

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2023 No. 241**

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

**PART 5**

Voluntary contributions

**CHAPTER 1**

General

**Interpretation of Part 5**

**27.** In this Part—

“additional pension” means rights to benefits secured by virtue of an election under—

- (a) in relation to the legacy scheme, paragraph 2 of schedule 2A to the 2005 Regulations<sup>(1)</sup>,
- (b) in relation to the reformed scheme, paragraph 6 of schedule 2 to the 2014 Regulations,

“alternative reformed scheme additional pension value” means the value of additional pension determined pursuant to regulation 28(1)(a)(i),

“bought out standard reduction” means rights to benefits secured by virtue of an election under paragraph 31 of schedule 2 to the 2014 Regulations<sup>(2)</sup>,

“compensatable amount” means, where an amount by way of compensation relates to remediable voluntary contributions paid to secure—

- (a) additional pension under the legacy scheme, the amount determined pursuant to regulation 28(1)(a)(ii),
- (b) reformed scheme flexibilities, the amount determined pursuant to regulation 28(1)(b)(ii),

“faster accrual” means benefits secured by virtue of an election under paragraph 22 of schedule 2 to the 2014 Regulations,

“reformed scheme flexibility” means additional pension, bought out standard reduction or faster accrual secured under the reformed scheme,

“relevant pension year” has the meaning given in direction 5(16)(c)(i) of the PSP Directions 2022,

“remediable voluntary contribution” means a voluntary contribution<sup>(3)</sup> paid pursuant to an arrangement which commenced during the period of M’s remediable teacher service,

“rights to alternative legacy scheme additional pension” means the rights to additional pension determined pursuant to regulation 28(1)(b)(i),

“RVC election” has the meaning given in regulation 29(4)(c),

---

(1) Schedule 2A was added by S.S.I. 2007/189.

(2) Paragraph 31 was amended by S.S.I. 2015/97.

(3) See section 110(1) PSPJOA 2022 for the meaning of “voluntary contributions”.

“voluntary contribution” means a contribution paid by a remedy member to secure—

- (a) additional pension under the legacy scheme, or
- (b) a reformed scheme flexibility.

### **Requirement to determine the value of flexibilities in a member’s alternative scheme**

**28.**—(1) The scheme manager must, as soon as is practicable after 1 October 2023, determine—

- (a) where a remedy member paid remediable voluntary contributions to secure additional pension under the legacy scheme—
  - (i) the equivalent value of additional pension that would have been secured under the reformed scheme if the remediable voluntary contributions had been paid to that scheme, and
  - (ii) the amount which is equal to—
    - (aa) the aggregate of the remediable voluntary contributions paid to secure the additional pension under the legacy scheme, less
    - (bb) an amount in respect of the value of tax relief in accordance with directions 5(5) to (9) of the PSP Directions 2022,
- (b) where a remedy member paid remediable voluntary contributions to secure reformed scheme flexibilities—
  - (i) the rights to additional pension under the legacy scheme that would have been secured under that scheme if the remediable voluntary contributions had been paid to that scheme, and
  - (ii) the amount which is equal to—
    - (aa) the aggregate of the remediable voluntary contributions paid to secure the reformed scheme flexibility, less
    - (bb) an amount in respect of the value of tax relief calculated in accordance with direction 5(5) to (9) of the PSP Directions 2022.

(2) Where a determination is made in accordance with direction 5(8) of the PSP Directions 2022, the following apply—

- (a) direction 5(10) (provision of explanation),
  - (b) direction 5(11) and (12) (appeals).
- (3) In making a determination under paragraph (1)—
- (a) the scheme manager must consult the scheme actuary, and
  - (b) the scheme manager must treat any remediable voluntary contribution paid to—
    - (i) the reformed scheme as if it was paid to the legacy scheme in the same relevant pension year in which it was paid to the reformed scheme,
    - (ii) the legacy scheme as if it was paid to the reformed scheme in the same relevant pension year in which it was paid to the legacy scheme.

