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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 246**

**The National Health Service Pension Schemes  
(Remediable Service) (Scotland) Regulations 2023**

**PART 11**

**Retirement pensions**

**Premature retirement in the interests of efficiency**

**70.**—(1) This regulation applies in relation to a relevant member (“M”) who has remediable service in the legacy scheme that is pensionable service under that scheme whether or not by virtue of section 2(1) (remediable service”) of PSPJOA 2022 (“M’s remediable service”).

(2) Where this regulation applies and the scheme manager accepts an immediate choice election in accordance with regulation 9 or a deferred choice election in accordance with regulation 12 and, as a result of that election, the additional contribution due from the employing authority increases, the scheme manager must waive that increase.

(3) In paragraph (2), the additional contribution due from the employing authority is the amount the scheme manager determines is required to meet the cost of providing the pension in the 1995 Section or 2008 Section (whichever is relevant).

(4) In this regulation, “relevant member” means a member—

- (a) who—
  - (i) on 30 September 2023—
    - (aa) was a pensioner member with regard to benefits paid in respect of remediable service in the legacy scheme, or
    - (bb) was deceased, or
  - (ii) on or after 1 October 2023 was an active, deferred or deceased remedy member but not a pensioner member; and
- (b) whose employment has been or is terminated by M’s employing authority under—
  - (i) regulation E8 of the 2011 Regulations (early retirement pension (redundancy etc notifications)), or
  - (ii) regulation 2.D.11 of the 2013 Regulations (early retirement on termination of employment by employing authority).

**Premature retirement on grounds of redundancy**

**71.**—(1) This regulation applies in relation to a relevant member (“M”) where M’s employing authority has made or makes a contribution to the scheme manager in accordance with—

- (a) regulation D2 of the 2011 Regulations (contributions and other payments by employing authorities);

- (b) regulation 2.C.6 of the 2013 Regulations (contributions by employing authorities: early retirement on termination of employment ); or
  - (c) regulation 34 of the 2015 Regulations (employing authority contributions: redundancy).
- (2) Paragraphs (3) and (4) apply if the cost of any benefits on termination in respect of M increase as a result of—
- (a) the scheme manager accepting—
    - (i) an immediate choice election made by or in respect of M in accordance with regulation 9, or
    - (ii) a deferred choice election made by or in respect of M in accordance with regulation 12; or
  - (b) an election referred to in sub-paragraph (a) not being made by or in respect of M before the end of the immediate choice election period or the end of the deferred choice election period (whichever election period applies in respect of M).
- (3) M may pay all or part of the additional contribution as the scheme manager, after having regard to the advice of the scheme actuary, determines will be sufficient to meet the increased cost of the benefits insofar as that cost—
- (a) is not met by the contribution referred to in paragraph (1), and
  - (b) exceeds the cost in respect of which M was entitled to make an additional contribution on becoming entitled to any benefits on termination.
- (4) If M elects not to pay any additional contribution in accordance with paragraph (3), the scheme manager must reduce the amount of pension pursuant to—
- (a) regulation E7 of the 2011 Regulations;
  - (b) regulation 2.D.11 of the 2013 Regulations (early retirement on termination of employment by employing authority); or
  - (c) schedule 11 of the 2015 Regulations.
- (5) Subject to paragraph (6), if the member is not entitled to make an additional contribution to meet the increase in costs referred to in paragraph (2) and that increase is to be met by M's employing authority in accordance with the terms and conditions relevant to M's employment, the scheme manager must waive the element of the further contribution due from the employing authority that relates to the increase.
- (6) Where M has received a relevant employing authority payment and that payment must be reduced as a consequence of the increase in costs referred to in paragraph (2), the amount that must be waived under that paragraph must also be reduced by the same amount.
- (7) Paragraph (8) applies if the cost of any benefits on termination in respect of M decrease as a result of—
- (a) the scheme manager accepting—
    - (i) an immediate choice election made by or in respect of M in accordance with regulation 9, or
    - (ii) a deferred choice election made by or in respect of M in accordance with regulation 12; or
  - (b) an election referred to in sub-paragraph (a) not being made by or in respect of M before the end of the immediate choice election period or the end of the deferred choice election period (whichever election period applies in respect of M).
- (8) The scheme manager must send a notice in writing to M or the designated person of the amount by which the cost of any benefits on termination in respect of M have decreased.

