
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 241

The Teachers' Pensions (Remediable Service) (Scotland) Regulations 2023

PART 3

Decisions about the treatment of remediable service

CHAPTER 3

Deferred choice decision for reformed scheme or legacy scheme benefits

Application and interpretation of Chapter 3

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

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

- 12.—**(1) A decision (a “deferred choice decision”) may be made—
- (a) to make an election (a “section 10 election”) by virtue of section 10 of PSPJOA 2022 in relation to M’s remediable teacher service, or
 - (b) that no section 10 election is to be made in relation to that service.
- (2) A deferred choice decision may be made—
- (a) by M, or
 - (b) where M is deceased, by the eligible decision-maker determined in accordance with the schedule.
- (3) A deferred choice decision—
- (a) to be made by a person other than the scheme manager is made when it is received by the scheme manager in a form and manner determined by the scheme manager,
 - (b) to be made by the scheme manager is made at a time determined by the scheme manager.
- (4) A deferred choice decision may only be made before the end of the section 10 election period.
- (5) A deferred choice decision to make a section 10 election takes effect as a section 10 election (see sections 10(4) and (5), 11(3)(b), (4) and (7) and 13 of PSPJOA 2022 about the effect of a section 10 election).
- (6) Where the deferred choice decision is that no section 10 election is to be made, the benefits payable to or in respect of M, so far as they are determined by reference to M’s remediable teacher service, are legacy scheme benefits.
- (7) The following provisions of PSPJOA 2022 have effect in relation to a decision that no section 10 election is to be made as they have effect in relation to a section 10 election—

- (a) section 10(5) (section 10 election has effect in respect of all remediable service in the employment or office),
 - (b) section 11(3)(b), (4) and (7) (provision about when a section 10 election take effect, and the effect of lapse or revocation of a section 10 election),
 - (c) section 13 (persons with remediable service in more than one Chapter 1 legacy scheme).
- (8) No benefits are payable under the legacy scheme in respect of M’s pensionable service under the scheme unless—
- (a) a deferred choice decision is made in relation to M’s remediable teacher service,
 - (b) a section 10 election is deemed to have been made under regulation 15(1) in relation to that service,
 - (c) M has notified the scheme manager that they intend to claim benefits under a teacher pension scheme in respect of their remediable teacher service and it was not reasonably practicable for the scheme manager to provide a remediable service statement in respect of M in accordance with regulation 4(2)(c)(i) before the date on which such benefits become payable, or
 - (d) paragraph (9) applies.
- (9) Where M is deceased, the scheme manager may, before a deferred choice decision is made or a section 10 election is deemed to have been made in relation to M’s remediable teacher service, pay to any person (“the beneficiary”) who is, or is to be, entitled to receive death benefits in relation to M’s pensionable service the lesser of—
- (a) such lump sum or pension benefits to which the beneficiary would be entitled if a section 10 election is made, or deemed to be made, in relation to M’s remediable teacher service, or
 - (b) such lump sum or pension benefits to which the beneficiary would be entitled if no section 10 election is made, or deemed to be made, in relation to M’s remediable teacher service,
- (10) Where, at the operative time—
- (a) the aggregate of the lump sum or pension benefits that have been paid pursuant to paragraph (9) to a beneficiary, is less than
 - (b) the aggregate of the lump sum or pension benefits to which (after taking into account the effect, if any, of paragraph (6) of this regulation or section 10(4) of PSPJOA 2022) the beneficiary is entitled under a teacher pension scheme in respect of M’s pensionable service,
- the scheme manager must pay an amount equal to the difference to the beneficiary.
- (11) In paragraph (10), “the operative time” means—
- (a) if—
 - (i) a deferred choice decision is made, or
 - (ii) a section 10 election is deemed to have been made,
 in relation to M’s remediable teacher service, the time the decision or election is made,
 - (b) otherwise, the end of the section 10 election period in relation to M.

Deferred choice decision to be made by M

- 13.**—(1) This regulation applies where M is the deferred choice decision-maker.
- (2) A deferred choice decision may only be made during the period—

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

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

14.—(1) This regulation applies where a person other than M is the deferred choice decision-maker.

- (2) A deferred choice decision may only be made during the period—
 - (a) beginning, where the deferred choice decision-maker is—
 - (i) a person other than the scheme manager, on the date a remediable service statement is issued under regulation 4(2)(c)(ii),
 - (ii) is the scheme manager, on the date the scheme manager receives notice that M has died, and
 - (b) ending—
 - (i) at the end of the day 12 months after that date,

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

Deferred choice election: deemed section 10 election

- 15.—(1) This regulation applies where—
- (a) either—
 - (i) the deferred choice decision-maker is a person other than M or the scheme manager, or
 - (ii) the scheme manager has paid any benefits by virtue of regulation 12(9),
 - (b) the end of the section 10 election period in relation to M has passed,
 - (c) no deferred choice decision has been made, and
 - (d) it appears to the scheme manager that the monetary value of the remediable benefits would be higher if they were treated as benefits in the reformed scheme compared with if they were treated as benefits in the legacy scheme.
- (2) The scheme manager may treat a section 10 election as having been made in relation to M’s remediable teacher service immediately before the end of the section 10 election period.
- (3) In this regulation—
- “monetary value of the remediable benefits” means the amount that would be crystallised in relation to the remediable benefits immediately before they became payable in accordance with section 216 of the Finance Act 2004 as it had effect immediately before 1 October 2023,
- “remediable benefits” means rights to benefits secured by virtue of M’s remediable teacher service.

Deferred choice decision: additional requirements

16. Where the deferred choice decision-maker (“D”) is a person other than the scheme manager, a deferred choice decision is to be treated as having been made only if D provides any information specified in a written request from the scheme manager that is—
- (a) information in D’s possession, or
 - (b) information which D can reasonably be expected to obtain.