
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 246

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

PART 3

Elections

Eligibility to make an election: designated persons

7.—(1) This regulation applies where for the purposes of regulation 8, 9 or 12 a designated person is to make an election on behalf of a remedy member.

(2) Where this regulation applies, the designated person is—

(a) in the circumstances described in regulation 8(2)(b)(ii), 9(2)(b)(i) or 12(2)(b)(i)—

(i) a person who is capable and—

(aa) entitled to a surviving partner pension in relation to that member under Part G of the 2011 Regulations;

(bb) entitled to a surviving adult dependant pension in relation to that member under regulation 2.E.1 or 3.E.1 of the 2013 Regulations; or

(cc) entitled to a surviving adult dependant pension in relation to that member under regulation 112 of the 2015 Regulations; or

(ii) where there is no such person (capable or otherwise), a person who on the date of issue of a remediable service statement in relation to that member (see regulation 6) is aged 18 or over, capable and—

(aa) entitled as the sole dependent child of that member to pension benefits in relation to that member under Part H of the 2011 Regulations⁽¹⁾ (dependent child allowance);

(bb) entitled as the sole dependent child of that member to pension benefits in relation to that member under Chapter 2.E of Part 2 (benefits for officers: death benefits) or Chapter 3.E of Part 3 (benefits for practitioners etc: death benefits) of the 2013 Regulations⁽²⁾; or

(cc) entitled as the sole eligible child of that member to pension benefits in relation to that member under Chapter 2 of Part 6 of the 2015 Regulations⁽³⁾ (child survivor);

(iii) otherwise, the scheme manager or a person appointed by the scheme manager;

(b) in the circumstances described in regulation 8(2)(b)(ii), 9(2)(b)(ii), the personal representatives of the remedy member;

(1) Part H was amended by S.S.I. 2011/117 and 364, 2018/124 and 102.

(2) Chapter 2.E of Part 2 was amended by S.S.I. 2010/22 and 369, 2011/364, 2013/174 and 2021/102. Chapter 3.E of Part 3 was amended by S.S.I. 2010/22 and 369, 2011/364, 2013/174 and 2021/102.

(3) Chapter 2 was amended by S.S.I. 2017/28 and 433 and 2021/102.

- (c) in the circumstances described in regulation 8(2)(b)(ii), 9(2)(b)(iii) or 12(2)(b)(ii), the scheme manager or a person appointed by the scheme manager.
- (3) For the purposes of paragraph (2)—
 - (a) a person is capable unless, in the opinion of the scheme manager, that person is, by reason of illness, mental disorder or otherwise, unable to look after their own affairs;
 - (b) the person appointed by the scheme manager (see paragraph (2)(a)(iii) and (c)) may include, in particular—
 - (i) the personal representatives of the remedy member;
 - (ii) the parent or guardian of a dependent or eligible child; or
 - (iii) a dependent or eligible child.

Election for retrospective provision to apply to opted-out service

8.—(1) A person mentioned in paragraph (2) may make an election in relation to relevant opted-out service⁽⁴⁾ of a remedy member (“opted-out service election”) in accordance with this regulation.

- (2) That person is—
 - (a) a remedy member (“M”) who has a period or periods of employment or office that would have been pensionable and remediable service in the legacy scheme or the 2015 scheme had M not opted out of that scheme for that period, or those periods (“relevant opted-out service”); or
 - (b) a designated person or such a person as would be a designated person were the relevant opted-out service considered remediable service (see regulation 7) where—
 - (i) M is deceased and was not at the time of their death entitled to a retirement pension in respect of pensionable service in the legacy scheme or the 2015 scheme;
 - (ii) M is deceased and was at the time of their death entitled to such a retirement pension; or
 - (iii) M is, in the opinion of the scheme manager, by reason of illness, mental disorder or otherwise unable to look after their own affairs.

(3) An opted-out service election may only be made if an application by or on behalf of M is made in a form and within a period determined, and accompanied by such information as is required, by the scheme manager.

- (4) The scheme manager—
 - (a) may refuse the application if the condition in paragraph (5) is not met;
 - (b) must, within six months of receiving the application, send to the person who made the application notice about its outcome;
 - (c) must, if the scheme manager accepts the application, include with that notice a remediable service statement in accordance with regulation 6.

