
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 246

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

PART 3

Elections

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.