### **Election in relation to remediable voluntary contributions**

**29.**—(1) This regulation applies where—

- (a) a remedy member (“M”) has paid remediable voluntary contributions to secure a reformed scheme flexibility, and
- (b) M is—

- (i) an immediate choice member and, at the time M made the election pursuant to which those remediable voluntary contributions were paid, M was under 65,
  - (ii) a deferred choice member.
- (2) This regulation applies separately in relation to each reformed scheme flexibility secured by M's remediable voluntary contributions.
- (3) The scheme manager must, as soon as is practicable after making the determinations mentioned in regulation 28(1)(b) in relation to M, give written notice to the relevant decision-maker.
- (4) The notice must set out—
  - (a) the rights secured by virtue of any remediable voluntary contributions paid by M,
  - (b) the effect on those rights if, as the case may be—
    - (i) a section 6 election or a section 10 election is made in relation to M's remediable teacher service, or
    - (ii) no section 6 election or section 10 election is made in relation to M's remediable teacher service,
  - (c) the fact that the relevant decision-maker may make an election (an "RVC election") in accordance with paragraph (5), and the consequences of making or not making an RVC election,
  - (d) the form and manner by which the RVC election must be communicated to the scheme manager,
  - (e) the time by which the RVC election must be received by the scheme manager,
  - (f) the fact that the RVC election is irrevocable.
- (5) The relevant decision-maker may elect that—
  - (a) rights to alternative legacy scheme additional pension are to be conferred,
  - (b) the scheme manager owes to M or, if M is deceased, M's personal representatives an amount by way of compensation equal to the compensatable amount, or
  - (c) except where—
    - (i) M is an immediate choice member, or
    - (ii) M is a deferred choice member who has died,the scheme manager must pay to M an amount by way of compensation equal to the compensatable amount, but that payment is to be waived by virtue of an agreement under regulation 39(2).
- (6) An election may only be made—
  - (a) during the period of six months beginning on the day after written notice is given in accordance with this regulation, or
  - (b) at such later time as the scheme manager considers reasonable in all the circumstances.
- (7) An election under paragraph (5) is irrevocable.
- (8) In this regulation—

"relevant decision-maker" means—

  - (a) where M is an immediate choice member, the immediate choice decision-maker in relation to M,
  - (b) where M is a deferred choice member, the deferred choice decision-maker in relation to M.

### **Disapplication of scheme rules where rights are determined, varied or conferred**

**30.** Where rights, or the value of rights, are determined, varied or conferred under Chapter 2 or 3, the following do not apply in relation to those rights—

- (a) any procedural requirement (such as the giving of a notice) imposed by the 2005 Regulations or the 2014 Regulations in connection with securing rights that are the same as, or similar to, the varied or conferred rights,
- (b) any provision contained in the 2005 Regulations or the 2014 Regulations limiting the amount of additional pension, bought out standard reduction or faster accrual that may be secured in a particular period.

### **Variation of the period during which a buy-out election may be made**

**31.—**(1) In relation to a relevant member, paragraph 31(4) of schedule 2 to the 2014 Regulations is to be read as if for “after P enters pensionable service under this scheme” there were substituted “of the beginning of 1 October 2023”.

(2) In paragraph (1), “relevant member” means a remedy member who, immediately before 1st April 2022, was not a full protection member within the meaning of paragraph 6 of schedule 3 to the 2014 Regulations(4).

## CHAPTER 2

### Immediate choice members

#### **Application of Chapter 2**

**32.** This Chapter applies in relation to the remediable voluntary contributions of an immediate choice member (“M”).

#### **Treatment of legacy scheme additional pension where reformed scheme benefits chosen**

**33.—**(1) This regulation applies where M has paid remediable voluntary contributions to secure additional pension under the legacy scheme.

(2) When making an immediate choice decision, the immediate choice decision-maker may elect that—

- (a) the value of additional pension under the legacy scheme secured by virtue of M’s remediable voluntary contributions is to be varied so that it is equivalent to the alternative reformed scheme additional pension value, or
- (b) the scheme manager must pay to M or, if M is deceased, M’s personal representatives an amount by way of compensation equal to the compensatable amount.

(3) Paragraphs (4) and (5) apply where a section 6 election is made (or deemed to have been made) in relation to M’s remediable teacher service.