(5) The condition referred to in paragraph (4)(a) is that the scheme manager is satisfied that it is more than likely than not that, but for an actual or anticipated relevant breach of a non-discrimination rule, M would not have made the decision to opt out of the legacy scheme or the 2015 scheme between 1 April 2015 and 31 March 2022 (those dates included).

(6) The scheme manager must determine that the condition in paragraph (5) has been met where M informed the scheme manager at any time between 1 October 2014 and 31 March 2022 (those dates included) of the decision by virtue of which M’s service became relevant opted-out service.

(4) For the meaning of “opted-out service”, see section 36 of PSPJOA 2022.

(7) Where the scheme manager has accepted an application made under paragraph (3), the person mentioned in paragraph (2) may make an opted-out service election which must be—

- (a) made after a remediable service statement has been provided in accordance with paragraph (4)(c);
- (b) made before the end of the applicable election period; and
- (c) in a form determined, and accompanied by such information as is required, by the scheme manager.

Immediate choice election for 2015 scheme benefits: pensioner and deceased members

9.—(1) A person mentioned in paragraph (2) may make an election for the benefits paid to or in respect of a remedy member with regard to that member’s remediable service to be determined as if the service to which those benefits relate were pensionable service for the purposes of the 2015 Regulations (“an immediate choice election”).

(2) That person is—

- (a) a pensioner remedy member, or
- (b) a designated person (see regulation 7 where)—
 - (i) the remedy member died on or before 30 September 2023 and was not at the time of their death entitled to a retirement pension in respect of their remediable service;
 - (ii) the remedy member died on or before that date and was at the time of their death entitled to a retirement pension in respect of their remediable service; or
 - (iii) the pensioner remedy member is, in the opinion of the scheme manager, by reason of illness, mental disorder or otherwise unable to look after their own affairs.

(3) For the purposes of this regulation, an immediate choice election must—

- (a) contain such information as the scheme manager requires;
- (b) be made by the pensioner remedy member or designated person in writing in such form as the scheme manager determines; and
- (c) be received by the scheme manager before the end of the immediate choice election period.

(4) Where the scheme manager accepts an immediate choice election made by a pensioner remedy member or designated person in accordance with this regulation or treats such an election as having been made in accordance with paragraph (5) that election is—

- (a) treated as having effect—
 - (i) immediately before the member became a pensioner remedy member in respect of the member’s remediable service, or
 - (ii) immediately before the remedy member’s death if the member died before becoming a pensioner remedy member; and
- (b) irrevocable.

(5) From the date on which the election is treated as having effect, the benefits due in respect of the remedy member’s remediable service, in place of the benefits being paid for that service, are such benefits as the scheme manager determines must be paid to or in respect of that member, after having regard to all the circumstances of the case and treating that service as if for all purposes it were pensionable service in the 2015 scheme.

(6) The scheme manager may treat an immediate choice election as having been made under this regulation immediately before the end of the immediate choice election period if paragraph (7) applies.

(7) This paragraph applies if the scheme manager—

- (a) does not receive an immediate choice election before the end of the immediate choice election period, and
- (b) determines, after having regard to all the circumstances of the case and the advice of the scheme actuary, that it would be more beneficial if the benefits to be paid to or in respect of the remedy member's remediable service are determined under the 2015 Regulations.

Pension benefits and lump sum benefits: immediate choice election: pensioner and deceased members

10.—(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) of PSPJOA 2022 (“M’s remediable service”).

(2) But this regulation does not apply where paragraph 3 of schedule 1 of these Regulations applies.

(3) Where, at the operative time—

- (a) the aggregate of the pension benefits that (after taking into account the effect, if any, of section 3(2) of PSPJOA 2022 (benefits already paid)) have been paid under the scheme to any person (“the beneficiary”) in respect of, or associated with, M’s remediable service exceeds
- (b) the aggregate of the pension benefits to which the beneficiary is entitled under the scheme in respect of, or associated with, the service after taking into account the effect, if any, of—
 - (i) section 2(1) of PSPJOA 2022 and regulation 9 of these Regulations in relation to the pension benefits to which the beneficiary is entitled in respect of the service, and
 - (ii) Parts 4 (voluntary contributions) and 6 (transfers) of these Regulations in relation to the pension benefits to which the beneficiary is entitled that are associated with the service,

the appropriate person must pay an amount equal to the difference to the scheme.

