scheme or the equivalent of those that would have been accrued in the reformed scheme) that they wish to receive for their service during the remedy period. The remedy period is 1 April 2015 – 31 March 2022, which is the period during which some members were treated differently according to their age.
16. Members who are eligible for the remedy are those who were members of the legacy scheme on or before 31 March 2012 (when the reforms were announced) and continued to be in pensionable service at some point during the remedy period without having had a disqualifying break in service. More detailed information concerning the scheme reforms and McCloud judgment is provided in subsequent sections of this document.

17. The Department is consulting on draft regulations making changes to the TPS rules which are necessary to implement the second phase of the remedy. The regulations contain consequential and procedural provisions as required by the Act.

## Consultation questions

18. The Department welcomes comments and views on the proposals set out in this document and the draft regulations. Please refer to the consultation questions on page 77 if you wish to respond.

## Respond online

19. To help us analyse the responses please use the online system. Visit [www.education.gov.uk/consultations](http://www.education.gov.uk/consultations) to submit your response.

## Other ways to respond

20. If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email or post it.

### **By email**

[tps.consultations@education.gov.uk](mailto:tps.consultations@education.gov.uk)

### **By post**

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Bishopsgate House (3<sup>rd</sup> Floor)  
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## Deadline

21. The consultation closes at 23:55 on 4 June 2023.

## The McCloud case

### Public service pension scheme reforms and the Court of Appeal judgment

22. In 2010, the then 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.
23. The IPSPC published its [final report](#) in 2011, setting out recommendations to reform public service pensions to better balance the interests of taxpayers, employers and members. The Government accepted the IPSPC's recommendations as the basis for discussions with public service workers, trades unions and other representative bodies.
24. In November 2011, the Government published a [Command Paper](#) setting out the Government's framework for reform of the public service schemes. Further discussions were undertaken with each of the workforces to develop scheme design proposals.
25. In April 2015, reformed schemes were introduced for the main workforces – teachers, the NHS, the armed forces, firefighters, police, judiciary and civil service - following similar reforms for local government workers in 2014. The reforms were implemented by regulations made under the [Public Service Pensions Act 2013](#).
26. As part of the reforms, members within 10 years of their scheme normal pension age (protected members) remained wholly in the legacy pension schemes. Members within 10-13.5 years of their scheme normal pension age (tapered protection members) remained partially in the legacy pension schemes and transitioned to the reformed schemes on a specific date between 1 April 2015 and 31 March 2022. Members more than 13.5 years from reaching their scheme normal pension age (unprotected members)



moved to the reformed scheme on their first date of service from 1 April 2015. The transitional protection provided to protected and tapered protected members was not a recommendation of the IPSPC but was agreed following discussions with member representatives.

27. In December 2018 the Court of Appeal found in *Lord Chancellor and Secretary of State for Justice v McCloud, Secretary of State for the Home Department v Sargeant* [\[2018\] EWCA Civ 2844](#) (referred to as the McCloud judgment) that 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 refused the Government permission to appeal the Court of Appeal's judgment.
28. On 15 July 2019 the Chief Secretary to the Treasury made a [Written Ministerial Statement](#) setting 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 accordingly.

## The Remedy

29. On 16 July 2020, the Government published a [consultation](#) containing two proposed options for retrospectively removing the discrimination suffered by members who were not eligible for transitional protection due to their age. The consultation also proposed that the legacy public service pension schemes would close to all remaining members on 31 March 2022. This was the 'prospective remedy' which is not the subject of this consultation.
30. The Government proposed that members should be given a choice of which scheme benefits they wish to receive during the period from when the reformed schemes were introduced to the date that the legacy schemes closed. This would apply equally to members who benefitted from transitional protection and those who did not. Amongst other issues,

the 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.

31. In February 2021 the Government published its [response](#), confirming that the legacy schemes would close on 31 March 2022 and affected members would be given a choice of which pension benefits (legacy or reformed) they wish to receive when those benefits are paid. That choice will apply to all of their remediable service and members are not permitted to take a combination of legacy scheme and reformed scheme benefits for this period. This means that those with tapered protection will have a choice between legacy and reformed scheme and cannot retain 'mixed' benefits, otherwise there would continue to be a difference in treatment due to age.
32. In the [Queen's Speech](#) on 11 May 2021 the Government announced its intention to bring forward the legislation to implement retrospective changes to remedy the discrimination that arose 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.
33. The [Public Service Pensions and Judicial Offices Bill](#) was introduced into the House of Lords on 19 July 2021 putting 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. Royal Assent was received on 10 March 2022.

## **The Public Service Pensions and Judicial Offices Act 2022**

34. The Act makes provision to remedy the discrimination arising from the transitional protection introduced into the public service pension schemes in 2015.
35. Certain elements of the remedy are achieved solely by provisions in the Act including who is eligible for the remedy and for reformed scheme

service to be 'rolled back' to the legacy scheme. The Act also gives schemes the power to make provisions in regulations to deliver other aspects of the remedy.

## Eligibility

36. To be eligible for the remedy a member must have 'remediable service.' Section 1 of the Act sets out that for service to be 'remediable service': -
- a) it relates to a period when the discrimination arose (1 April 2015 - 31 March 2022);
  - b) the member was eligible for transitional protection or would have been eligible for transitional protection but for the discriminatory requirement in the schemes;
  - c) the member was, on or before 31 March 2012, a member of a legacy scheme;
  - d) the member does not have a disqualifying break in service (breaks of more than 5 years).
37. Members with service that meets the criteria are eligible for the remedy. This includes active, deferred, retired and deceased members irrespective of whether they benefited wholly or partially from transitional protection.

## Rollback

38. From 1 October 2023 the unprotected and tapered protected members who accrued benefits between 1 April 2015 and 31 March 2022 in a reformed scheme will have that period of service returned to the relevant legacy scheme. This will result in all affected members having their remediable service in the legacy scheme.
39. As explained in paragraph 1 of this document, the TPS legacy scheme has two sections. The member's service will be returned to the section of the legacy scheme in which the member most recently had service - i.e. the

section that the member was in immediately prior to moving to their reformed scheme from 1 April 2015.

40. The Act also makes provision for 'Excess Teacher Service' to be included in the definition of 'remediable service'. An explanation of Excess Teacher Service is included in paragraphs 179-187 and 300-309.

## **Need for scheme specific regulations**

41. The previous section has described how under the provisions of the Act, all service accrued from 1 April 2022 in the TPS is in the reformed scheme.
42. On 1 October 2023, members who are eligible for the remedy will have service between 1 April 2015 and 31 March 2022 'rolled back' to the legacy scheme.
43. When those members retire, they will be given a choice as to whether their remedy period service is to be treated as legacy or reformed scheme. This is because one scheme will not always be better than the other scheme for members – which is most beneficial will depend on each individual's circumstances up to retirement. For this reason, most members will make their choice at the point immediately before retirement so that their decision is based on all relevant information.
44. The Act also provides that those who have already taken retirement benefits before 1 October 2023 will be given their choice as soon as possible after this date. Beneficiaries of members who have died before this date will also be given a choice as soon as possible.
45. TPS regulations are needed to give effect to the requirements of the Act and to address other consequential matters arising from rollback and the member's choice of benefits. Regulations amend scheme rules to implement the remedy and provide authority for the administrator to apply the changes.

46. One set of regulations, the [Teachers' Pension Scheme \(Amendment\) Regulations 2022](#), provided for the closure of the legacy scheme on 31 March 2022 and moved all remaining active members to the reformed scheme on 1 April 2022 (phase one). This followed an earlier [consultation](#) by the Department which was held from 30 November 2021 to 21 January 2022 which dealt with the prospective phase of the remedy. The [consultation response](#) was published on 17 March 2022.
47. A second set of regulations is needed for phase two, to allow the TPS to:
- Offer eligible members a choice over the set of benefits they wish to receive in respect of remediable service during the remedy period of 1 April 2015 to 31 March 2022.
  - Deal with the consequential effects of rollback and member choices on issues such as scheme flexibilities, transfers and orders made during divorce/dissolution proceedings that arose during the remedy period.
  - Correct any overpayment or underpayment of pension benefits or member contributions that arise as a consequence of rollback or a member's choice of retirement benefits.
  - Address any special cases that arise, for example ill-health retirement reassessments or the protection of child pensions in payment.
  - Facilitate the payment of appropriate compensation to address financial losses or tax losses arising from the discrimination or operation of the remedy.
48. This consultation relates to the second set of regulations.

## TPS retrospective regulations

49. This section explains how the Department proposes to deliver the consequential and procedural changes required as a result of the Act through scheme regulations.
50. The retrospective remedy is being delivered by introducing new TPS regulations rather than making regulations that amend the existing 2010 and 2014 regulations. The retrospective regulations only apply to those members who have remediable service i.e. members who are in scope of the remedy (see paragraphs 36-37).
51. The explanation of the draft regulations and how they would provide eligible members with their choice of benefits for the remedy period and other consequential changes relating to rollback and/or a member's choice of retirement benefits is divided into two parts.
52. Part 1 addresses how the Department proposes regulatory changes would affect active and deferred members of the scheme. An active member is someone who has benefits in the scheme and is currently paying contributions. A deferred member is someone who has retained benefits in the scheme but is not currently paying contributions. These are referred to as 'Deferred Choice' members as they will make a deferred decision about their remediable retirement benefits at the point of retirement. Paragraphs 54-187 explain the proposed approach for Deferred Choice members.
53. Part 2 addresses how the Department proposes that regulatory changes would affect members of the scheme who have retired or died before the remedy takes effect on 1 October 2023 and therefore the member (or beneficiary) is already in receipt of their TPS benefits. These members are referred to as 'Immediate Choice' members as the circumstances which determine the value of each set of benefits will have already transpired. They will make a choice about their remediable retirement benefits as soon as possible after 1 October 2023. Paragraphs 188-309 explain the proposed approach for Immediate Choice members.

## Part 1 - Deferred Choice Members

### Overview

54. Deferred Choice members are those who are active or deferred on 1 October 2023 and have not taken any retirement benefits relating to remediable service from the TPS.
55. These members will be provided with statements which will include details of remedy period benefits according to whether they are taken as legacy scheme or (equivalent) reformed scheme. The statements are provided for information purposes only, however when these members are ready to retire they will receive a further statement which will include final benefit calculations under the legacy and reformed schemes.
56. Some Deferred Choice members with service in the reformed scheme during the remedy period will need to make decisions following the rollback of remediable service on 1 October 2023. This includes members who have worked overtime or have Excess Teacher Service (see paragraphs 179-187) resulting in overpaid pension contributions or where members have taken out scheme flexibilities. Draft regulations set out how the Department proposes to address such issues.
57. The consultation also covers areas such as Ill-Health Retirement reassessments and how the TPS proposes to manage any overpayment of pension contributions.