(4) Where either—

- (a) an election is made in accordance with paragraph (2)(a), or
- (b) no election is made in accordance with paragraph (2),

the scheme manager must vary the value of additional pension secured under the legacy scheme by virtue of M’s remediable voluntary contributions so that it is equivalent to the alternative reformed scheme additional pension value,

(5) Where an election is made in accordance with paragraph (2)(b)—

---

(4) Paragraph 6 was amended by [S.S.I. 2015/97](#) and [S.S.I. 2022/102](#).

- (a) the scheme manager must pay to M or, if M is deceased, M's personal representatives an amount by way of compensation equal to the compensatable amount, and
- (b) the rights that would have been secured by payment of the remediable contributions are extinguished.

#### **Treatment of reformed scheme flexibilities where legacy scheme benefits take effect**

**34.**—(1) This regulation applies where M has paid remediable voluntary contributions to secure a reformed scheme flexibility.

(2) This regulation applies separately in relation to each type of reformed scheme flexibility secured by M's remediable voluntary contributions.

(3) Where either—

- (a) the end of the section 6 election period in relation to M has passed and no section 6 election is made (or deemed to have been made) in relation to M's remediable teacher service, or
- (b) an immediate choice decision has been made that no section 6 election is to be made in relation to M's remediable teacher service,

the rights that would have been secured by the payment of the remediable voluntary contributions are extinguished.

(4) Where—

- (a) an RVC election is made under regulation 29(5)(a), or
- (b) the period mentioned in regulation 29(6) has expired and no RVC election has been made,

the scheme manager must confer the rights to alternative legacy scheme additional pension.

(5) Where—

- (a) an RVC election is made under regulation 29(5)(b), or
- (b) at the time M made the election pursuant to which the remediable voluntary contributions were paid, M was 65 or over,

the scheme manager owes to M or, where M is deceased, to M's personal representatives an amount equal to the compensatable amount.

#### **Treatment of scheme flexibilities in payment**

**35.**—(1) Paragraph (2) applies where—

- (a) section 2(1) of PSPJOA 2022 has effect in relation to the remediable teacher service of an immediate choice member ("M"), and
- (b) M paid a remediable voluntary contribution to secure a reformed scheme flexibility.

(2) Where this paragraph applies—

- (a) the rights to benefits secured by virtue of the remediable voluntary contribution mentioned in paragraph (1)(b) are to be treated for the purposes of these Regulations and of PSPJOA 2022 as if those rights were secured by virtue of M's remediable teacher service, and
- (b) section 2(5)(a) of PSPJOA 2022 does not apply in relation to the arrangement by virtue of which M secured the relevant reformed scheme flexibility mentioned in paragraph (1)(b) (and, accordingly, section 2(1) of PSPJOA 2022 affects that arrangement).

(3) Paragraph (4) applies where—

- (a) an immediate choice member ("M") paid a remediable voluntary contribution to secure additional pension under the legacy scheme,

- (b) immediately before 1 October 2023, M was a pensioner member in relation to the legacy scheme, and
- (c) a section 6 election is made, or deemed to have been made, in relation to M’s remediable service.

(4) Where this paragraph applies, the rights secured by virtue of the remediable voluntary contribution mentioned in paragraph (3)(a) are to be treated for the purposes of these Regulations and of PSPJOA 2022 as if those rights were secured by virtue of M’s remediable teacher service.

### CHAPTER 3

#### Deferred choice members

#### SECTION 1

#### *Application of Chapter 3*

#### **Application of Chapter 3**

**36.** This Chapter applies in relation to the remedial voluntary contributions of a deferred choice member (“M”).

#### SECTION 2

#### *Provision about remedial voluntary contributions on the entry into force of section 2(1) of PSPJOA 2022*

#### **Application of Section 2**

**37.**—(1) This Section applies where M has paid remediable voluntary contributions to secure a reformed scheme flexibility.

(2) This Section applies separately in relation to each type of reformed scheme flexibility secured by M’s remediable voluntary contributions.

