
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 241

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

PART 7

Provision about special cases

CHAPTER 1

Ill-health retirement

Interpretation of Chapter 1

61.—(1) In this Chapter—

“alternative scheme”, in relation to a remedy member means, where the member’s eligibility for ill-health retirement benefits was assessed under—

- (a) the member’s legacy scheme, the reformed scheme,
- (b) the reformed scheme, the member’s legacy scheme,

“ill-health retirement benefits”—

- (c) in relation to the legacy scheme, means benefits payable in accordance with regulation E6(5) of the 2005 Regulations,
- (d) in relation to the reformed scheme, has the meaning given in regulation 3 of the 2014 Regulations,

“ill-health retirement criteria” means the criteria contained in a teacher pension scheme by which it is determined whether a person is eligible for ill-health retirement benefits under that scheme,

(2) For the purposes of this Chapter, an application for ill-health retirement benefits is “finally determined” in relation to a teacher pension scheme when—

- (a) it has been determined that the member in respect of whom the application is made meets the ill-health retirement criteria of that scheme, or
- (b) it has been determined that the member does not meet the ill-health retirement criteria of that scheme, and any route for disputing that determination has been exhausted (including where any deadline for initiating a dispute has passed and no dispute has been initiated).

Determining whether a member meets the ill-health retirement criteria in each scheme

62.—(1) Paragraph (2) applies where, during the period beginning on 1 April 2015 and ending at the end of 30 September 2023, an application by a remedy member (“M”) for ill-health retirement benefits was finally determined.

(2) The scheme manager must take reasonable steps to determine whether M would have met the ill-health retirement criteria in M’s alternative scheme at the “relevant time”, being—

- (a) where the application was initially determined—
 - (i) under the reformed scheme, or
 - (ii) under the legacy scheme on or before 31 March 2022, at the time the application was first determined,
 - (b) where the application was initially determined under the legacy scheme on or after 31 March 2022, on 31 March 2022.
- (3) Whether a step is reasonable for the purposes of paragraph (2) depends on, among other things, the difficulty of obtaining information or evidence (including by interviewing or examining M) relevant to the question of whether M would have met the ill-health retirement criteria in M's alternative scheme at the relevant time.
- (4) Paragraph (5) applies where a remedy member (“M”)—
- (a) makes an application for ill-health retirement benefits which—
 - (i) was received by the scheme manager before 1 April 2022, and
 - (ii) is finally determined on or after 1 October 2023, or
 - (b) is a deferred member of a teacher pension scheme, who—
 - (i) before 1 April 2022, left all service in an employment or office which is capable of being pensionable service under a teacher pension scheme,
 - (ii) makes an application for ill-health retirement benefits which is received by the scheme manager on or after 1 April 2022, and
 - (iii) the application has not been finally determined by 1 October 2023.
- (5) The scheme manager must determine—
- (a) whether M would have met the ill-health retirement criteria in the legacy scheme if the application had been determined on 31 March 2022, and
 - (b) whether M meets the ill-health retirement criteria in the reformed scheme.

Provisions about ill-health retirement benefits following reassessment

- 63.**—(1) This regulation applies where—
- (a) a remedy member’s (“M’s”) application for ill-health retirement benefits was determined under a teacher pension scheme before 1 October 2023,
 - (b) it was determined that M did not meet the ill-health retirement criteria in that teacher pension scheme,
 - (c) the scheme manager determines in accordance with regulation 623 that M would have met the ill-health retirement criteria in M’s alternative scheme at the time the application was first determined, and
 - (d) M is a deferred choice member.
- (2) The scheme manager must, as soon as reasonably practicable following the determination mentioned in paragraph (1)(c), send to M a written notice setting out—
- (a) that an election (an “immediate IHR election”) may be made,
 - (b) the time by which an immediate IHR election must be received by the scheme manager, and
 - (c) the consequences of making (or not making) an immediate IHR election.
- (3) M may make an immediate IHR election by sending notice of the election to the scheme manager—

- (a) in a form and manner determined by the scheme manager, and
 - (b) so that it is received by the scheme manager no later than the end of the period of three months beginning on the day the notice mentioned in paragraph (2) is sent.
- (4) Where an immediate IHR election is made, M is to be treated—
- (a) for all purposes as if a deferred choice decision has been made—
 - (i) where M’s alternative scheme is M’s legacy scheme, that no section 10 election is to be made in relation to M’s remediable teacher service (and, accordingly, the benefits payable in relation to M’s remediable teacher service are legacy scheme benefits),
 - (ii) where M’s alternative scheme is the reformed scheme, that a section 10 election is to be made in relation to M’s remediable teacher service, and
 - (b) as if M is entitled to the payment of ill-health retirement benefits under M’s alternative scheme from the day after M’s last day of service in an employment or office which is capable of being pensionable service in a teacher pension scheme.
- (5) Where M does not leave all service in an employment or office which is capable of being pensionable service in a teacher pension scheme before—
- (a) the end of the period of three months beginning on the day the immediate IHR election is received by the scheme manager, or
 - (b) such later time as the scheme manager considers reasonable in all the circumstances,
- M is to be treated as if the immediate IHR election had not been made (and no subsequent immediate IHR election may be made).
- (6) An immediate IHR election is irrevocable.
- (7) The provisions of Chapter 1 of Part 1 of PSPJOA 2022 and of these Regulations about the timing and effect of, as the case may be, a deferred choice decision and a section 10 election apply subject to this regulation.