## Deferred Choice Underpin and Remediable Service Statements

58. As a result of section 2(1) of the Act, all affected members will be deemed to be in the legacy scheme for the remedy period. As some members may have been better off in the reformed scheme, they will be given the opportunity to elect to receive the equivalent of what they would have accrued in the reformed scheme for the remedy period.
59. For active and deferred members, this will be a Deferred Choice (DC) and it ensures that the decision on which scheme benefits the member chooses is based on all relevant information that will determine the amount of pension payable under each scheme, such as career progression. That information will be provided in a Remediable Service Statement that will be issued to the member (or decision maker).
60. A DC decision will be given to all eligible active and deferred members when they apply for retirement benefits. Where an active or deferred member dies after 1 October 2023, this choice will be presented to the eligible decision maker (paragraphs 71-74).

## Remediable Service Statements

61. Provision is needed for the scheme to provide eligible members with a Remediable Service Statement (RSS) in accordance with s29 of the Act and [HM Treasury Directions](#).
62. RSSs are not currently provided to members of the TPS and are being introduced as part of the remedy to provide the details of an eligible member's options.
63. The RSS will display a member's benefits accrued during the remedy period calculated under both the legacy scheme and the reformed scheme. This will ensure that eligible members (or decision makers in the case of deceased members) have sufficient information to make an



informed decision. The RSS will be in a similar format to the annual benefit statement and will include relevant details relating to each member. The RSS will provide information about when and how a member will make their DC decision.

64. The Act provides that an RSS must be provided to all eligible members within 18 months of 1 October 2023 (or such later day as the scheme manager considers reasonable).
65. Active members of the scheme will subsequently be provided with an RSS annually. Deferred members will be provided with one RSS per year, within 3 months of submitting a written request. These RSSs will be combined with the member's Annual Benefits Statement.
66. An RSS will also be provided to active and deferred members when they apply for retirement benefits and to an eligible decision maker when the scheme is notified of an eligible member's death.

*Draft regulation 3 applies.*

## Making a DCU decision at retirement

67. Having applied for retirement and received their retirement RSS, the member must make a DC decision before the end of the election period – this is within 12 months of the RSS being issued. A period of 12 months is to allow the member sufficient time to consider their options and seek independent financial advice should they wish to do so.
68. S.10 of the Act provides that a member may make an election for equivalent reformed scheme benefits before the end of the election period. The Act provides that an election for reformed scheme benefits takes effect immediately before the member becomes a pensioner member of the scheme. Where a member decides not to make an election for reformed scheme benefits (i.e. they choose legacy scheme benefits) the wording of the Act means that this 'decision' does not take effect until the end of the election period. The Department has therefore included provision in the draft regulations for a 'Deferred Choice Decision.' That

decision will be that a member either (i) elects reformed scheme benefits or (ii) does not elect reformed scheme benefits and once that is communicated to the scheme the choice will take effect. This means that where a member chooses legacy scheme benefits that decision can be implemented without having to wait until the election period has ended.

69. A member may subsequently revoke their decision and make a different choice at any point before retirement benefits become payable.
70. Where the scheme administrator receives notice of a DC member's death up to two weeks before the first payment of retirement benefits is due to be made to the member (or later if deemed appropriate in the circumstances), any DC decision communicated by the member is revoked and is treated as never having been made. In this situation an RSS would be issued to the eligible decision maker and the decision process and time period are reset.

*Draft regulations 11 and 12 apply.*

## DC decision to be made by an eligible decision maker

71. Where an active or deferred member dies after 1 October 2023 but before making their DC decision (or before benefits have become payable if they had made a decision), an eligible decision maker will be issued with an RSS. They will then have 12 months to confirm their decision.
72. A DC decision communicated by the eligible decision maker will take effect immediately and cannot be revoked.
73. The draft regulations also make provision for the payment of death benefits and lump sums when a DC member dies after 1 October 2023 but before their decision has been communicated to the scheme.
74. These benefits will be calculated under both the legacy scheme and reformed scheme rules and the lower of those amounts would be paid (in order to prevent creating a potential overpayment) pending a decision by the decision maker. This would be subject to any relevant adjustment.

*Draft regulation 13 applies.*

## Deemed Election

75. If a DC member does not communicate their decision before the end of the election period, no retirement benefits will become payable.
76. The retirement application process is instigated by the member and they must provide the necessary information requested by the scheme manager as part of the application process. The member's decision will become an additional piece of information required to complete the application before benefits can be put into payment.
77. Where notice of the death of a DC member is received, the choice will be the responsibility of the eligible decision maker. Where the eligible decision maker does not communicate a decision before the end of the election period, the draft regulations allow the scheme to deem that a s10 election for reformed scheme benefits has been made where such an election would result in the higher monetary value, as calculated by the scheme.
78. The Department has included this provision because in the absence of a DC decision or deemed election, beneficiaries who are not the decision maker may not receive the benefits that they could be entitled to.
79. Where reformed scheme benefits produce the higher monetary value, the scheme will deem that an election for reformed scheme benefits has been made for the remedy period. Alternatively, where legacy scheme benefits produce the higher monetary value, there will be no deemed election and legacy scheme benefits will apply to the members' remediable service.
80. In order to determine which set of benefits would produce the higher monetary value, the scheme administrator would use the Benefit Crystallisation Event value to assess the Lifetime Allowance figure (also referred to as the 'Scheme Fund'). This is a calculation that is completed in business-as-usual processes for all members for pensions tax purposes.

Details of how this value is calculated can be found in the [Annual Allowance and Lifetime Allowance section of the TPS website.](#)

*Draft regulation 14 applies.*

## Eligible Decision Maker for Deceased Members

81. The draft regulations include a framework to identify the different categories of eligible decision-maker and outline the conditions to be met for each type. In most cases that decision maker would be the surviving adult (the member's spouse, civil partner or eligible cohabiting partner). There are some circumstances where there may be multiple beneficiaries, and therefore the schedule provides a clear route to identify who the eligible decision maker would be. Where no decision maker can be agreed or identified, the scheme manager would be the decision maker.

*Schedule 1 to the draft regulations sets out how the decision maker is identified.*

## Opted-out service elections

82. Provision is made for members who opted-out of the TPS as a result of the identified discrimination to have that service during the remedy period reinstated.
83. The member must complete an application within 12 months of section 2(1) coming into force on 1 October 2023. The decision to opt-out must have been communicated to the scheme on or after 10 March 2012. This was the date on which the reforms to the public service pension schemes were announced which may have prompted some members to opt-out of the scheme. Though a decision to opt-out of the scheme may pre-date 1 April 2015 (in anticipation of the changes) only service during the remedy period can be reinstated under these provisions. The member will also need to provide evidence that demonstrates that they opted-out of the scheme because of the discrimination.
84. The scheme manager will consider the application and where the claim is accepted an RSS will be issued to the member. They would then have 12 months to confirm their election to have opted out service reinstated. The RSS will detail the contributions owed by the member for the opted-out service and the options available to pay those contributions. Where the member confirms that they wish to make an election to have their opted-out service reinstated they will then be treated in the same way as eligible members.
85. If the member's application is rejected by the scheme administrator, they could submit an appeal via the existing [Internal Dispute Resolution Procedure process](#).

*Draft regulation 5 applies.*

## Divorce and Dissolution of Civil Partnership

86. Members of the TPS may be subject to a Pension Sharing Order (PSO) as a result of divorce or dissolution proceedings. Before a PSO can be made, the court requires that the member requests an estimated Cash Equivalent Transfer Value (CETV) from the scheme. The CETV is the value of accrued benefits within each scheme, which the court uses when calculating the total value of assets. The CETV is calculated by the scheme using guidance and factors provided by the Government Actuary's Department (GAD). Further details on PSOs can be found in the [TPS Divorce Factsheet](#).
87. Where a member of the scheme is subject to a PSO in relation to their remediable service, the impact of the remedy on the PSO will need to be taken into account.
88. This will affect both the Pension Credit Member (the ex-spouse or civil partner of a scheme member – the PCM) and the Pension Debit Member (the scheme member who is subject to divorce or dissolution of civil partnership proceedings – the PDM).

## PSO calculated before 1 October 2023

### Pension Credit Member

89. The CETV used for any PSO involving remediable service that has been implemented before 1 October 2023 will need to be recalculated. This is because as a result of the remedy, it is possible that the value of the pension at the time of the divorce/dissolution would have been different had the PDM always been a member of the alternative scheme for the remedy period. This means that though the percentage quoted in the PSO remains the same, the actual amount credited to the pension credit member may have been different. Where the PDM is a protected or

unprotected member, the pension credit will be recalculated in the alternative scheme. If that alternative value is higher, an additional credit would be awarded to the PCM and will be applied to the same scheme that the existing pension credit currently resides. Where the alternative scheme value is lower, there would be no change to the existing pension credit value (to ensure the PCM is not disadvantaged). An exception to this is where the PDM has mixed service (tapered protection members who had service in both the legacy and reformed schemes during the remedy period) which is explored in paragraphs 90 and 91.

90. Where the PDM was a tapered protection member and therefore had mixed service during the remedy period, the values will be recalculated in relation to the remediable service being entirely in the legacy scheme and entirely in the reformed scheme. This is because the Act does not allow for remediable service to be in both the legacy and the reformed schemes.
91. One or both values could produce a higher amount which would be awarded to the PCM as a credit. Conversely, if both of these values would produce a lower amount, the pension credit would need to be reduced.

*Draft regulations 18, 19 and 20 apply.*

92. Within 12 months of section 2(1) coming into force, the scheme manager must provide PCMs with a statement setting out any alternative credit amount and any credit adjustment.
93. If the PCM has credits in both schemes, the amount will be applied to the account that would be most beneficial to the PCM. If the PCM does not want the credit to be applied in such a way, they must notify the scheme administrator according to the instructions to be provided within the statement, within 6 months of its issue.

## Pension Debit Member

94. The calculation for pension debits will be revisited to ensure that the debit is calculated as at the PSO valuation date based on the PDM's remediable

service in both the legacy and reformed schemes. The member's RSS will present the relevant calculations taking into account debits in both schemes. The debit that will be applied will be based upon the members Deferred Choice decision (or any deemed election for reformed scheme benefits).