(4) Where, at the operative time—

- (a) the amount mentioned in paragraph (3)(a) is less than
- (b) the amount mentioned in paragraph (3)(b),

the scheme manager must pay an amount equal to the difference to the relevant person.

(5) Where, at the operative time—

- (a) the aggregate of the lump sum benefits that (after taking into account the effect, if any, of section 3(2)) have been paid under the scheme to any person (“the beneficiary”) in respect of, or associated with, M’s remediable service exceeds
- (b) the aggregate of the lump sum benefits to which the beneficiary is entitled under the scheme in respect of, or associated with, the service after taking into account the effect, if any, of—
 - (i) section 2(1) of PSPJOA 2022 and regulation 9 of these Regulations in relation to the lump sum benefits to which the beneficiary is entitled in respect of the service, and
 - (ii) Parts 4 (voluntary contributions) and 6 (transfers) of these Regulations in relation to the lump sum benefits to which the beneficiary is entitled that are associated with the service,

the relevant person must pay an amount equal to the difference to the scheme.

(6) Where, at the operative time—

- (a) the amount mentioned in paragraph (5)(a) is less than

(b) the amount mentioned in paragraph (5)(b),
the scheme manager must pay an amount equal to the difference to the appropriate person.

(7) For the purposes of paragraphs (3) and (5), pension benefits and lump sum benefits are associated with M’s remediable service if those benefits are, or are derived from, one or more of the following—

- (a) additional pension payable to or in respect of M where one or more of the circumstances described in regulation 20(1)(c) (treatment of additional contributions: pensioners and deceased members of the legacy scheme) apply in relation to that pension;
- (b) additional pension payable to or in respect of M where one or both of the circumstances described in regulation 21(1)(c) (voluntary contributions: members of the 2015 scheme) apply in relation to that pension;
- (c) buy-out contributions paid by or in respect of M where the circumstance described in regulation 22(1)(c) (treatment of buy-out contributions made under 2015 regulation 47: pensioners and deceased members of the 2015 scheme) applies in relation to those contributions; and
- (d) the acceptance by the scheme manager of a transfer payment or transfer value payment under or in accordance with one or more of—
 - (i) the circumstances described in regulation 38(2)(b) (treatment of transfer and transfer value payments made to the 1995 Section or the 2008 Section that are not made under public sector transfer arrangements);
 - (ii) the circumstances described in regulation 41(1)(c)(iii) (transfer and transfer value payments made to the 2015 scheme that are not made under public sector transfer arrangements: treatment as if accepted under the legacy scheme: pensioner and deceased members);
 - (iii) regulation 53(1) (application and interpretation of regulations 54 to 56: remediable transfer value payments and remediable club transfer value payments).

(8) In this regulation—

“operative time” means if an immediate choice election by virtue of regulation 9 is made in relation to M’s remediable service, the time when the election is made, otherwise, the end of the immediate choice election period in relation to M;

“relevant member” means a member who is—

- (a) a pensioner remedy member, or
- (b) a member who died on or before 30 September 2023;

“appropriate person” means—

- (a) in paragraph (3), the beneficiary referred to in that paragraph or, if the beneficiary is deceased, that beneficiary’s personal representative;
- (b) in paragraph (6), the beneficiary referred to in that paragraph or, if the beneficiary is deceased, that beneficiary’s personal representative.

(9) Where this regulation applies, section 14 of PSPJOA 2022 (pension benefits and lump sum benefits: pensioner and deceased members) does not apply and the reference to that section in section 18(1) of that Act (powers to reduce or waive liabilities) is to be read as a reference to this regulation.

Continuation of pensions: immediate or deferred choice election: dependent and eligible children of a remedy member

11.—(1) This regulation applies in relation to a relevant child of a remedy member where

