

Timings and process for immediate and deferred choice

1. This paper sets out the position in relation to timings and process for immediate and deferred choices for members with remediable service as defined in section 1 of the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA 2022). All references to section and subsections in this paper are references to sections and subsections of that Act.

Immediate choice

Election period

2. The election period for an immediate choice to receive new scheme benefits is set out in section 7(2). It is either the end of the period of one year beginning with the day on which a remediable service statement is first provided in respect of the member, or such later time as the scheme manager considers reasonable in all the circumstances. Section 29(7) in turn sets out that a remediable service statement must be provided on or before the relevant date. The relevant date is defined in section 29(10) as the day after the final day of the period of 18 months beginning with the day on which section 2(1) comes into force in relation to a Chapter 1 legacy scheme or such later day as the scheme manager considers reasonable in all the circumstances in the case of a particular member or class of member. This means that the scheme essentially has 18 months to provide a remediable service statement to eligible members, and a pensioner or beneficiary of a deceased member has 12 months thereafter to make an immediate choice election. Section 29(11) provides that the requirement to issue an RSS can be met by providing it in advance of the provisions Chapter 1 come into force.

Default if no election is made

3. All members with remediable service in the new scheme will have that service returned to the legacy scheme when section 2(1) enters into force. If no election is made by the end of the election period, the default is that the member will receive legacy scheme benefits. However, schemes do have the power under section 8 to deem an election to receive new scheme benefits to have been made. Under section 8(2), this power can only be used when the end of the section 6 election period has passed and no decision as to whether an election is to be made in relation to the member's remediable service has been communicated to the scheme. Under section 8(3) schemes may set conditions in which an election is to be treated as having been made, though it is worth noting that this power is not intended to be used in a blanket manner.

Effect of section 6(4)

4. All new scheme remediable service is rolled back to the legacy scheme when section 2(1) enters into force. However, for members who are pensioners or deceased and in receipt of new scheme benefits, section 6(4) sets out that section 2(1) i.e. the rollback to the legacy scheme only has effect in respect of the amount of benefits paid to the member if no election to receive new scheme benefits is made before the end of the section 6 election period. This is intended to simplify the process for members who are already in receipt of new scheme benefits on 1 October 2023 (or other date on which the scheme implements the retrospective remedy) and wish to continue receiving these benefits.

Revocation

5. Section 7(1)(c) sets out that an immediate choice election is irrevocable. Once an election is made, it is treated as having taken effect immediately before the member became a pensioner

member of the legacy scheme, or if earlier, the new scheme or if the member died without becoming a pensioner member, immediately before the member's death. Effectively, the election is backdated to the member's retirement or death. If the member made an election before the end of the election period, it is therefore not possible for the member to undo that election.

Deferred choice

Election period

6. The election period for a deferred choice is set out in section 11(2). The end of the section 10 election period must not be more than one year before the day on which it is reasonably expected that, if an election were made, new scheme benefits would become payable under the scheme to or in respect of the member. The end of the election period can be later than this and it may be helpful for schemes to consider the timings involved in their normal retirement processes and ensure that the end of the section 10 election period is aligned. For example, if a member would normally be required to communicate their intention to retire to the scheme three months in advance of any benefits being paid, this might be a suitable point to end the election period.
7. The Act does not specify when the section 10 election period should start. Again, schemes should consider their existing retirement processes and ensure that there is enough time between the start and end of the section 10 election period for a member to consider the information available to them in the RSS and make a decision. We understand that some schemes are considering whether a 3-month period between the start and end of the section 10 election period would be appropriate. However schemes may consider a shorter or longer election period to be more suitable, particularly if this ties in better with existing processes. The intention is for the decision (whether to make an election or not) to be made close to retirement, regulations may specify that an election will lapse where it is made significantly in advance of retirement.

Where there is a difference in NPA between the legacy and the new scheme

8. Section 11(2) sets out that the end of the section 10 election period must not be more than one year before the day on which it is reasonably expected that, if an election were made, new scheme benefits would become payable under the scheme to or in respect of the member. For most workforces there is a difference between the NPA of the new scheme and NPA of at least some of the legacy schemes. This should not be understood as preventing schemes from offering the member a deferred choice at legacy scheme NPA (or indeed earlier) if that is when the member indicates they wish to retire. This is because the Act is set up to pay legacy scheme benefits by default unless the member elects to receive new scheme benefits. As such, the point at which new scheme benefits would become payable to or in respect of a member who wishes to take legacy scheme benefits would be the same point at which they take their legacy scheme benefits. The election referred to in section 11(2) simply doesn't happen. The intention, as above, is for the member to make their decision when they are planning to retire and not to take their decision at the point they first become eligible to retire.

Members who retire after section 2(1) enters into force but before an RSS can be provided

9. There are several options which schemes could consider to manage the process of offering these members a deferred choice. The most suitable option may vary between schemes depending on administrative processes.