*Draft regulations 18 and 21 apply.*

## PSOs calculated after 1 October 2023

95. Where a PSO is calculated for the first time after 1 October 2023 and the PDM has not made their DCU decision, the scheme manager will provide the court with the higher of the CETVs calculated under both legacy and reformed scheme rules. The value for the PCM will be calculated in line with the highest value possible. Where the PDM has made their DCU decision the CETV provided to the court should reflect the value of the benefits chosen by the PDM.
96. For the PDM, the scheme will include details of the debit calculated under both the legacy and reformed scheme rules and provide these values in the member's RSS. After their Deferred Choice is confirmed, the member's benefits will be paid and the relevant debit reflecting this choice applied to their pension account.

*Draft regulations 23 and 24 apply.*

## Divorce/dissolution arrangements other than PSOs

97. Where the value of the remediable rights of a member must be determined for the purpose of divorce or dissolution proceedings after 1 October 2023, the value of the rights will be the greater of legacy or reformed scheme service.

*Draft regulation 25 applies.*



## Scheme Flexibilities

98. Under current TPS arrangements, members can choose to increase their scheme benefits by purchasing scheme flexibilities. Both legacy and reformed scheme regulations provide for Additional Pension Benefit (APB), whilst only reformed regulations allow for Faster Accrual and Buy-Out.
99. APB must be purchased in full units of £250 per annum and can be paid by a one-off lump sum or by monthly deductions from the member's salary in accordance with their age and current scheme. Any APB purchased is paid when the member takes their standard scheme retirement benefits and is actuarially adjusted as applicable. As with main scheme benefits, the member can choose to convert part of their annual APB into a one-off lump sum.
100. Members of the reformed scheme can elect to 'Buy-Out' the actuarial reduction that applies to pension benefits when retiring before Normal Pension Age (NPA). Members can make a Buy-Out election only in the first six months of entering that scheme. Contributions must then be paid as service is accrued throughout the member's career, or until the election is revoked.
101. Members of the reformed scheme can also elect to pay higher contributions to increase their pension accrual rate for a particular scheme year, known as Faster Accrual. An election must be made for each year, which runs from 1 April to 31 March. Members can improve the standard accrual rate of  $1/57^{\text{th}}$  of pensionable earnings to  $1/55^{\text{th}}$ ,  $1/50^{\text{th}}$  or  $1/45^{\text{th}}$ .
102. All flexibilities are calculated in line with factors and guidance provided by GAD. Further details on scheme flexibilities can be found in the [scheme flexibilities factsheet](#).

## Impact of the remedy

103. Some members have purchased flexibilities in the reformed scheme during the remedy period but, following rollback and in accordance with section 2(1) of the Act, will be treated as though they were always members of the legacy scheme. Any reformed scheme elections must also be managed.
104. The Act extinguishes the rights arising from reformed scheme flexibilities taken out during the remedy period and so these draft regulations provide for members to be offered alternative rights in the legacy scheme or compensation for those additional contributions that were made.
105. From 1 October 2023 the scheme administrator will begin to implement these changes and start to contact members with reformed scheme flexibilities to provide information regarding their options and alternative rights available in the legacy scheme.
106. The notice will provide details of how the member can make an election in relation to their reformed scheme flexibilities, the effects of their decision on their Deferred Choice options at the point of retirement and the time period in which an election must be made. The member will be notified that where no election is made before the end of the election period, the scheme will implement a default election and that the election is irrevocable.
107. The options members are to be provided with in relation to their reformed scheme flexibilities are: -
- a) Maintain their flexibility election: keeping the payments within the scheme which will be reconstructed as legacy scheme Additional Pension Benefit (APB); or
  - b) Cancel the flexibility election and receive an immediate compensation payment for the contributions paid; or

- c) Cancel the flexibility election (option b) but agree for the scheme to hold the compensation until the time of making their Deferred Choice.

108. Where a member chooses option (a), contributions paid will be reconstructed to purchase APB in the legacy scheme and any remaining payment plan agreed will continue without change. If the member elects for reformed scheme benefits for their DC at retirement, the rights will be varied to provide the equivalent reformed scheme flexibility benefit as originally taken out.
109. Where a member chooses option (b), the election will be completely extinguished, ceasing any agreed payment plan and they will receive compensation equivalent to the contributions paid to the scheme (plus applicable interest). The flexibility will not be included in the DC option presented at retirement.
110. Where a member chooses option (c), like option (b) the election is revoked and their payment plan would cease. Legacy APB would not be reconstructed and the applicable compensation would be held in the scheme until their DC. If at retirement the member elects to receive reformed scheme benefits, this will include the value of the reformed scheme flexibilities purchased between the date the flexibilities election was made and the date that payments ceased. If the member makes a choice for legacy scheme benefits, they will receive legacy scheme benefits and compensation equivalent to the contributions paid to the scheme for that reformed scheme flexibility.
111. Members can make a new election for reformed scheme flexibilities in accordance with existing scheme rules from 1 April 2022. Where a member wishes to make a Buy-Out election please refer to paragraphs 120-123.
112. Where a member does not communicate their choice to the scheme by the end of 6 months from issue of the notice, a default will be applied for reformed scheme flexibilities to be reconstructed into legacy scheme APB

(option a). This ensures the additional contributions paid by the member to the scheme provides an additional equivalent benefit and protects the original flexibility election where reformed benefits are taken at retirement.

113. Any election (or deemed election) in relation to reformed scheme flexibilities will be included in the member's benefit calculations and presented in their RSS.

*Draft regulations 27 and 28 apply.*

## Members who elect reformed scheme benefits at DCU

114. Where a member elects for reformed scheme benefits for the remedy period and they did not choose an immediate refund (option b) at rollback, they would receive benefits equivalent to those they would have received had their reformed scheme benefits not been extinguished.

115. This effectively means that where a member elects to have their reformed scheme benefits reconstructed to legacy scheme APB (option a), or where the member waives compensation for reformed scheme flexibility contributions until their DC decision (option c), their equivalent reformed scheme remediable service benefits will include the value of any reformed scheme flexibilities (subject to the amount of contributions paid).

116. Where a member purchased legacy scheme APB during the remedy period and elects reformed scheme benefits at DCU, they will have the following options: -

- (a) Reconstruct legacy scheme APB to equivalent reformed scheme APB; or
- (b) Cancel the election and receive an immediate compensation payment for the contributions paid.

117. These options will be displayed in the member's RSS.

*Draft regulations 34 – 40 apply.*

## Provision for members to pay voluntary contributions to the legacy scheme

118. The draft regulations also make provision for eligible members with remediable service to retrospectively purchase legacy scheme APB for the remedy period.
119. The member must be active or deferred and will need to satisfy the scheme manager that they would have entered into an arrangement to purchase legacy scheme APB if they had been in that scheme at the time. The request must be completed within 12 months from 1 October 2023 and draft regulations therefore require members to submit an application within 6 months. This is to allow sufficient time to consider the application and to complete payment arrangements.

*Draft regulation 41 applies.*

## Provision for members to purchase a Buy-Out election

120. Existing TPS regulations allow members to make an election to Buy-Out the actuarial reduction between age 65 and 68, that applies to pension benefits if the member retires before reaching their reformed scheme NPA. A member has 6 months from entering the reformed scheme to elect for this option.
121. Rollback provisions of the Act mean that all reformed scheme remediable service will be rolled back to the legacy scheme and therefore these members will have effectively not entered the reformed scheme until 1 April 2022. Under the existing rules on Buy-Out elections, the applicable window would therefore be from 1 April 2022 to 30 September 2022.
122. As roll back provisions in the Act and scheme specific regulations will not come into force until 1 October 2023, the window for affected members will have closed before members have had the opportunity to apply.

123. The draft regulations therefore make provision to create a new Buy-Out election window for eligible members to allow 6 months from 1 October 2023 for an application. This measure ensures equal treatment with protected members who had access to the Buy-Out window when they entered the reformed scheme on 1 April 2022. TPS communications alerted these members of the scheme closure and reformed scheme options in advance of moving to that scheme.

*Draft regulation 30 applies.*

## Transfers

124. Upon joining the TPS, members may wish to transfer pension from previous employment into the TPS, or conversely when a member leaves the TPS they may wish to transfer their TPS pension into another defined benefit scheme. Existing rules permit three methods of transfer in and out of the TPS: club transfer, Cash Equivalent Transfer Value (CETV) transfer and a bulk transfer.

### Club Transfer

125. The TPS is part of the Public Sector Transfer Club (the Club) which facilitates the movement of pension rights in the public sector. The Club enables members to transfer between participating schemes on the basis that the member will receive benefits of an equivalent value in the receiving scheme.

### CETV transfer (including non-club transfer)

126. A CETV transfer may take place in or out of the TPS where:

- a. A person joins the TPS from a non-Club scheme.
- b. A member changes employment and their new employer's scheme is not covered by the Club.
- c. A Club transfer is not possible, for example where the Club transfer criteria has not been met.

127. A CETV transfer is a transfer of the member's pension based on the calculated value of their accrued benefits. The transfer value is calculated using factors and guidance provided by GAD, with a separate CETV calculated for final salary accrual and career average accrual, as well as for any purchased flexibilities. These values are combined to produce a

total CETV, which is used by the receiving scheme to calculate benefits in that scheme.

## Bulk transfer

128. In the event of a compulsory transfer of members from one employer to another which offers a different type of defined benefit public service pension scheme (or broadly comparable), a bulk transfer may take place.

129. Further details on transfers can be found on the [TPS website](#).

## Impact of the remedy

130. As a result of the remedy, new TPS rules are required in respect of transfers into and out of the TPS which involve remediable service in a public service pension scheme (as defined in the Act). Draft regulations provide that when transfer values are being calculated, members with remediable service choose whether to use reformed scheme benefits or legacy scheme benefits for the remedy period.

## Transfers completed before 1 October 2023

131. All transfers involving remediable service completed before 1 October 2023 will be revisited as part of the remedy. This is to provide members with their DC decision which includes remediable transferred service.

## Remediable Service Statement and transferred out service

132. Where a member transferred remediable service rights out of the TPS, the scheme manager will provide a RSS. This will detail: -

- a) the value of any additional rights in respect of remediable service that the member would have been entitled to immediately prior to the transfer as a result of rollback,



- b) the options (if any) that are available in relation the treatment of those additional rights, and
- c) where there are any such options, the circumstances in which, and the process by which, an option may be chosen.

*Draft regulation 43 applies.*

## CETV transfers completed before 1 October 2023 (including non-club transfers)

133. Where a member transferred out of the TPS before 1 October 2023, the CETV calculated and provided to the receiving scheme will not have included information relating to the remedy. When regulations come into force, the scheme administrator will commence rectification activity and will revisit all remediable CETV calculations to take into account the member's remediable service.