#### **Treatment of rights to reformed scheme flexibilities on the entry into force of section 2(1) of PSPJOA 2022**

**38.**—(1) Paragraph (2) applies in relation to rights to reformed scheme flexibilities in respect of which—

- (a) an RVC election is made under regulation 29(5)(a), or
- (b) the period mentioned in regulation 29(6) has expired and no RVC election has been made.

(2) Where this paragraph applies—

- (a) the scheme manager must confer rights to alternative legacy scheme additional pension,
- (b) the rights to reformed scheme flexibilities mentioned in paragraph (1) are extinguished, and
- (c) if the arrangement under which remediable voluntary contributions are paid to secure the reformed scheme flexibilities is continuing, any remediable voluntary contributions paid under that arrangement are to be treated as being paid to secure rights to legacy scheme additional pension.

(3) Paragraph (4) applies in relation to rights to reformed scheme flexibilities in respect of which an RVC election is made under regulation 29(5)(b) or (c).

(4) Where this paragraph applies—

- (a) the scheme manager owes to M or, where M is deceased, to M's personal representatives an amount equal to the compensatable amount except in accordance with the terms of an agreement under regulation 39(2),
- (b) the rights to reformed scheme flexibilities mentioned in paragraph (3) are extinguished, and
- (c) if the arrangement under which remediable voluntary contributions are paid to secure the reformed scheme flexibilities is continuing, that arrangement is terminated.

#### **Agreement to waive payment of a compensatable amount**

**39.**—(1) This regulation applies in relation to rights to reformed scheme flexibilities in respect of which an RVC election is made under regulation 29(5)(c).

(2) The scheme manager and M may agree to waive the compensatable amount otherwise owed under regulation 38(4)(a).

(3) Such an agreement—

- (a) must be in writing, and
- (b) must provide that the waiver ceases to apply where—
  - (i) the end of the section 10 election period in relation to the remediable teacher service has passed without a deferred choice decision having been made in relation to that service, or
  - (ii) a deferred choice decision is made in relation to that service.

(4) The agreement must provide that, where a waiver ceases to apply by virtue of the circumstances mentioned in paragraph (3) and the benefits payable in relation to M's remediable teacher service are—

- (a) legacy scheme benefits, the scheme manager owes M or, where M is deceased, M's personal representatives the compensatable amount mentioned in paragraph (2),
  - (b) reformed scheme benefits—
    - (i) the scheme manager must, having consulted the scheme actuary, confer rights under the reformed scheme equivalent to the reformed scheme flexibilities mentioned in paragraph (1), and
    - (ii) any right to payment of the compensatable amount is extinguished.
- (5) An agreement under this regulation may not be varied.

### *SECTION 3*

#### *Provision about remediable voluntary contributions on a deferred choice decision*

#### **Variation of legacy scheme additional pension where reformed scheme benefits chosen**

**40.**—(1) This regulation applies where M has paid remediable voluntary contributions to secure additional pension under the legacy scheme.

(2) When making a deferred choice decision, the deferred choice decision-maker may elect that—

- (a) the value of additional pension under the legacy scheme secured by virtue of M's remediable voluntary contributions is to be varied so that it is equivalent to the alternative reformed scheme additional pension value, or
- (b) the scheme manager must pay to M or, if M is deceased, M's personal representatives an amount by way of compensation equal to the compensatable amount.

(3) Paragraphs (4) and (5) apply where a section 10 election is made (or deemed to have been made) in relation to M's remediable teacher service.

(4) Where either—

- (a) an election is made in accordance with paragraph (2)(a), or
- (b) no election is made in accordance with paragraph (2),

the scheme manager must vary the value of additional pension under the legacy scheme secured by virtue of M's remediable voluntary contributions so that it is equivalent to the alternative reformed scheme additional pension value.

(5) Where an election is made in accordance with paragraph (2)(b)—

- (a) the scheme manager must pay to M or, if M is deceased, M's personal representatives an amount by way of compensation equal to the compensatable amount, and
- (b) the rights that would have been secured by payment of the remediable voluntary contributions are extinguished.