(9) In paragraph (5), the element to be waived does not include any payment received by M under—

- (a) regulation E3A(5)(a) of the 2011 Regulations;
- (b) regulation 2.D.11(6)(a) of the 2013 Regulations; or
- (c) paragraph 7(2)(a) of schedule 11 of the 2015 Regulations.

(10) In this regulation—

“benefits on termination” means benefits under—

- (a) regulations E3A, E6 (lump sum on retirement) and E7 (general option to exchange part of pension for lump sum) of the 2011 Regulations ;
- (b) regulations 2.D.11 (early retirement on termination of employment by employing authority) and 2.D.14 (general option to exchange part of pension for lump sum) of the 2013 Regulations;
- (c) regulations 76 (conversion of part of pension into lump sum) and 80 (premature retirement in the interests of efficiency) of the 2015 Regulations,

“relevant member” means a member

- (a) who—
  - (i) on 30 September 2023—
    - (aa) was a pensioner remedy member, or
    - (bb) was deceased; or
  - (ii) on or after 1 October 2023 was an active, deferred or deceased remedy member; and
- (b) who in respect of the termination of M’s employment by M’s employing authority is entitled to the payment of any benefits on termination,

“relevant employment authority payment” means a payment made to M by M’s employing authority in respect of the cessation of M’s employment referred to in (whichever is relevant)—

- (a) regulation E6 of the 2011 Regulations;
- (b) regulation 2.D.11(6)(a) of the 2013 Regulations; or
- (c) paragraph 7(2)(a) of schedule 11 of the 2015 Regulations.

### **Partial retirement: pensioner remedy members**

**72.—**(1) This regulation applies to a pensioner remedy member (“M”) who—

- (a) is entitled to a pension under—
  - (i) regulation 2.D.5 or 3.D.5 of the 2013 Regulations (Partial retirement (members aged at least 55)), or
  - (ii) regulation 83 of the 2015 Regulations (election for partial retirement (members over normal minimum pension age)); and
- (b) either—
  - (i) has remediable service in the 2008 Section that is pensionable service under that section by virtue of section 2(1) of PSPJOA 2022 and does not make an immediate choice election under regulation 10 of these Regulations in respect of that service, or
  - (ii) has remediable service in the 2008 Section that is pensionable service under that section other than by virtue of section 2(1) of PSPJOA 2022 and makes an immediate choice election under regulation 10 of these Regulations in respect of that service.

(2) M may elect to adjust the specified percentage of M’s pension (excluding any additional pension) in respect of which M has claimed immediate payment by an amount determined by the scheme manager as being necessary to maintain the amount of M’s annual partial retirement pension in payment at—

- (a) the end of the immediate choice election period where paragraph (1)(b)(i) applies to M; and
  - (b) the date the member makes an immediate choice election under regulation 10 where paragraph (1)(b)(ii) applies to M.
- (3) Where this regulation applies —
- (a) the scheme manager must send a notice in writing to M of M’s right under paragraph (2) on or before the relevant date referred to in regulation 6(2); and
  - (b) M must, if M decides to exercise that right, give the scheme manager notice in writing of that decision—
    - (i) within three months beginning with the day on which the scheme manager sends the notice referred to in sub-paragraph (a); or
    - (ii) by such later time as the scheme manager considers reasonable in all the circumstances of the case.

**Partial retirement: deferred and active remedy members**

**73.**—(1) This regulation applies to an active or deferred remedy member (“M”) who, at the operative time, is entitled to a pension under—

- (a) regulation E11 (early retirement with actuarial reduction) of the 2011 Regulation;
- (b) regulation 2.D.5 or 3.D.5 (partial retirement (members aged at least 55)) of the 2013 Regulations; or
- (c) regulation 83(election for partial retirement (members over normal minimum pension age)) of the 2015 Regulations.

(2) M may make an election to substitute the specified percentage of M’s pension (excluding any additional pension) in respect of which M has claimed immediate payment with a different specified percentage (“a substitute percentage election”).

(3) The scheme manager must send a notice in writing to M of M’s right to make a substitute percentage election under paragraph (2) on or before the relevant date referred to in regulation 6(2).

(4) A substitute percentage election must—

- (a) be notified by M to the scheme manager in writing;
- (b) be received by the scheme manager—
  - (i) within a period of three months beginning with the day after the scheme manager sends the notice referred to in paragraph (3), or
  - (ii) by such later time as the scheme manager considers reasonable in all the circumstances of the case;
- (c) contain such information as the scheme manager requires;
- (d) take effect from the day on which M became entitled to the pension referred to in paragraph (1) (whichever is relevant); and
- (e) be disregarded for the purposes of determining whether M may make a further election for partial retirement under the regulation referred to in paragraph (1) (whichever is relevant).