134. Draft regulations provide that the TPS will calculate the transfer value of the member's remediable service under both the legacy and reformed scheme and if the value would have been higher in the alternative scheme the TPS will pay the additional amount to the receiving scheme where possible. Where the value cannot be paid, for example if the other scheme no longer exists, the member will receive compensation representing that amount.

135. The details of how to claim compensation will be included in the member's RSS in relation to transferred out service.

*Draft regulation 44 applies.*

136. Where a member transferred into the TPS from an affected public service pension scheme on a non-club basis before 1 October 2023, the CETV provided to the TPS will not have taken account of the remedy. As this transferred service is a period of remediable service, the TPS will be provided with the higher CETV from the sending scheme. The draft regulations require that this would be held by the TPS to include in

calculations under both legacy and reformed scheme rules, to implement when the member makes their DCU decision.

*Draft regulation 45 applies.*

## Club transfers completed before 1 October 2023

137. Where a member transferred remediable service into or out of the TPS and another public service pension scheme on a Club basis before 1 October 2023, they will continue to receive a choice as to whether to receive legacy or reformed scheme benefits in the receiving scheme.
138. When a member transferred out of the TPS on a Club basis before 1 October 2023, the transfer value will have been based on the member's accrual during the remedy period before implementation of the remedy. When regulations come into force, transfer values will be revisited to take into account the member's remediable service.
139. The draft regulations provide that the scheme will calculate transfer values of the remediable service under legacy and reformed schemes, in line with Club transfer rules. The TPS will provide the receiving scheme with both values, to be included in the member's RSS to inform their DCU decision.

*Draft regulation 48 applies.*

140. Where a member transferred into the TPS on a Club basis before 1 October 2023, the sending scheme will have provided the TPS with a transfer value based on the member's accrual during the remedy period. The sending scheme will revisit the transfer value calculating the value under both schemes. The TPS will then hold the two calculations on the member's record and apply those when calculating the retirement options.

*Draft regulation 49 applies.*

## Transfers completed after 1 October 2023

### CETV transfers (including non-club transfer)

141. Where a member transfers out of the TPS after 1 October 2023, to reflect the member's remediable service draft regulations provide that the TPS

will calculate the CETV under both legacy and reformed schemes for any remediable service and will pay the higher value to the receiving scheme.

*Draft regulation 46 applies.*

142. Where a member transfers into the TPS after 1 October 2023 on a CETV basis, the sending scheme will complete both CETV calculations and pay the higher value to the TPS.

*Draft regulation 47 applies.*

## Club transfers after 1 October 2023

143. Where a member transfers out of the TPS on a Club basis after 1 October 2023, draft regulations provide that the TPS will calculate the transfer value of the member's remediable service under both sections, in accordance with Club transfer rules. The receiving scheme will apply those values when calculating the retirement benefit options for their DC.

*Draft regulation 51 applies.*

144. Where a member transfers into the TPS on a Club basis after 1 October 2023, the sending scheme will provide the TPS with two transfer values calculated under both legacy and reformed scheme rules for the remedy period. The TPS will hold both values on record and apply these to the member options at retirement.

*Draft regulation 52 applies.*

## Bulk Transfers

145. Scheme data shows that there have been no bulk transfers involving the TPS during the remedy period. Should a bulk transfer involving remediable service occur in future, the TPS will follow the bulk transfer process using provisions in existing regulations. The calculation of remedy period benefits would be completed in line with the Club transfer approach, as outlined above.

## Ill-Health Retirement

146. The TPS rules make provision for members who are too ill to continue teaching to apply for ill-health retirement. Providing the member has qualified for retirement benefits, members can apply for ill-health retirement at any time before they reach their scheme NPA. To be eligible for ill-health retirement, an in-service member must meet either the Tier 1 or Tier 2 criteria. Where the member is out of service, Tier 2 criteria must be met for Tier 1 benefits to be paid. Further information about ill-health retirement can be found on the [TPS website](#).

### Impact of the remedy

147. Where a member applied for ill-health retirement during the remedy period and was rejected, they may in consequence have left teaching employment (becoming a deferred member) or remained an active member in pensionable service if they felt able to do so and wanted to continue working. These members may have been eligible for ill-health retirement in the alternative scheme if they had been able to apply to that scheme at the time. Therefore, in line with the approach of the remedy to remove the discrimination and provide choice to eligible members, the draft regulations make provision for such members to be reassessed against the alternative scheme ill-health retirement criteria which applied at the time they made their ill-health application. Details of the proposals and the relevant draft regulations are set out below.

### Determining whether a member meets the criteria in each scheme

148. Where an active or deferred member has applied for ill-health retirement in relation to their remediable service after 1 April 2015 and that application has been rejected before 1 October 2023, the scheme must reassess the member against the ill-health criteria of the alternative scheme.

149. Where a deferred member of the scheme makes an out of service ill-health retirement application after 1 April 2022 and the application is finally determined from 1 October 2023 onwards, the member must be assessed against the ill-health criteria of both the legacy and reformed schemes. This is because the member's service ended during their remediable service and had no pensionable service in the new scheme on or after 1 April 2022, therefore in line with their DCU the member may be entitled to a choice of legacy scheme ill-health benefits or new scheme ill-health benefits, depending on the assessment results.

*Draft regulation 61 applies.*

## Ill-health retirement benefits following reassessment

150. Where a member satisfies the alternative scheme criteria following reassessment, they will receive notice that they have the opportunity to make an immediate ill-health retirement election. The notice will detail the ill-health retirement benefits available to the member, the process by which the member can elect to take ill-health retirement benefits and the effects of making (or not making) an election.

151. If the member does not make an election before the end of the period of 3 months from the date that the notice is issued, then the proposal is that this ill-health retirement option will no longer be available to the member. This is because ill-health retirement is only granted where it is determined by the scheme manager that someone is incapable of undertaking either teaching work, or any other employment, depending on the category of ill-health applied for. If the member chooses not to elect to take ill-health retirement benefits available under the remedy proposal, they cannot be deemed as continuing to meet the ill-health retirement criteria indefinitely. Therefore, a cut-off is required and a 3-month period is considered sufficient for the member to make their decision about whether they want to retire on ill-health grounds.

152. Where this involves an active member, they must leave all pensionable employment before the end of the 3-month period (or a longer period deemed reasonable by the scheme manager). If they do not leave pensionable employment, an election for ill-health retirement benefits will be treated as if it has not been made. This proposal mirrors existing rules whereby if an active member wishes to retire on ill-health grounds they must leave all pensionable employment before receiving their ill-health benefits.

*Draft regulation 62 applies.*

## Ill-health retirement benefits payable in transitional cases

153. Some members may have applied for ill-health retirement before 1 April 2022, but the application may not have been decided until after this date and the member continued teaching. As they continued in pensionable employment after 1 April 2022, they will have transitioned to the reformed scheme before their application has been determined.

154. These members may satisfy the ill-health criteria of the reformed scheme and/or would have satisfied the criteria of the legacy scheme had the application been determined on or before 31 March 2022.

155. In such cases an ill-health underpin will operate meaning that the member's application will be tested against the ill-health criteria of both schemes. This means that the member will be entitled to receive ill-health benefits payable from the reformed scheme that are no less generous than those that would have been payable from the legacy scheme, had the member qualified for such benefits and retired on 31 March 2022.

156. Where the member meets the criteria of both schemes, they will receive benefits paid from the reformed scheme and the scheme will complete a calculation to determine how much the member would have been paid under the legacy scheme, calculated as at 31 March 2022. If legacy

scheme benefits would have been higher, the reformed scheme benefits will be uplifted to that amount.

157. Where the member only satisfies the legacy scheme ill-health criteria, they will receive ill-health retirement benefits payable from the reformed scheme calculated at the same rate as they would have been paid from the legacy scheme, as at 31 March 2022.

158. Where the member only satisfies the reformed scheme ill-health criteria, they will receive reformed scheme ill-health retirement benefits.

159. The ill-health underpin will also apply where a member's application for ill-health retirement was rejected under the reformed scheme before 1 April 2022 and the member continued to work beyond that date. The underpin will operate to allow these members to be reassessed under the legacy scheme ill-health retirement criteria and, if the criteria were to be met, they would be paid ill-health retirement benefits from the reformed scheme calculated at the rate that would have been payable under the legacy scheme rules as at 31 March 2022.

*Draft regulation 63 applies.*

## Liabilities and Payment

160. As a result of the application of the remedy and certain decisions that may be taken at rollback, there may have been overpayments of TPS contributions by some members.
161. Any amounts owed to a member will be clearly displayed in the member's RSS including details of how these amounts were calculated and the amount of interest that is applicable. The RSS will also detail how and when amounts owed to the member would be paid.
162. There may also be situations where a member successfully claims compensation from the scheme as a result of the discrimination or the application of the remedy (paragraphs see 167 to 169).

## Netting Off

163. Where amounts are owed to a member by the scheme and amounts are owed to the scheme by the member, these amounts will be adjusted by relevant tax amounts and then netted off to calculate a final liability.
164. Payments will have to be adjusted by relevant tax amounts because where a member has overpaid amounts to the scheme, they will have received too much tax relief on their pension contributions.

*Draft regulations 69 and 70 apply.*

## Interest

165. Interest will be applied to all amounts owed, whether this involves amounts owed to a member by the scheme, or to the scheme by a member. HM Treasury directions contain provisions in relation to the rates of interest applicable where certain liabilities arise. Interest on amounts owed to and from the scheme must be calculated in accordance with those directions. There are several reasons why interest must be applied to payments, but principally there is a requirement to as closely as possible reflect the position that the member may otherwise have been in. Generally, where



amounts are owed to a member the rate of interest is higher than the interest rate applied to amounts owed to the scheme.

166. Further information about the HM Treasury directions and rationale for the approach to applying interest can be found on [WWW.GOV.UK](http://WWW.GOV.UK).

*Draft regulation 66 applies.*

## Compensation

167. Provisions in the Act allow schemes to pay compensation to members for direct financial losses that have arisen as a result of the identified discrimination or the application of the remedy. The draft regulations allow affected members to make an application for compensation.

168. An application for compensation will be initiated by the member and they must provide evidence of their financial loss. Any compensation must be determined in line with the Act and relevant HM Treasury directions.

169. The TPS website will be updated to set out how a member can make an application for compensation and access the relevant application form to complete. It will also include details of how any appeals would be handled. The application form is not required for members to receive their choice of benefits for the remedy period. The scheme administrator will be contacting all affected members over a period of time from 1 October 2023 to provide relevant information.