- (a) a designated person is eligible to make an election on behalf of the member—
 - (i) under regulation 9(1) (see regulation 9(2)(b)), or
 - (ii) under regulation 12(1) (see regulation 12(2)(b)), and
 - (b) on the relevant date, that child is not living in the same household as that designated person.
- (2) Paragraph (4) applies if the scheme manager determines that as a result of the acceptance of such an election made by the designated person, the pension being paid to or in respect of a relevant child will reduce.
- (3) Paragraph (5) applies if the scheme manager determines that as a result of a designated person not making such an election—
- (a) before the end of the immediate choice election period, where paragraph (1)(a)(i) applies, or
 - (b) before the end of the deferred choice election period, where paragraph (1)(a)(ii) applies,
- the pension being paid to or in respect of a relevant child will reduce.
- (4) Where this paragraph applies (see paragraph (2)), the scheme manager may treat the election as if it applied only to pension benefits in respect of remediable service other than the pension being paid for that service to or in respect of a relevant child.
- (5) Where this paragraph applies (see paragraph (3)), the scheme manager may treat the pension being paid for remediable service to or in respect of a relevant child as if the election had been made in respect of that service.
- (6) In this regulation—
- “relevant child” means a child who on 30 September 2023 was—
- (a) entitled as a dependent child of a remedy member to pension benefits in relation to that member under Part H of the 2011 Regulations (dependent child allowance);
 - (b) entitled as a dependent child of a remedy member to pension benefits in relation to that member under Chapter 2.E or Chapter 3.E of the 2013 Regulations (death benefits); or
 - (c) entitled as an eligible child of a remedy member to pension benefits in relation to that member under Chapter 2 of Part 6 of the 2015 Regulations (survivor benefits: child survivor);
- “relevant date” means—
- (a) where paragraph (1)(a)(i) applies—
 - (i) the day on which the scheme manager accepts an immediate choice election in accordance with regulation 9 made by the designated person mentioned in regulation 9(2)(b), or
 - (ii) if that designated person does not make such an election, the end of the immediate choice election period, or
 - (b) where paragraph (1)(a)(ii) applies—
 - (i) the day on which the scheme manager accepts a deferred choice election made in accordance with regulation 12 by the designated person mentioned in regulation 12(2)(b),
 - (ii) if that designated person does not make such an election, the end of the deferred choice election period.

Deferred choice election for 2015 scheme benefits: active, deferred and deceased members

12.—(1) A person mentioned in paragraph (2) may make an election for the benefits paid to or in respect of a remedy member with regard to that member’s remediable service to be determined

as if the service to which those benefits relate were pensionable service under the 2015 Regulations (“a deferred choice election”).

- (2) That person is—
 - (a) an active or deferred remedy member, or
 - (b) a designated person (see regulation 7) where—
 - (i) the remedy member died on or after 1 October 2023 and was not at the time of their death entitled to a retirement pension in respect of their remediable service;
 - (ii) the remedy member died on or after that date and was at the time of their death entitled to a retirement pension in respect of their remediable service; or
 - (iii) the active or deferred remedy member is, in the opinion of the scheme manager, by reason of illness, mental disorder or otherwise, unable to look after their own affairs.
- (3) For the purposes of this regulation, a deferred choice election must—
 - (a) contain such information as the scheme manager requires;
 - (b) be made by an active or deferred remedy member or a designated person in writing in such form as the scheme manager determines; and
 - (c) be received by the scheme manager before the end of the deferred choice election period.
- (4) Where the scheme manager accepts a deferred choice election made by an active or deferred remedy member or a designated person in accordance with this regulation or treats such an election as having been made in accordance with paragraph (6), that election is—
 - (a) treated as having effect—
 - (i) immediately before the active or deferred remedy member becomes a pensioner member in respect of their remediable service, or
 - (ii) immediately before the active or deferred remedy member’s death; and
 - (b) irrevocable.
- (5) From the date on which the election is treated as having effect, the benefits due in respect of the active or deferred remedy member’s remediable service are such benefits as the scheme manager determines should be paid to or in respect of that member, after having regard to all the circumstances of the case and treating that service as if for all purposes it were pensionable service in the 2015 scheme.
- (6) The scheme manager may treat a deferred choice election as having been made under this regulation immediately before the end of the deferred choice election period if paragraph (7) applies.
- (7) This paragraph applies if the scheme manager—
 - (a) does not receive a deferred choice election before the end of the deferred choice election period, and
 - (b) determines, after having regard to all the circumstances of the case and the advice of the scheme actuary, that it would be more beneficial if the benefits to be paid to or in respect of the remedy member’s remediable service are determined in accordance with the provisions of the 2015 Regulations.
- (8) The end of the deferred choice election period must not be more than one year before the day on which it is reasonably expected that, if a deferred choice election were made, benefits under the 2015 scheme would become payable to or in respect of the active or deferred remedy member.

