
STATUTORY INSTRUMENTS

2023 No. 942

The Public Service (Civil Servants and Others)
Pensions (Remediable Service) Regulations 2023

PART 7

Provision about special cases

CHAPTER 1

Ill-health retirement

Application and interpretation of Chapter 1

53.—(1) This Chapter applies in relation to a remedy member (“M”) in respect of whom a process of assessment to determine M’s entitlement to ill-health benefits began during the period of M’s remediable service.

(2) In this Chapter—

“alternative scheme” means, in relation to a person who has been assessed for entitlement to ill-health benefits under—

- (a) the PCSPS, alpha;
- (b) alpha, the PCSPS;

“ill-health benefits” means—

- (a) the following under rule D.4 of Section I—
 - (i) a lower tier pension (“Section I lower tier”), or
 - (ii) a lower tier pension and an upper tier top up pension (“Section I upper tier”);
- (b) an ill health pension, whether or not with a lump sum, under rule 3.4 of Section II (“Section II ill health benefits”);
- (c) the following under rule E.7 of Section III—
 - (i) a lower tier earned pension (“Section III lower tier”), or
 - (ii) a lower tier earned pension and an upper tier top up earned pension (“Section III upper tier”);
- (d) the following under regulation 74 of the 2014 Regulations—
 - (i) a lower tier earned pension (“alpha lower tier”), or
 - (ii) a lower tier earned pension and an upper tier top up earned pension (“alpha upper tier”);

“IHR criteria” means the requirements in connection with a person’s health imposed by the PCSPS or (as the case may be) the 2014 Regulations for entitlement to ill-health benefits;

“initial assessment” means the process of assessment mentioned in paragraph (1);

“relevant time” means the time when the initial assessment was finally determined, and “finally determined” means—

- (a) it has been determined that the member meets the IHR criteria in a civil service scheme, or
- (b) it has been determined that the member does not meet the ill-health retirement criteria of that scheme, and all routes for disputing that determination have been exhausted (including where any deadline for initiating a dispute has passed and no dispute has been initiated);

“remediable ill-health benefits” means ill-health benefits payable in relation to M’s remediable service.

Whether M meets the IHR criteria in M’s alternative scheme

- 54.**—(1) Where, pursuant to the initial assessment, it has been finally determined that—
- (a) M meets the IHR criteria for alpha upper tier, M is to be deemed to meet whichever of the following is the IHR criteria in M’s relevant Chapter 1 legacy scheme—
 - (i) Section I upper tier;
 - (ii) Section II ill health benefits;
 - (iii) Section III upper tier;
 - (b) M meets the IHR criteria for alpha lower tier, M is to be deemed to meet whichever of the following is the IHR criteria in M’s relevant Chapter 1 legacy scheme—
 - (i) Section I lower tier;
 - (ii) Section II ill health benefits;
 - (iii) Section III lower tier;
 - (c) M meets the IHR criteria for—
 - (i) Section III lower tier, M is to be deemed to meet the IHR criteria for alpha lower tier;
 - (ii) Section III upper tier, M is to be deemed to meet the IHR criteria for alpha upper tier;
 - (d) M satisfies the severe ill-health condition, M is to be deemed to meet the IHR criteria for all ill-health benefits in both alpha and the PCSPS;
 - (e) M does not meet the IHR criteria for—
 - (i) Section I lower tier, Section II ill health benefits or Section III lower tier, M is to be deemed to not meet the IHR criteria for alpha lower tier or alpha upper tier;
 - (ii) Section I upper tier or Section III upper tier, M is to be deemed to not meet the IHR criteria for alpha upper tier.
- (2) Where, pursuant to the initial assessment, it has been finally determined that—
- (a) M meets the IHR criteria for alpha lower tier, and—
 - (i) M’s relevant Chapter 1 legacy scheme is not Section II, and
 - (ii) it has not been determined that M satisfies the severe ill-health condition, the scheme manager must determine whether M, at the relevant time, met the IHR criteria for whichever of Section I upper tier or Section III upper tier is the IHR criteria in M’s relevant Chapter 1 legacy scheme;
 - (b) M meets the IHR criteria for Section I lower tier, Section I upper tier or Section II ill health benefits and it has not been determined that M satisfies the severe ill-health condition, the scheme manager must determine whether M, at the relevant time, met the IHR criteria for alpha lower tier or alpha upper tier;