*Draft regulation 68 applies.*

## Option to waive a liability owed to the member for an immediate correction

170. On 1 October 2023 all reformed scheme service will be rolled back to the legacy scheme, which could result in a member having paid contributions to the reformed scheme which are not pensionable in the legacy scheme. For example, this could arise in relation to overtime or Excess Teacher Service which is not pensionable in the LGPS (see paragraphs 179-187).

The default position is that overpaid contributions will be refunded to the member by way of compensation.

171. Draft regulations make provision however for the member to elect for this compensation to be 'waived' until they make their DC at retirement. Where a member thinks they are likely to choose reformed scheme benefits for their DC, this option seeks to avoid a potential double correction of contributions, whereby they receive compensation at rollback which would then need to be repaid if they choose reformed scheme benefits.
172. The scheme will maintain a record of the member's choice for the scheme to hold contributions, so that where they choose reformed scheme benefits at retirement benefit calculations will include relevant service.
173. Should the member choose legacy scheme benefits at retirement a compensation payment will be made for the overpaid contributions (with applicable interest).
174. The member would have 6 months from being provided with notice that they are owed compensation for overpaid contributions to confirm their agreement for that compensation to be waived until their DC. If confirmation is not received by the scheme in the given period, the compensation will be paid with immediate effect.

*Draft regulation 72 applies.*

## Amounts owed by the scheme

175. The scheme will pay any liability owed to the member as soon as reasonably practicable, unless the member chooses to waive the compensation for the reasons detailed above.
176. Before an amount can be paid, the scheme may require the member to provide certain information, such as relevant bank details.

*Draft regulation 75 applies.*

## Other effects of the remedy that do not require regulations

177. There are a number of aspects of the remedy that generally do not require new regulations, however there will still be impacts that need to be explained to members and scheme employers. These are explained in the following sections.

### Abatement

178. Current scheme regulations on abatement will continue to apply to ensure consistent treatment of all members. For DC members, the RSS will detail how abatement rules would apply under both schemes if the member re-entered employment following retirement. Members will therefore be able to make an informed decision about re-entering pensionable employment and the impact, if any, of abatement.

### Excess Teacher Service

179. Where members have an additional teaching employment to a full-time teaching employment, it is not pensionable in the TPS legacy scheme. This non-pensionable service is referred to as Excess Teacher Service in this document.

180. Excess Teacher Service may be pensionable in the Local Government Pension Scheme (LGPS) if the employer at the time was also an accepted employer of LGPS. Where a member has Excess Teacher Service and their employer was not an LGPS employer, the service is not pensionable in the TPS legacy scheme or the LGPS.

181. Excess Teacher Service is pensionable in the TPS reformed scheme, therefore the issue does not affect employment from 1 April 2022, but the rollback of remediable service from the reformed scheme to the legacy scheme on 1 October 2023 will need to be addressed. The following paragraphs explain the Department's proposed approach.

182. On 1 October 2023 reformed scheme service will be rolled back to the legacy scheme. As Excess Teacher Service is not pensionable in the legacy section, it cannot be rolled back to that scheme.
183. Excess Teacher Service is included in the definition of remediable service allowing it to be rolled back to the appropriate public service pension scheme (i.e. the LGPS) where appropriate. This roll back will happen automatically if the member would have been eligible to join the LGPS (i.e. their employer was an LGPS employer for the relevant period of employment). The Excess Teacher Service will then be subject to LGPS rules for the remedy.
184. Where a member's Excess Teacher Service was not pensionable in the LGPS either (i.e. because their employer was not an accepted employer of the LGPS), the provisions explained in paragraphs 170-174 of this consultation will apply. Effectively, the member would be entitled to be paid compensation for the Excess Teacher Service member contributions.
185. Where Excess Teacher Service is moved into the LGPS, active members will have the option under existing processes to transfer the LGPS service into the TPS reformed scheme. A provision is made in the draft regulations to give members 12 months from the issue of their RSS to transfer LGPS service. This option is no longer available where a member takes retirement benefits from the TPS before a transfer is complete.

*Draft regulation 53 applies.*

186. The Department acknowledges that this is a complex policy area and is working closely with officials from the Department for Levelling Up, Housing and Communities, which is responsible for the LGPS, in order to ensure that clear communications and processes will be in place for affected members and employers.
187. There may be further consequential changes to TPS regulations required in relation to Excess Teacher Service to fully achieve the intended policy as described. If relevant those would be addressed in the Department's consultation response.

## Part 2 - Immediate Choice Members

### Overview

188. Immediate Choice members are those members who have service during the remedy period and have retired or died before 1 October 2023. These members (or their beneficiaries) are already in receipt of pension benefits.
189. The benefits paid to retired members (or beneficiaries of deceased members) will not change when relevant legislation comes into force on 1 October 2023. Although reformed scheme service accrued during the remedy period will legally belong in the legacy scheme, this rollback will not take effect until the Immediate Choice (IC) decision is taken.
190. IC members will be provided with Remediable Service Statements (RSS) which will include details of remedy period benefits as if accrued in both the legacy and reformed schemes. Members will use the information provided in their RSS to make an IC decision about which set of benefits they wish to choose for the remedy period. The draft regulations make provision about who can make an IC decision and the timescales for, and effect of, that decision.
191. The draft regulations provide for how matters such as transfers, scheme flexibilities and orders made during divorce/dissolution proceedings relating to a member's remediable service will be managed to ensure that benefit calculations take the remedy into account. The draft regulations also cover areas such as ill-health retirement, child pensions in payment and how any over or underpayments of pension benefits and/or contributions are to be managed.

## Immediate Choice and Remediable Service Statements

192. As a result of section 2(1) of the Act, all affected members of the TPS will be deemed to be in the legacy scheme for the remedy period. As some members may have been better off in the reformed scheme, they will be given the opportunity to elect to receive equivalent reformed scheme benefits for the remedy period. The choice will relate to all of the member's remediable service. A member cannot receive a combination of legacy and reformed scheme benefits for service during the remedy period.
193. For members who have retired or died during the remedy period, there will be an IC decision. The IC decision is provided via a combination of powers in the Act and the draft regulations (see paragraphs 199-201 for further details). In order for a member to make a decision, an RSS will be provided to the member.
194. Where a member has died before 1 October 2023, the IC decision will be made by the eligible decision maker. Further details on the eligible decision-maker can be found in paragraphs 202-203 of this document.

## Remediable Service Statements

195. Provision is needed for the scheme to provide eligible members with RSSs in accordance with section 29 of the Act and [HM Treasury Directions](#).
196. RSSs are not currently provided to members of the TPS and are being introduced as part of the remedy to provide the details of an eligible member's IC options.
197. The RSS will display a member's benefits accrued during the remedy period calculated under both the legacy scheme and the reformed scheme. This will ensure that eligible members (or decision makers in the case of deceased members) have sufficient information to make an informed IC decision. The RSS will be a similar format to the Annual Benefit Statement that all members receive and will include relevant

details relating to each member. The RSS will provide information about how and when a member will make their IC decision.

198. The Act provides that an RSS must be provided to all eligible members within 18 months of 1 October 2023 (or such later day as the scheme manager considers reasonable). This period is required to allow the scheme administrator sufficient time to ascertain the relevant choices that all of the IC members have, which in some cases will require confirmation of rollback choices (explained below) before the RSS can be issued.

*Draft regulation 3 applies.*

## Making an Immediate Choice decision

199. The IC provisions in the regulations apply to any member who has retired or died before 1 October 2023, however, further scheme specific regulations are needed where the member has retired prematurely or due to ill-health. These proposals are explained in paragraphs 272-275 and 267-271 of this consultation document.

200. Section 6 of the Act provides that a member may make an election for equivalent reformed scheme benefits before the end of the election period (see paragraph 201). The Act further provides that an election for reformed scheme benefits takes effect immediately, however, where a member decides not to make an election for reformed scheme benefits (i.e. decides to choose legacy scheme benefits), then that 'decision' does not take effect until the end of the election period. The Department has therefore included provision in the draft regulations for an 'Immediate Choice Decision' to be made. That decision will be that a member either (i) elects reformed scheme benefits or (ii) does not elect reformed scheme benefits and once that is communicated to the scheme the choice will take effect immediately. This means that where a member chooses (ii), that decision can be implemented immediately as opposed to waiting until the election period has ended.

201. The member (or eligible decision maker) must make their IC decision by the end of the election period – this is one year from when the RSS is issued to them, or such later time as the scheme manager considers reasonable. This is to allow members sufficient time to consider their options and seek relevant advice if required.

*Draft regulations 7 and 8 apply.*

## Immediate choice decision to be made by decision-maker

202. Where a member has died before 1 October 2023, or a pensioner member dies before confirming their choice, an eligible decision-maker will be issued with an RSS. The decision maker will then have 12 months to confirm their decision.

203. The draft regulations include a framework to identify the different categories of eligible decision-maker and outline the conditions to be met for each type. In the majority of cases the eligible decision maker will be a surviving adult (spouse, civil partner or eligible cohabiting partner). Where this does not apply or there are multiple beneficiaries, the regulations provide the scheme administrator with a clear route to identify who the decision maker should be. Where no decision maker can be agreed or identified the scheme manager will be the decision maker.

*Regulation 7 and Schedule 1 of the draft regulations apply.*

## Deemed election

204. Where the member or eligible decision maker does not communicate an IC decision before the end of the election period, the draft regulations allow the scheme to deem that an election for reformed scheme benefits has been made (under s.6 of the Act) where such an election would result in the higher monetary value.

205. The Department has included this provision because in the absence of an IC decision all members would be deemed to be in the legacy scheme and would be paid legacy scheme benefits once the election period has ended.



This could lead to some members receiving a lower value than they could be entitled to.

206. Where reformed scheme benefits produce the higher monetary value, the scheme will deem that an election for reformed scheme benefits has been made for the remedy period. Alternatively, where legacy scheme benefits produce the higher monetary value, there will be no deemed election and legacy scheme benefits will be paid for the remediable service.