(5) In this regulation—

“operative time” means if a deferred choice election by virtue of regulation 12 is made in relation to M’s remediable service, the time when the election is made; otherwise, the end of the deferred choice election period in relation to M.

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

74.—(1) This regulation applies to a remedy member (“M”)—

- (a) who ceased to be employed in NHS employment during the period of M’s remediable service, and
- (b) whose application for an ill-health pension in relation to that service (“M’s application”) has been determined by the scheme manager.

(2) Where this regulation applies, the scheme manager must reconsider M’s application together with any supporting medical evidence to determine whether M would have met the ill-health retirement criteria in M’s alternative scheme or section when the application was initially determined.

(3) Where M or a designated person on M’s behalf (see regulation 7) has the right to make an immediate choice election under regulation 9—

- (a) the scheme manager must send a notice in writing to M or the designated person of the outcome of the scheme manager’s determination under paragraph (2) before the immediate choice election period commences in respect of M, and
- (b) if M or the designated person on M’s behalf elects to take an ill-health pension as a result of the scheme manager’s determination under paragraph (2), any rights for M to make that election must be deemed to have been fulfilled.

(4) Where M or a designated person on M’s behalf (see regulation 7) has the right to make a deferred choice election under regulation 12—

- (a) the scheme manager must send a notice in writing to M or the designated person of the outcome of the scheme manager’s determination under paragraph (2) as soon as reasonably practicable after 1 October 2023, and
- (b) if M or the designated person on M’s behalf elects to take an ill-health pension as a result of the scheme manager’s determination under paragraph (2), any rights for M to make that election must be deemed to have been fulfilled.

(5) The provisions of chapter 1 of PSPJOA 2022 and Part 3 of these Regulations about the timing and effect of an immediate choice election by virtue of section 6, and of a deferred choice election by virtue of section 10, of that Act apply subject to this regulation.

(6) In this regulation—

“ill-health pension” means a pension under—

- (a) regulation E3 (early retirement on ill health grounds (post 1<sup>st</sup> April 2008)) of the 2011 Regulations ;
- (b) regulation L1 (treatment of pensionable service of early leavers returning to pensionable employment) of the 2011 Regulations;
- (c) regulation 2.D.8 or regulation 3.D.7 of the 2013 Regulations (early retirement on ill-health: active members and non-contributing members);
- (d) regulation 2.D.10 or regulation 3.D.9 of the 2013 Regulations (early retirement on ill-health: deferred members);
- (e) regulation 89 of the 2015 Regulations (entitlement to ill-health pension); or
- (f) regulation 93 of the 2015 Regulations (early retirement on ill-health (deferred members));

“M’s alternative scheme or section” means—

- (a) where M’s eligibility for ill-health pension was assessed under the 1995 Section or the 2008 Section, the 2015 scheme;
- (b) where M’s eligibility for ill-health pension was assessed under the 2015 scheme, the 1995 Section or the 2008 Section (whichever is relevant);

“NHS employment” has the meaning given in schedule 13 to the 2015 Regulations.

### **Ill-health pension: acceptance of retrospective applications**

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

- (a) a remedy member (“M”) submits an application for ill-health pension on or after 1 October 2023, and
- (b) the scheme manager is satisfied that it is more likely than not that, but for a relevant breach of a non-discrimination rule (in terms of section 61 of the Equality Act 2010 (c.15)), M would, during the period of M’s remediable service, have made the decision to apply for ill-health pension.

(2) The scheme manager may treat the application—

- (a) in accordance with regulation 27 (ill-health benefits: continuity of existing applications) of the 2015 Transitional Regulations(1), and
- (b) as if the application had been submitted before 1 April 2022.

(3) In this regulation—

“ill-health pension” means a pension under—

- (a) regulation E3 (early retirement pension on ill health grounds (post 1<sup>st</sup> April 2008)) of the 2011 Regulations;
- (b) regulation 2.D.8 or regulation 3.D.7 (early retirement on ill- health: active members and non-contributing members) of the 2013 Regulations; or
- (c) regulation 89 (entitlement to ill-health pension) of the 2015 Regulations.

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(1) Regulation 27 was amended by [S.S.I. 2022/100](#).