Ill-health retirement benefit payable in transitional cases

- 64.**—(1) This regulation applies where—
- (a) a remedy member’s (“M’s”) application for ill-health retirement benefits was received by the scheme manager before 1 April 2022,
 - (b) that application is finally determined on or after 1 April 2022, and
 - (c) M has service in an employment or office which is pensionable service under the reformed scheme on or after 1 April 2022.
- (2) Paragraphs (3) and (4) apply where, by virtue of regulation 622 or otherwise, it has been determined that—
- (a) M would have met the ill-health retirement criteria in the legacy scheme if the application had been determined on 31 March 2022 (“the legacy scheme condition”), and
 - (b) M meets the ill-health retirement criteria in the reformed scheme (“the reformed scheme condition”).
- (3) The scheme manager must, as soon as reasonably practicable after the date of the latest determination mentioned in paragraph (2), determine—
- (a) the amount of the ill-health retirement benefits that would have been payable under the legacy scheme if the application had been determined under the legacy scheme on 31 March 2022 (the “legacy scheme IHR benefits”), and
 - (b) the amount of the ill-health retirement benefits under the reformed scheme (the “reformed scheme IHR benefits”) calculated up to the later of—

- (i) if M is no longer in any service in an employment or office that is capable of being pensionable service under a teacher pension scheme, the last day of such service,
- (ii) otherwise, the date on which the determination under this sub-paragraph is made.

(4) Where the reformed scheme IHR benefits payable to a person (“P”) are less than the legacy scheme IHR benefits payable to P, an amount is payable to P under the reformed scheme which is equal to the difference between the reformed scheme IHR benefits and the legacy scheme IHR benefits.

(5) Paragraph (6) applies where, by virtue of regulation 622 or otherwise, it has been determined that—

- (a) M meets the legacy scheme condition, but
- (b) M does not meet the reformed scheme condition.

(6) An amount is payable to a person by way of ill-health retirement benefits under the reformed scheme which is equal to the amount that would have been payable to that person under the legacy scheme had M’s application been determined under that scheme on 31 March 2022.

CHAPTER 2

Miscellaneous special cases

Protection of the amount of pension payable to an eligible child

65.—(1) This regulation applies where—

- (a) immediately before 1 October 2023, a child pension is in payment to an eligible child (“E”) in respect of the remediable teacher service of a deceased member (“M”),
- (b) there is a surviving adult (“S”) in relation to the deceased member,
- (c) E is not in the care of S, and
- (d) S makes an immediate choice decision which would (disregarding this regulation) result in a decrease in the rate of child pension payable to E in respect of M’s remediable teacher service.

(2) Where this regulation applies—

- (a) E does not owe the scheme manager a liability under section 14(3) of PSPJOA 2022 in respect of the child pension, and
- (b) the rate of child pension continues to be the rate that was payable before the decision was made.

Immediate choice members with excess teacher service

66.—(1) This regulation applies in relation to an immediate choice member (“M”) who has excess teacher service within the meaning of section 110(2)(b) of PSPJOA 2022 (“relevant excess teacher service”).

(2) Section 2(1) of PSPJOA 2022 does not apply in relation to M’s remediable teacher service until the sooner of—

- (a) an immediate choice decision being made in relation to that service, or
- (b) the end of the section 6 election period in relation to M.

(3) Where—

- (a) section 2(1) of PSPJOA 2022 has effect in relation to M’s remediable teacher service, and
- (b) a section 6 election has been made, or deemed to have been made, in relation to that service,

section 4(4) of PSPJOA 2022 does not apply in relation to M’s relevant excess teacher service (and, accordingly, the relevant Chapter 1 legacy scheme in relation to that excess teacher service is the legacy scheme).

CHAPTER 3

Premature retirement

Compensation for premature retirement

67. No annual compensation or lump sum compensation to which a remedy member is eligible under regulation 5 of the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996⁽¹⁾ is to be treated as a pension benefit or a lump sum benefit for the purposes of section 14 of PSPJOA 2022.

Payment of annual allowance tax charges and provision of information

68. Where a remedy member is unable to give an effective notice to the scheme administrator under section 237B(3) of FA 2004⁽²⁾ in relation to an in-scope tax year (within the meaning of direction 7(7) of the PSP Directions 2022) because the time limit in section 237BA⁽³⁾ of FA 2004 has passed, direction 7(2) to (6) of the PSP Directions 2022 applies in relation to the remedy member.

(1) S.I. 1996/2317.

(2) In accordance with section 110 (1) of PSPJOA 2022, “FA 2004” means the Finance Act 2004 (c. 12). Section 237B was inserted by paragraph 15 of schedule 17 to the Finance Act 2011 (c. 11).

(3) Section 237BA was inserted by section 9(3) of the Finance Act 2022 (c. 3).