207. In order to determine which set of benefits would produce the higher monetary value, the scheme administrator would use the Benefit Crystallisation Event value to assess the Lifetime Allowance (also referred to as the 'Scheme Fund'). This is a calculation that is completed in 'business as usual' processes for all members for pensions tax purposes. Details of how this value is calculated can be found in the [Annual Allowance and Lifetime Allowance section of the TPS website.](#)

*Draft regulation 9 applies.*

## Opted out service elections

208. Provision is made for members who opted out of the TPS as a result of the identified discrimination to have that service during the remedy period reinstated.
209. The member must complete an application within 12 months of 1 October 2023. The decision to opt-out must have been communicated to the scheme on or after 10 March 2012. This was the date on which the reforms to the public service pension schemes were announced which may have prompted some members to opt-out of the scheme. Although a decision to opt-out of the scheme may pre-date 1 April 2015, only service during the remedy period can be reinstated under these provisions. The member will need to provide evidence that demonstrates that they opted out of the scheme because of the discrimination and not for another reason.
210. The scheme manager will consider the application and where the claim is accepted an RSS will be issued to the member. They would then have 12 months to confirm their election to have opted out service reinstated. The RSS will detail the contributions that would be owed by the member for the opted-out service and the options available to pay those contributions. Where the member confirms that wish to make an election to have their opted-out service reinstated, they will then be treated in the same way as other eligible members.
211. If the application is rejected by the scheme administrator, the member could appeal using the existing Internal Dispute Resolution Procedure process.

*Draft regulation 5 applies.*

## Divorce and Dissolution of a Civil Partnership

212. Members of the TPS may be subject to a Pension Sharing Order (PSO) as a result of divorce or dissolution proceedings. Before a PSO can be made, the court requires that the member requests an estimated Cash Equivalent Transfer Value (CETV) from the scheme. The CETV is the value of accrued benefits within each scheme, which the court uses when calculating the total value of assets. The CETV is calculated by the scheme using guidance and factors provided by the Government Actuary's Department (GAD). Further details on Pension Sharing Orders can be found in the [TPS Divorce Factsheet](#).

### Impact of the remedy

213. Where a member of the scheme is subject to a PSO in relation to their remediable service, the impact of the remedy on the PSO will need to be taken into account. This is because as a result of the remedy, it is possible that the value of the pension at the time of the divorce/dissolution would have been different had the PDM always been a member of the alternative scheme for the remedy period. This means that though the percentage quoted in the PSO remains the same, the actual amount credited to the pension credit member may have been different.

214. This will affect both the Pension Credit Member (the ex-spouse or civil partner of a scheme member – the PCM) and the Pension Debit Member (the scheme member who is subject to divorce or dissolution of civil partnership proceedings – the PDM).

### PSO calculated before 1 October 2023

#### Pension Credit Member

215. Any CETV involving remediable service for the purposes of a PSO implemented before 1 October 2023 will need to be recalculated. This is because as a result of the remedy, it is possible that the value of the pension at the time of the divorce/dissolution would have been different

had the PDM always been a member of the alternative scheme for the remedy period. This means that though the percentage quoted in the pension sharing order remains the same, the actual amount credited to the pension credit member may have been different. Where the PDM was a protected or unprotected member, the pension credit will be recalculated in the alternative scheme. If that alternative value is higher, an additional credit would be awarded to the PCM and will be applied to the same scheme that the existing pension credit currently resides. Where the alternative scheme value is lower, there would be no change to the existing pension credit value (to ensure the PCM is not disadvantaged). An exception to this is where the PDM has mixed service (tapered protection members who had service in both the legacy and reformed schemes during the remedy period) which is explored in paragraphs 216-218.

216. Where the PDM was a tapered protection member and therefore had service in both the legacy and reformed schemes for the remedy period, the values will be recalculated in relation to the remediable service being entirely in the legacy scheme and entirely in the reformed scheme. This is because the Act does not allow for remediable service to be in both the legacy and the reformed schemes.

217. One or both of these values could produce a higher amount which would be awarded to the PCM as a credit. Conversely, if both of these values produce a lower amount, the pension credit would need to be reduced.

218. Where a pension is already in payment to the PCM and the recalculation of credit results in an under or over payment of pension benefits, regulations provide that the PCM must pay an amount to the scheme or the scheme must pay an amount to the PCM. The scheme would also have the power to waive any amounts owed by a PCM to the scheme. This would be according to the individual circumstances of the PCM and the circumstances under which an overpayment occurred.

*Draft regulations 18, 19 and 20 apply.*

219. Within 12 months of 1 October 2023, the scheme manager must provide PCMs with a statement setting out any alternative credit amount and any credit adjustment.

220. If the PCM has credits in both schemes, the amount will be applied to the account that would be most beneficial to the PCM. If the PCM does not want the credit to be applied in such a way, they must notify the scheme administrator according to the instructions within the statement, within 6 months of it being issued.

#### Pension Debit Members

221. The pension debits will be recalculated as at the PSO valuation date, based on the PDM's remediable service in both schemes. The member's RSS will present the relevant calculations taking into account debits in both schemes. The debit to be applied will be based upon the members IC decision (or any deemed election for reformed scheme benefits).

*Draft regulations 18 and 21 apply.*

## PSOs calculated after 1 October 2023

#### Pension Credit Member

222. Where a retired member has confirmed their IC decision before divorce proceedings have commenced, the CETV to be provided to the court will be calculated according to the member's choice.

223. Where an IC member has not yet made their decision, the scheme manager will provide the court with the higher of the CETVs calculated under both legacy and reformed rules. The pension credit will be calculated in line with the highest value possible which means that no adjustment to the PCM's credit is needed as they already have the higher of the amounts they would be entitled to.

*Draft regulation 23 applies.*

#### Pension Debit Member

224. The scheme will include details of the debits calculated under both the legacy and reformed scheme in the member's RSS. After the IC is confirmed, the relevant debit will be applied to the PDM's pension account and benefits will be paid accordingly.

*Draft regulation 24 applies.*

## Divorce/dissolution arrangements other than PSOs

225. Where the value of the remediable rights of a member are determined for divorce or dissolution proceedings after 1 October 2023 and before an IC decision has been confirmed, the value of the rights will be the greater of legacy or reformed scheme service.

*Draft regulation 25 applies.*

## Scheme Flexibilities

226. Under current rules, members can choose to increase their scheme benefits by purchasing scheme flexibilities. Additional Pension Benefit (APB) is available in both schemes, whilst Faster Accrual and Buy-Out are available in the reformed scheme only.
227. APB must be purchased in full units of £250 per annum and can be paid by a one-off lump sum, or by monthly deductions from the member's salary in accordance with their age and applicable scheme. Any APB purchased is paid when the member takes their standard scheme retirement benefits and is actuarially adjusted as applicable. As with main scheme benefits, the member can choose to convert part of their annual APB into a one-off lump sum.
228. Members of the reformed scheme can elect to 'Buy-Out' the actuarial reduction that applies to pension benefits when retiring before NPA. Members can make a Buy-out election only in the first six months of entering that scheme. Contributions must then be paid as service is accrued throughout the member's career, or until the election is revoked.
229. Members of the reformed scheme can also elect to pay higher contributions to increase their pension accrual rate for a particular scheme year (1 April – 31 March), known as Faster Accrual. Members can improve the standard accrual rate of  $1/57^{\text{th}}$  of pensionable earnings to  $1/55^{\text{th}}$ ,  $1/50^{\text{th}}$  or  $1/45^{\text{th}}$ .
230. All flexibilities are calculated in line with factors and guidance provided by the GAD. Further details on scheme flexibilities can be found in the [Scheme Flexibilities Factsheet](#).

## Impact of the remedy

231. Some members have purchased flexibilities in the reformed scheme during the remedy period but following rollback (and in accordance with

section 2(1) of the Act) they will be treated as though they were always members of the legacy scheme. Any reformed scheme flexibilities must therefore be managed.

232. The Act extinguishes the rights arising from reformed scheme flexibilities taken out during the remedy period and the draft regulations provide for members to be offered alternative rights in the legacy scheme or compensation for those additional member contributions that were made.
233. From 1 October 2023 the scheme administrator will begin to contact members with reformed scheme flexibilities taken out during the remedy period to provide information regarding their options and alternative rights available in the legacy scheme.
234. The notice will provide details of how the member can make an election in relation to their reformed scheme flexibilities, the effects of their decision on their IC options and the time period in which an election must be made. The member will be notified that where no election is made before the end of the election period, the scheme will implement a default election and that the election is irrevocable.
235. The options members are to be provided with in relation to their reformed scheme flexibilities are: -
- a) Maintain their flexibility election: keeping the payments within the scheme. These will be reconstructed as legacy scheme (APB); or
  - b) Cancel the flexibility election and receive an immediate compensation payment for the contributions paid.
236. Where a member chooses option (a), contributions paid will be reconstructed to APB purchased in the legacy scheme. Where a member elects for reformed scheme benefits as their IC decision, the rights will be varied to provide the equivalent reformed scheme flexibility benefit as originally taken out.



237. Where a member chooses option (b), the election will be completely extinguished and they will receive compensation equivalent to the contributions paid to the scheme (plus interest). No benefit for this flexibility would be included in either of the IC options.
238. Where a member does not communicate their choice to the scheme by the end of 6 months from issue of the notice, a default will be applied by the scheme for reformed scheme flexibilities to be reconstructed into legacy scheme APB (option a). This ensures the additional contributions paid by the member to the scheme provides an additional equivalent benefit and protects the original flexibility election if reformed scheme benefits are chosen.
239. Any election (or deemed election) in relation to reformed scheme flexibilities will be included in the member's benefit calculations and presented in their RSS.

*Draft Regulations 27 and 28 apply.*

## Members who elect reformed scheme benefits at IC

240. Where a member elects for reformed scheme benefits for the remedy period and they did not choose an immediate refund (option b) at rollback, they would receive benefits equivalent to those they would have received had their reformed scheme benefits not been extinguished.
241. This effectively means that where a member elects to have their reformed scheme benefits reconstructed to legacy scheme APB (option a) their equivalent reformed scheme remediable service benefits will include the value of any reformed scheme flexibilities.
242. Where a member purchased legacy scheme APB during the remedy period and elects reformed scheme benefits when they make their IC, they will have the following options: -
- (a) Reconstruct legacy scheme APB to equivalent reformed scheme APB; or

- (b) Cancel the original APB election and receive an immediate compensation payment for the contributions paid.

243. These options will be displayed in the member's RSS.

*Draft regulations 31 to 33 apply.*

## Provision for members to pay voluntary contributions to the legacy scheme

244. The draft regulations also make provision for eligible members with remediable service to retrospectively purchase legacy scheme APB for the remedy period.

245. The member must be retired (these provisions do not apply in respect of deceased members) and will need to satisfy the scheme manager that they would have entered into an arrangement to purchase legacy scheme APB if they had been in that scheme at the time. The request must be completed within 12 months of 1 October 2023 and draft regulations require members to submit an application within 6 months. This is to allow sufficient time to consider the application and to agree and implement necessary payment arrangements.