Pension benefits and lump sum benefits: deferred choice election: pensioner and deceased members

13.—(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) of PSPJOA 2022 (“M’s remediable service”).

(2) Where, at the operative time—

- (a) the aggregate of the pension benefits that (after taking into account the effect, if any, of section 3(2) of PSPJOA 2022 (benefits already paid)) have been paid under the scheme to any person (“the beneficiary”) in respect of, or associated with, M’s remediable service exceeds
- (b) the aggregate of the pension benefits to which the beneficiary is entitled under the scheme in respect of, or associated with, the service after taking into account the effect, if any, of—
 - (i) section 2(1) of PSPJOA 2022 and regulation 12 of these Regulations in relation to the pension benefits to which the beneficiary is entitled in respect of the service, and
 - (ii) Parts 4 (voluntary contributions) and 6 (transfers) of these Regulations in relation to the pension benefits to which the beneficiary is entitled that are associated with the service,

the appropriate person must pay an amount equal to the difference to the scheme.

(3) Where, at the operative time—

- (a) the amount mentioned in paragraph (2)(a) is less than
- (b) the amount mentioned in paragraph (2)(b),

the scheme manager must pay an amount equal to the difference to the appropriate person.

(4) Where, at the operative time—

- (a) the aggregate of the lump sum benefits that (after taking into account the effect, if any, of section 3(2) of PSPJOA 2022) have been paid under the scheme to any person (“the beneficiary”) in respect of, or associated with, M’s remediable service exceeds
- (b) the aggregate of the lump sum benefits to which the beneficiary is entitled under the scheme in respect of, or associated with, the service after taking into account the effect, if any, of—
 - (i) section 2(1) of that Act and regulation 12 of these Regulations in relation to the lump sum benefits to which the beneficiary is entitled in respect of the service, and
 - (ii) Parts 4 (voluntary contributions) and 6 (transfers) of these Regulations in relation to the lump sum benefits to which the beneficiary is entitled that are associated with the service,

the appropriate person must pay an amount equal to the difference to the scheme.

(5) Where, at the operative time—

- (a) the amount mentioned in paragraph (4)(a) is less than
- (b) the amount mentioned in paragraph (4)(b),

the scheme manager must pay an amount equal to the difference to the relevant person.

(6) For the purposes of paragraphs (2) and (4), pension benefits and lump sum benefits are associated with M’s remediable service if those benefits are, or are derived from, one or more of the following—

- (a) additional pension payable to or in respect of M where one or more of the circumstances described in regulation 19(1)(c) (treatment of additional contributions: active and deferred members of the legacy scheme) apply in relation to that pension;

- (b) additional pension payable to or in respect of M where one or both of the circumstances described in paragraph (2) of regulation 17 (treatment of a corresponding option exercised in accordance with regulation 15 on the making of a deferred choice election for 2015 scheme benefits under regulation 12) apply in relation to that pension;
 - (c) buy-out contributions paid by or in respect of M where the circumstance described in regulation 18(1)(c) (treatment of buy-out contributions made under 2015 regulation 47: active and deferred members of the 2015 scheme) applies in relation to those contributions; and
 - (d) the acceptance by the scheme manager of a transfer payment or transfer value payment under or in accordance with one or more of—
 - (i) the circumstances described in regulation 38(2)(b) (treatment of transfer and transfer value payments made to the 1995 Section or the 2008 Section that are not made under Public Sector Transfer Arrangements);
 - (ii) the circumstances described in regulation 39(1)(c) (transfer value payments made to the 2015 scheme that are not made under Public Sector Transfer Arrangements: treatment as transfer payments under the 1995 Section or transfer value payments under the 2008 Section: active and deferred members); or
 - (iii) the circumstances described in regulation 40(1) (transfer value payments treated in accordance with regulation 39: variation of the member’s rights on the making of a deferred choice election);
 - (iv) regulation 53(1) (application of regulations 54 to 56: remediable transfer value payments and remediable club transfer value payments).
- (7) 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;
- “relevant member” means an active or deferred remedy member or a remedy member who died on or after 1 October 2023;
- “appropriate person” means—
- (a) in paragraphs (2) and (3), the beneficiary referred to in paragraph (2) or, if the beneficiary is deceased, that beneficiary’s personal representatives;
 - (b) in paragraph (4), the beneficiary referred to in that paragraph or, if the beneficiary is deceased, that beneficiary’s personal representative.