#### **Reinstatement of reformed scheme flexibilities where reformed scheme benefits chosen**

**41.**—(1) Paragraph (2) applies—

(a) in relation to—

- (i) rights to alternative legacy scheme additional pension conferred under regulation 38(2)(a), together with
- (ii) any rights treated as being rights to legacy scheme additional pension by virtue of regulation 38(2)(c), and

(b) where a section 10 election is made (or deemed to have been made) in relation to M's remediable teacher service.

(2) The scheme manager must, having consulted the scheme actuary, vary the rights mentioned in paragraph (1)(a) so that they are equivalent to the rights to reformed scheme flexibilities that would have been secured had regulation 38(2) never taken effect in relation those rights.

(3) Paragraph (4) applies—

- (a) in relation to rights which were extinguished under regulation 38(4)(b),
- (b) where payment of a compensatable amount in respect of those rights was waived in accordance with the terms of an agreement under regulation 39(2), and
- (c) where a section 10 election is made (or deemed to have been made) in relation to M's remediable teacher service.

(4) Where this paragraph applies—

- (a) the scheme manager must, having consulted the scheme actuary, confer rights under the legacy scheme that are equivalent to the extinguished rights mentioned in paragraph (3) (a), and
- (b) the right to payment of the compensatable amount is extinguished.

#### **Treatment of waived compensatable amount where legacy scheme benefits take effect**

**42.**—(1) This regulation applies where—

- (a) payment of a compensatable amount was waived in accordance with the terms of an agreement under regulation 39(2),
- (b) the waiver under that agreement has ceased to apply, and



- (c) the benefits payable in relation to M's remediable teacher service are legacy scheme benefits.
- (2) The scheme manager owes M or, where M is deceased, M's personal representatives the compensatable amount.

## CHAPTER 4

### Remedial arrangements to pay voluntary contributions to the legacy scheme

#### **Remedial arrangements to pay voluntary contributions to secure legacy scheme additional pension**

- 43.**—(1) This regulation applies to a remedy member (“M”) who is not a deceased member.
- (2) M may elect to enter into an arrangement (a “remedial arrangement”) to pay contributions for additional pension under the legacy scheme in accordance with—
- (a) schedule 2A of the 2005 Regulations, and
  - (b) this regulation.
- (3) M may only enter into a remedial arrangement—
- (a) in respect of a period of M's remediable teacher service,
  - (b) if the scheme manager is satisfied that it is more likely than not that, but for a relevant breach of a non-discrimination rule, M would, during the period of M's remediable teacher service, have entered into the same or a similar arrangement,
  - (c) before—
    - (i) the end of the period of one year beginning with the day on which a remediable service statement is first provided in respect of M, or
    - (ii) such later time as the scheme manager considers reasonable in all the circumstances, and
  - (d) after an application made in accordance with paragraph (4) is approved by the scheme manager.
- (4) An application is made in accordance with this paragraph where—
- (a) it is in writing in a form and manner determined by the scheme manager,
  - (b) it is accompanied by any information the scheme manager reasonably requires to be provided for the purposes of—
    - (i) determining the matters mentioned in paragraph (3)(b),
    - (ii) complying with any requirement imposed by schedule 2A of the 2005 Regulations in connection with making an election to pay voluntary contributions for additional pension, and
  - (c) it is received by the scheme manager—
    - (i) before the end of the period of six months beginning with the day on which a remediable service statement is first provided in respect of M, or
    - (ii) such later time as the scheme manager considers reasonable in all the circumstances.
- (5) The scheme manager may treat an application made in accordance with paragraph (4) as if it were a notice under paragraph 2 of schedule 2A to the 2005 Regulations.
- (6) Where M enters into a remedial arrangement, M owes to the scheme manager an amount equal to—

---

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

---

- (a) the aggregate of the voluntary contributions which M would have owed had M entered into the remedial arrangement at the time M would have entered into the same or a similar arrangement but for a relevant breach of a non-discrimination rule, less
  - (b) tax relief amounts calculated in accordance with direction 12(2) to (7) of the PSP Directions 2022.
- (7) Where a determination is made in accordance with direction 12(6) of the PSP Directions 2022, the following apply—
- (a) direction 12(8) (provision of explanation),
  - (b) direction 12(9) and (10) (appeals).