*Draft regulation 41 applies.*

246. Due to the application of tax regulations on a member's remediable service it may be necessary to consider further draft regulations in relation to scheme flexibilities. Any changes would not alter the proposed policy approach but will ensure that any resulting tax implications are addressed.

## Transfers

247. Upon joining the TPS, members may wish to transfer their pension from their previous employment into the TPS, or conversely, when a member leaves the TPS, they may wish to transfer their pension into another defined benefit pension scheme. There are three methods of transfer in and out of the TPS: club transfer, CETV transfer and bulk transfer. Further details on transfers can be found on the [TPS website](#).

### Club transfer

248. The TPS is part of the Public Sector Transfer Club (the Club) which facilitates the movement of pension rights in the public sector. The Club enables members to transfer between participating schemes on the basis that the member will receive benefits of an equivalent value in the receiving scheme.

### CETV transfer (including non-club transfer)

249. A CETV transfer may take place in or out of the TPS where:

- a. A person joins the TPS from a non-Club scheme.
- b. A member changes employment and their new employer's scheme is not covered by the Club.
- c. A Club transfer is not possible (e.g. the club transfer criteria have not been met).

250. A CETV transfer is a transfer of the member's pension based on the calculated value of their accrued benefits. The transfer value is calculated using factors and guidance provided by GAD, with a separate CETV calculated for final salary accrual and career average accrual, as well as for any purchased flexibilities. These values are combined to produce a total CETV, which is used by the receiving scheme to calculate benefits in that scheme.

## Bulk transfer

251. In the event of a compulsory transfer of members from one employer to another, which offers a different type of defined benefit public service pension scheme, or a broadly comparable scheme, a bulk transfer may take place.

252. Further details on transfers can be found on the [TPS website](#).

## Impact of the remedy

253. Provisions are required in respect of transfers into and out of the TPS which involve remediable service. Draft regulations have been prepared so that, when transfer values are being calculated, members with remediable service choose whether to use reformed scheme benefits or legacy scheme benefits for the remedy period.

## Transfers completed before 1 October 2023

254. All transfers involving remediable service completed before 1 October 2023 will be revisited as part of the remedy. This is to provide members with their IC decision which includes remediable transferred service.

### Remediable Service Statement for transferred-out service

255. Where a member transferred remediable service rights out of the TPS, the scheme manager will provide a RSS. This statement will detail: -

1. the value of any additional rights in respect of remediable service that the member would have been entitled to immediately prior to the transfer as a result of rollback.
2. the options (if any) that are available in relation the treatment of those additional rights, and
3. where there are any such options, the circumstances in which, and the process by which, an option may be chosen.

*Draft regulation 43 applies.*

CETV transfers (including Club transfers on a non-Club basis)

256. Where a member transferred out of the TPS before 1 October 2023, the CETV calculated and provided to the receiving scheme will not have included information relating to the remedy. When regulations come into force on 1 October 2023, the scheme administrator will commence rectification activity and will revisit all remediable CETV calculations to take into account the member's remediable service.

257. Draft regulations provide that the scheme will calculate the transfer value of the member's remediable service under both the legacy and reformed scheme. If the value would have been higher had the member been in the alternative scheme during the remedy period, an additional amount will be paid to the receiving scheme where possible. Where the value cannot be paid to the scheme, for example if the other scheme no longer exists, the member will receive compensation representing the difference in amounts.

258. Details of how to claim compensation in relation to transferred out service will be included in the member's RSS.

*Draft regulation 44 applies.*

259. Where a member transferred into the TPS from an affected public service pension scheme on a non-Club basis before 1 October 2023, the CETV provided to the TPS will not have taken account of the remedy. As this transferred service is a period of remediable service, the TPS will be provided with the alternative CETV from the sending scheme and this would be held by the TPS to include in calculations under both legacy and reformed scheme rules, to implement when the member makes their IC decision.

*Draft regulation 45 applies.*

#### Club transfers completed before 1 October 2023

260. Where a member transferred remediable service into or out of the TPS and another public service pension scheme on a Club basis before 1 October 2023, they will continue to receive a choice of whether to receive legacy or reformed scheme benefits in the receiving scheme.

261. When a member transferred out of the TPS on a Club basis before 1 October 2023, the transfer value will have been based on the member's accrual during the remedy period before implementation of the remedy. When regulations come into force on 1 October 2023, transfer values will be revisited to take into account the member's remediable service.

262. The draft regulations provide that the scheme will calculate the transfer value of the member's remediable service under both legacy and reformed schemes, in accordance with Club transfer rules. The TPS will provide the receiving scheme with both values, to be included in the member's RSS to inform their IC decision.

*Draft regulation 48 applies.*

263. Where a member transferred into the TPS on a club basis before 1 October 2023, the sending scheme will have provided the TPS with a transfer value based on the member's accrual during the remedy period. The sending scheme will revisit the transfer value calculating the value under both schemes. The TPS will apply those values when calculating the member's IC options.

*Draft regulation 49 applies.*

## Child Pensions in Payment

264. Regulations make provision for the protection of the amount of pension in payment to an eligible child of a deceased member. The regulations provide that where the surviving adult does not live in the same household as an eligible child and they make an IC decision that would result in a reduction to that child's pension in payment, there will not be an overpayment created in respect of those benefits paid to date. The ongoing payment of the pension will also not be reduced.
265. If the surviving adult makes a decision that increases the rate of an eligible child's pension in payment, then any underpayment of pension benefits will be paid to the child by the scheme.
266. This provision has been included to ensure that children of deceased members are not disadvantaged financially by the choice made by an adult who does not live in the same household and to account for their parent or guardian's lack of control over the decision affecting the child's pension payment. Where a child pension is in payment to a child who lives in the same household as the surviving adult, it is expected that the IC decision would take into account all information relevant to their circumstances.

*Draft regulation 59 applies.*

## Ill-Health Retirement

267. The TPS rules allow members who are too ill to continue working to apply for ill-health retirement. Providing the member has qualified for retirement benefits, members can apply for ill-health retirement at any time before they reach their scheme NPA. To be eligible for ill-health retirement, an in-service member must meet either the Tier 1 or Tier 2 criteria, or where the member is out of service, Tier 2 criteria must be met for Tier 1 benefits to be paid. Further information about ill-health retirement can be found on the [TPS website](#).

### Impact of the remedy

268. Where a member applied for ill-health retirement during the remedy period that application may have (i) been accepted and the member is in receipt of ill health retirement benefits or (ii) been rejected and the member has retired under alternative provisions (e.g. early retirement). These members may have been eligible for ill-health retirement in the alternative scheme if they had been able to apply to that scheme at the time. Therefore, in line with the approach of the remedy to remove the discrimination and provide choice to eligible members, the draft regulations make provision for these members to be reassessed against the alternative scheme ill-health retirement criteria (which applied at the time they made their ill-health application in the remedy period). Details of the proposals and the relevant draft regulations are set out below.

### Determining whether a member meets the criteria in each scheme

269. Where a member has applied for ill-health retirement in relation to their remediable service and that application has been finally determined before 1 October 2023, the scheme must reassess the member against the ill-health criteria of the alternative scheme.

270. IC members who retired under ill-health provisions during the remedy period will be reassessed against the criteria of the alternative scheme. The outcome of the reassessment and any ill-health retirement benefits



available will be presented to the member in their RSS. Where a member is already in receipt of ill-health retirement benefits, the reassessment does not look at the current award and therefore it would not result in benefits being reduced. The reassessment is to assess whether the member could be entitled to a higher level of ill-health retirement benefits in the alternative scheme.

271. There may also be IC members who were rejected for ill-health retirement who then took an alternative form of retirement benefits (e.g. early retirement). These members will also be assessed against the ill-health criteria in the alternative scheme and the outcome of this (and any ill-health retirement benefits the member may be entitled to) will be displayed in the member's RSS. Payment would be backdated to the date on which the member took retirement benefits.

*Draft regulations 61 and 62 apply.*

## Premature Retirement

272. Premature Retirement is a form of compensation that an employer of a TPS member may make in certain circumstances when an employment is terminated by reason of redundancy or in the interests of the efficient discharge of the employer's functions. There are two forms of Premature Retirement compensation that reflect that where an employee stops working before their NPA, their accrued pension benefits are reduced if put into payment (as they are being paid for a longer period) and the member is not able to accrue further pension benefits. Premature Retirement compensation may have been paid in respect of a reduced TPS pension.
273. Premature Retirement is not a scheme benefit – TPS employer and member contributions do not pay for Premature Retirement compensation, it is entirely funded by the employer and is a separate payment outside of the TPS. The employer may pay an administration fee to the TPS to administer payment of the compensation, alongside the member's pension, on their behalf.
274. Members who have accepted Premature Retirement during the remedy period and who have remediable service are pensioner members and would therefore be entitled to make an IC decision.
275. Where an IC member has been awarded Premature Retirement during the remedy period, their benefit calculations under the legacy and reformed scheme rules will not include any amounts of Premature Retirement compensation. There is no provision to increase or reduce an award of Premature Retirement compensation linked to the member's choice of pension benefits for the remedy period regardless of the benefit choice made by the member.

*Draft regulation 64 applies.*

## Liabilities and Payment

276. As a result of the remedy and certain decisions made by members, it is possible that there are resulting under or over payments of pension benefits and/or contributions. It is expected that in most cases, it is the scheme that will owe the member. In cases where the member owes the scheme, this would mostly be as a result of an option they have chosen.

277. There may also be situations where a member seeks compensation from the scheme as a result of the discrimination or the application of the remedy (paragraphs 283-290).

278. Any amounts owed to or by a member will be clearly displayed in the member's RSS including details of how these amounts were calculated and any interest that is applicable. The RSS will also detail how and when amounts owed to them by the scheme would be paid and what the member is required to do in order to repay amounts owed to the scheme.

*Draft regulations 74 and 75 apply.*

## Netting off

279. Where amounts are owed to a member by the scheme and amounts are owed to the scheme by the member, these amounts will be adjusted by relevant tax amounts and then netted off to calculate a final liability.

280. Adjustments for tax are needed because where a member has overpaid amounts to the scheme, they will have received too much pension tax relief on these payments. The scheme manager will therefore pay compensation to reflect the overpaid amounts, less the relevant amount to reflect the excess tax relief that was received. This is a requirement of the Act.

