
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 241

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

PART 3

Decisions about the treatment of remediable service

CHAPTER 1

Opted-out service elections

Application and interpretation of Chapter 1

5.—(1) This Chapter applies to and in respect of a member (“M”) with opted-out service⁽¹⁾ in an employment or office in relation to the legacy scheme.

(2) In this Chapter—

“opted-out service decision-maker” means the person who may make an opted-out service election under regulation 6(2),

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

Election in relation to relevant opted-out service

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

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

(a) by M, or

(b) where M is deceased, by the eligible decision-maker determined in accordance with the schedule.

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

(a) made by or behalf of M,

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

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

(d) accompanied by such information—

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

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

⁽¹⁾ See section 36 of PSPJOA 2022 for the meaning of “opted-out service”.

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

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

- (a) determine whether an opted-out service election may be made in relation to M, and
- (b) notify the person who made the application whether such an opted-out service election may be made.

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

(6) The scheme manager must refuse an application unless both the following conditions are met—

- (a) the decision by virtue of which the member’s service became opted-out service was communicated to the scheme manager on or after 10 March 2012, and
- (b) the decision by virtue of which the member’s service became opted-out service was made pursuant to a relevant breach of a non-discrimination rule⁽²⁾.

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

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

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

CHAPTER 2

Immediate choice decision for reformed scheme or legacy scheme benefits

Application and interpretation of Chapter 2

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

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

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

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

(2) An immediate choice decision may be made—

- (a) by M, or
- (b) where M is deceased, by the eligible decision-maker determined in accordance with the schedule.

(3) An immediate choice decision made by—

(2) See section 25(8) of PSPJOA 2022 for the meaning of “non-discrimination rule” and section 25(9) for the circumstances in which breach of a non-discrimination rule is “relevant”.

- (a) a person other than the scheme manager is made when it is received by the scheme manager in a form and manner determined by the scheme manager,
 - (b) the scheme manager is made at the time determined by the scheme manager.
- (4) An immediate choice decision may only be made before the end of the section 6 election period⁽³⁾.
- (5) An immediate choice decision is irrevocable.
- (6) An immediate choice decision to make a section 6 election takes effect as a section 6 election (see sections 6(5) and (7), 7(1)(b) and 9 of PSPJOA 2022 about the effect of a section 6 election).
- (7) Paragraph (8) applies where—
- (a) immediately before 1 October 2023, M has remediable teacher service in the reformed scheme (“reformed scheme service”), and
 - (b) an immediate choice decision is made that no section 6 election is to be made in relation to M’s remediable teacher service.
- (8) Where this paragraph applies, section 6(4) of the PSPJOA 2022 does not apply in relation to M’s reformed scheme service (and, accordingly, section 2(1) of PSPJOA 2022 has effect in relation to M’s reformed scheme service for the purposes mentioned in section 2(3)(b) of that Act from the time the immediate choice decision is made).
- (9) The following provisions of PSPJOA 2022 have effect in relation to an immediate choice decision that no section 6 election is to be made as they have effect in relation to a section 6 election—
- (a) section 6(7) (section 6 election has effect in respect of all remediable service in the employment or office),
 - (b) section 7(1)(b) (provision about when a section 6 election is to be treated as having taken effect),
 - (c) section 9 (provision about persons with remediable service in more than one Chapter 1 legacy scheme).

Immediate choice decision: additional requirements

- 9.—(1) This regulation applies where the immediate choice decision-maker (“D”) is a person other than the scheme manager.
- (2) An immediate choice decision may not be made unless a remediable service statement has been provided to D in accordance with regulation 4(2)(a).
- (3) An immediate choice decision is to be treated as having been made only if D provides any information specified in a written request from the scheme manager that is—
- (a) information in D’s possession, or
 - (b) information which D can reasonably be expected to obtain.

Immediate choice decision: deemed section 6 election

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

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

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

(2) In this regulation—

“monetary value of the remediable benefits” means 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⁽⁴⁾ as it had effect immediately before 1 October 2023,

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

CHAPTER 3

Deferred choice decision for reformed scheme or legacy scheme benefits

Application and interpretation of Chapter 3

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),

(4) 2004 c. 12. Section 216 was amended by paragraphs 31 and 42 of schedule 10 to the Finance Act 2005 (c. 7); paragraph 30 of schedule 23 to the Finance Act 2006 (c. 25); paragraphs 1(3) and 5 of schedule 29 to the Finance Act 2008 (c. 9); paragraphs 43 and 73(2) and (3)(a) and (b) of schedule 16 to the Finance Act 2011 (c. 11); paragraph 16 of schedule 1, and paragraph 21 of schedule 2 to the Taxation of Pensions Act 2014 (c. 30); paragraph 4(2) and (3) of schedule 4 to the Finance Act 2015 (c. 11); and paragraph 10(2)(a) and (b) of schedule 5 to the Finance Act 2021 (c. 26).

- (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.