
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 246

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

PART 3

Elections

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⁽¹⁾ 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).

⁽¹⁾ For the meaning of “opted-out service”, see section 36 of PSPJOA 2022.

(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.

(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.