*Draft regulations 69 and 70 apply.*

## Interest

281. Interest will be applied to all amounts owed, whether this be owed to a member by the scheme or to the scheme by a member. HM Treasury directions contain provisions in relation to the rates of interest applicable where certain liabilities arise and interest on amounts owed to and from the scheme must be calculated in accordance with those directions. There are several reasons why interest must be applied to payments, but principally there is a requirement to as closely as possible reflect the position that the member may otherwise have been in. Generally, where amounts are owed to a member the rate of interest is higher than the interest rate applied to amounts owed to the scheme.

282. Further information about the HM Treasury directions and rationale for the approach to applying interest can be found on [WWW.GOV.UK](http://WWW.GOV.UK).

*Draft regulation 66 applies.*

## Indirect Compensation

283. Contributions made by members are subject to tax relief as the TPS is a registered pension scheme under Part 4 of the Finance Act 2004. Limits are in place regarding the amount of pension accrual that a member can build up in a financial year, known as the Annual Allowance (AA), and over a lifetime, known as the Lifetime Allowance (LTA).

284. Where a tax charge arises as a result of a member exceeding their AA or LTA limit, the scheme can pay the tax charge and the member's retirement benefits are reduced to reflect the amount of the charge.

285. Where a pensioner or deceased member makes an IC decision for alternative scheme benefits which retrospectively alters their accrual during the remedy period, this may affect the member's AA or LTA assessment, resulting in the member having paid too much tax or not enough tax.

286. Some of these overpaid amounts may have arisen in an out-of-scope tax year and therefore will not be compensable under section 23 of the Act.

287. Where the member entered into an agreement whereby the scheme paid the tax charge and because of the remedy they have now overpaid tax which relates to an out-of-scope year, draft regulations provide for the benefits that were reduced under the Scheme Pays arrangement to be reinstated where there is an equivalent amount of compensation entitlement. The member would need to make an application for indirect compensation and provide information as may be requested by the scheme manager.

*Draft regulations 67 and 68 apply.*

## Compensation

288. Provisions in the Act allow schemes to pay compensation to members for direct financial losses that have arisen as a result of the identified discrimination or application of the remedy. Therefore, draft regulations allow affected members to make an application for such compensation.

289. An application for compensation would be initiated by the member and the member must provide evidence of their financial loss and that this is as a result of the discrimination or remedy. Any compensation paid must be determined in line with the Act and associated Treasury directions.

290. The TPS website will provide information regarding how a member can make an application for compensation and access the relevant application form. The application form is not required for members to receive their choice of benefits for the remedy period. The scheme administrator will contact all affected members over a period of time commencing 1 October 2023 regarding their RSS and details of how to make their choice.

*Draft regulation 68 applies.*

## Option to reduce or waive amounts owed to the scheme

291. Where a member owes an amount to the scheme as a result of their IC decision, that amount should be paid in full. The scheme may consider reducing or waiving a debt in limited scenarios, having specific regard to the circumstances of the member as is required by HMT directions (see paragraph 195). An example might be a tapered protection member whereby both choices (all remedy period service in the legacy scheme or all remedy period service in the reformed scheme) would result in an overpayment of benefits and that would cause them financial hardship.

*Draft regulation 72 applies.*

## Amounts owed by the member

292. Where a member owes an amount to the scheme, the administrator will send written notice informing the member of the liability. The member will be required to pay the amount before the end of 6 months beginning on the day after the member receives the notice. By agreement, the liability may be paid in full, via instalments, or by a deduction from the member's benefits. Should the member fail to pay any amount via a lump sum or instalment plan, the scheme may determine that amounts are to be deducted from the member's benefits.

*Draft regulation 74 applies.*

## Amounts owed by the scheme

293. The scheme will pay any liability owed to the member as soon as reasonably practicable. Before an amount can be paid, the scheme may require the member to provide certain information - for example, relevant bank details.

*Draft regulation 75 applies.*

## Effects of the remedy that do not require regulations

294. There are a number of aspects of the remedy that do not require new regulations, however there will still be impacts that need to be explained to members and scheme employers. These are as follows.

### Abatement

295. Current scheme rules on abatement will continue to apply to ensure consistent treatment of all members. Due to the application of the remedy (i.e. rollback of reformed scheme service to the legacy scheme for the remedy period), members with reformed scheme service who re-entered employment after retiring will be subject to abatement rules.

296. Any member who is in receipt of remedy period benefits and returned to employment before the remedy is implemented may see their pension in payment retrospectively adjusted based on their IC election. Where the member makes an immediate choice decision to:

- a. receive legacy benefits - remedy period benefits will be subject to abatement; or
- b. receive reformed scheme benefits - remedy period benefits will not be subject to abatement (as under existing scheme rules, it is only final salary pension that may be abated). Any pre-remedy legacy scheme benefits will continue be subject to abatement rules.

297. Depending upon their individual circumstances and IC decision, some members may see an adjustment to their pension in payment. Any resulting overpayment or underpayment of pension benefits will be recovered by the scheme or paid to the member. Members will continue to receive their current benefit payments until their IC decision is confirmed.

298. For those members who have already retired and re-entered employment, their RSS will outline how their decision might affect the abatement calculation under both schemes.

299. For members who have retired but are yet to re-enter employment, the RSS will detail how abatement rules would apply under both schemes if the member re-entered employment. Members will therefore be able to make an informed decision about abatement and the impact of re-entering employment that is pensionable in the TPS in the future.

## Excess Teacher Service

300. Where members have an additional teaching employment to a full-time teaching employment, that additional employment is not pensionable in the TPS legacy scheme. This non-pensionable service is referred to as Excess Teacher Service.

301. Excess Teacher Service for service during the remedy period may be pensionable in the Local Government Pension Scheme (LGPS) if the employer was also an accepted employer in the LGPS. If the employer was not an accepted employer in the LGPS, the Excess Teacher Service is not pensionable in the TPS legacy scheme or the LGPS.

302. The rollback of remediable service from the reformed scheme to the legacy scheme on 1 October 2023 will affect the treatment of that service. Excess Teacher Service is pensionable in the TPS reformed scheme, therefore the issue does not exist for employment from 1 April 2022. The following paragraphs explain how the issue will be addressed.

303. There will be no immediate changes to benefits in payment to retired members or beneficiaries of deceased member on 1 October 2023 when section 2(1) of the Act comes into force. Any change will only take effect once a member (or eligible decision maker) has communicated their IC decision to the scheme.

304. Where a protected member had Excess Teacher Service during the remedy period that service will either have been pensionable in the LGPS (and is therefore subject to the rules of that scheme) or not pensionable in either the LGPS or TPS and no member contributions will have been paid. No further action is therefore required in respect of Excess Teacher Service for protected members.



305. Where an unprotected or tapered protection member had Excess Teacher Service during the remedy period their IC option will depend upon whether that service was pensionable in the LGPS.
306. If these members make an IC decision to elect reformed scheme benefits for the remedy period, their Excess Teacher Service will be included in their reformed scheme benefit calculations.
307. If these members make an IC decision to take legacy scheme benefits for the remedy period, their Excess Teacher Service will be treated as follows:
- (i) If the Excess Teacher Service would have been pensionable in the LGPS at the time (because the employer was an LGPS employer) then that service will be moved to the LGPS and will be treated in accordance with the rules of that scheme. Information will be communicated to the member by the LGPS in respect of that service.
  - (ii) If the Excess Teacher Service would not have been pensionable in the LGPS at the time (because the employer was not an LGPS employer) the contributions for that service will be refunded by way of compensation. The member's RSS will detail any amounts owed to the member.
308. The Department acknowledges that this is a complex issue and is working with the Department for Levelling Up, Housing and Communities (which is responsible for the LGPS rules), to ensure that clear communications and processes are put in place for affected members and employers.
309. There may be further consequential changes to TPS regulations required in relation to Excess Teacher Service to fully achieve the intended policy as described, and if needed this will be addressed in the Department's response to this consultation.

## Other issues affecting Deferred Choice and Immediate Choice members

### Contingent Decisions

310. In line with the implementation of the second phase of remedy from 1 October 2023, a contingent decision process will be introduced to consider any potential claims from members who may demonstrate that they would have made alternative choices or taken other actions had the identified discrimination not occurred. This will ensure a fair and consistent approach is applied.
311. The TPS website will be updated to set out the process for making a contingent decision claim and will include the relevant application form to be completed. It will also include details of the appeal process if needed.

### Tax

312. For most members no tax adjustment will be required, however, a minority of members may see changes to their individual tax situation. Some elements of taxation policy remain under development and guidance will be provided by HMRC and HM Treasury soon. Links to this guidance will be shared with members via the [Teachers' Pensions website](#) and in relevant communications.

### Employers

313. The Department will issue specific communications to employers in relation to any actions employers may need to take in relation to the remedy. The [Employer section of the TPS website](#) will be updated and the scheme administrator will continue to provide information via regular employer bulletins.

# Equality Impact Assessment

## The Public Sector Equality Duty

314. The Public Sector Equality Duty (PSED) requirements are set out in s.149 of the Equality Act 2010. The PSED requires a public authority to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

315. These aims are also known as the three limbs of the PSED. This involves having due regard to the need to remove or minimise disadvantages suffered by people due to their protected characteristics and take steps to meet the needs of people from protected groups where these are different from the needs of other people.

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

317. The Department has completed an Equality Impact Assessment (EIA) in relation to the draft regulations which is published alongside this document. Please refer to the EIA for details of the Department's assessment regarding the proposed approach to this part of the remedy.

## Consultation Questions

### **Respondents are asked to consider;**

Q.1 Do you agree with the policy approach that is proposed in the consultation document for the TPS to address the identified discrimination with the transitional protection arrangements?

Q.2 Do the draft regulations achieve the policy aims as described in the consultation document?

Q.3 Are any other scheme regulations required to achieve the stated policy aims?

Q.4 Are there any other comments regarding the draft regulations?

Q5 Are there any further considerations and evidence that the Department should take into account when assessing equalities issues arising as a result of the proposed regulations?

Q6 Overall, do you agree with the draft regulations included in the consultation document?

## Next Steps

318. After the consultation has closed on 4 June 2023, responses will be fully considered before TPS regulations are finalised. Regulations need to be in force on 1 October 2023. The Department will publish its consultation response prior to this date.
319. Due to the number of members affected, it will take a period of time for the scheme administrator to make relevant calculations needed for the Remediable Service Statements and other decisions that members will need to make regarding flexibilities etc. Information will be provided on the TPS website setting out when members can expect to be contacted after 1 October 2023. Members will not need to contact the scheme in order to receive relevant details regarding their remediable service or to make their choice of benefits for the remedy period.
320. Further information on scheme changes can be found on the [Transitional Protection section of the Teachers' Pensions website](#). This section is regularly updated with relevant information.



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