Issuing RSS early

10. Section 29(11) sets out that schemes can meet the requirement to provide a RSS by providing it before any provision of Chapter 1 has entered into force. This would allow schemes to provide RSSs early to members who are expected to retire shortly after 1 October 2023 (or other date when section 2(1) enters into force), for example those who have contacted the scheme expressing an interest to retire at that point, or those who will reach NPA in either the legacy scheme or new scheme shortly after 1 October 2023.

Different election periods for different members

11. It is possible for scheme regulations to set different election periods for different cohorts of member. While one year before the day on which it is reasonably expected that, if an election were made, new scheme benefits would become payable under the scheme to or in respect of the member is the earliest the election period can end, it would be possible to end the election period later for members who retire shortly after 1 October 2023. This could be an option where providing the RSS to the member early is not feasible. For example, it may be possible to set the election period so that it ends X number of months after the member has received an RSS, i.e. broadly the same process which applies to members making an immediate choice. For example, a member who retired on 5 November 2023 and received their RSS on 12 December 2023 could be given a deadline of 3 months from receiving their RSS, meaning that the election period would end on 12 March 2024.
12. Whilst it is not ideal for an election to be made after a member becomes a pensioner member, the Act provides that an election will have retrospective effect where it is. This group of members will be entitled to legacy scheme benefits for the remedy period and it would not be appropriate for schemes to use section 12 to deem an election had been made (as this is irreversible, would deprive the member of their choice and, in any case, would not work if provision is made in the scheme regulations for a later end of election period for this group).
13. This does raise the question of what approach should be taken to paying the member's benefits. Our understanding is that the scheme will have to pay legacy scheme benefits for the period between the member's benefits coming into payment and the end of the election period. This is because the member is retiring with an entitlement to the immediate payment of legacy scheme benefits and any steps to interfere with that are likely to be unlawful.
14. To facilitate this approach, schemes will need to make provision in scheme regulations to allow benefits to be corrected where a deferred choice member chooses benefits different to those initially put into payment. This could be achieved by making provision to modify section 14 PSPJOA 2022 so that it can also apply to members who were active or deferred when section 2(1) enters into force.

Tax consequences

15. If a pension commencement lump sum (PCLS) is amended more than 12 months after the original payment and / or if entitlement reduces the permitted value of the PCLS then an unauthorised payment charge (UPC) could arise. Wherever possible, where benefits have been put into payment for a member who was active or deferred on 1 October and the member subsequently makes a deferred choice election, schemes should make any corrections to pension benefits and lump sum within 12 months of the original payment. Where this is not possible, we do not consider provision in tax regulation to be necessary to mitigate this. Instead, BAU processes will apply whereby schemes pay any UPC that arises as a result of a delay of longer than 12 months or reducing a PCLS.

Default if no election is made

16. As the deferred choice election process is likely to be tied in with a member's retirement application, it's less likely that there would be no communication of a decision to the scheme by the end of the election period. Schemes should consider whether communicating their decision can be made a mandatory part of the application process. Members will need to be given clear information about their entitlement in the absence of an election (in the RSS and any other communications). Where no election is made the default benefits to be paid to the member in respect of their remediable service would be legacy scheme benefits. However, schemes do have the power under section 12 to deem an election to receive new scheme benefits to have been made. Under section 12(2), this power can only be used when the end of the section 10 election period has passed and no decision as to whether an election is to be made in relation to the member's remediable service has been communicated to the scheme. Under section 12(3) schemes may set conditions in which an election is to be treated as having been made, though it is worth noting that this power is not intended to be used in a blanket manner but in exceptional cases where the scheme is aware that the member does not have the capacity (or appropriate representatives) to make the decision. It is worth noting that the power to deem an election to have been made does not allow a member to make a late deferred choice election, but depending on the conditions the scheme sets under section 12(3), it could be possible for the scheme to take into account for example a late submission of a form indicating that the member did intend to make an election when deciding whether or not to deem an election to have been made. The decision would rest with the scheme rather than the member though.

Revocation

17. Section 11(5) sets out that scheme regulations may (but are not required to) make provision for how and when an election lapses or may be revoked, subject to section 11(6) which provides that the regulations may not provide for an election to lapse or be revoked after any benefits have become payable after the end of the section 10 election period.
18. The main circumstances in which we envisage that a member's election may lapse or be revoked is if the member decides after having made an election not to retire at that moment or potentially if they die in service. Where this arises, as per section 11(7) the election is treated as never having had effect.
19. Sections 11(5) and (6) do not prevent a revocation or lapse taking place even if benefits have become payable, provided the election period has not yet ended. However, we do not consider it would be appropriate to provide for a deferred choice election that is made after retirement, as per paragraphs 11 – 14, (because information could not be provided in advance of retirement) to be able to lapse or be revoked, but it should be implemented expeditiously.