- (c) M does not meet the IHR criteria for alpha lower tier or alpha upper tier, the scheme manager must determine whether M, at the relevant time, met the IHR criteria for whichever of the following is M's relevant Chapter 1 legacy scheme—
 - (i) Section I lower tier and Section I upper tier;
 - (ii) Section II ill health benefits;
 - (iii) Section III lower tier and Section III upper tier.
- (3) Paragraphs (1) and (2) do not apply where—
 - (a) it has been finally determined, pursuant to the initial assessment, that M meets the IHR criteria for alpha lower tier or alpha upper tier, and
 - (b) at the relevant time, M had reached the pension age that would have applied to M had M been a member of the PCSPS.
- (4) In making a determination required by paragraph (2), the scheme manager must—
 - (a) obtain the opinion of the scheme medical adviser about whether M met the applicable IHR criteria at the relevant time, and
 - (b) treat the opinion of the scheme medical adviser as conclusive of that question.
- (5) In forming an opinion for the purpose of paragraph (4), the scheme medical adviser may only have regard to—
 - (a) the report (the “outcome report”) produced pursuant to the initial assessment on the basis of which it was determined whether M met, or did not meet, any IHR criteria;
 - (b) where no outcome report is available, any other evidence which—
 - (i) relates to the question of M's entitlement to ill-health benefits which was, or could have been, available at or before the relevant time, and
 - (ii) the scheme manager considers relevant to that question.
- (6) For the purposes of this regulation, M satisfies the severe ill-health condition if M is a person described in any of section 229(4)(a) to (c) of the FA 2004(1).

Deferred choice members entitled to ill-health benefits in their alternative scheme only

- 55.**—(1) This regulation applies where—
- (a) it was finally determined, pursuant to the initial assessment, that M was not entitled to any ill-health benefits under alpha,
 - (b) it is determined, pursuant to regulation 54, that at the relevant time M met the IHR criteria in whichever of Section I, Section II or Section III is M's relevant Chapter 1 legacy scheme, and
 - (c) M is a deferred choice member.
- (2) The scheme manager must, as soon as reasonably practicable following the determination mentioned in paragraph (1)(b), 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—

(1) In accordance with section 110(1) of PSPJOA 2022, “FA 2004” means the Finance Act 2004 (c. 12). Section 229(4) was inserted by paragraph 6(4) of Schedule 17 to the Finance Act 2011 (c. 11).

- (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 with the day on which the notice mentioned in paragraph (2) is issued.
- (4) Where an immediate IHR election is made, M is, subject to paragraph (5), to be treated—
- (a) for all purposes as if a deferred choice decision has been made that no section 10 election is to be made in relation to M's remediable service (and, accordingly, the benefits payable in relation to M's remediable service are PCSPS benefits),
 - (b) as not being entitled to any benefits in respect of service in an employment or office which—
 - (i) took place on or after 1st April 2022, and
 - (ii) is pensionable service under alpha;
 - (c) as not being entitled to the payment of ill-health benefits from the PCSPS, and
 - (d) as being entitled to the payment of ill-health benefits which are—
 - (i) of an amount that would have been determined under the PCSPS if the relevant time had been 31st March 2022, and
 - (ii) payable—
 - (aa) from alpha, and
 - (bb) from the day after M's last day of service in an employment or office which is capable of being pensionable service in a civil service scheme.
- (5) Where M does not leave all service in an employment or office which is capable of being pensionable service in a civil service scheme before—
- (a) the end of the period of three months beginning with the day on which notice of 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 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.

Remedy members entitled to ill-health benefits in their alternative scheme only

- 56.**—(1) This regulation applies where—
- (a) it was finally determined, pursuant to the initial assessment, that M was not entitled to any ill-health benefits under alpha,
 - (b) it is determined, pursuant to regulation 54, that at the relevant time M met the IHR criteria in whichever of Section I, Section II or Section III is M's relevant Chapter 1 legacy scheme, and
 - (c) M is, or at any time was, a pensioner member of alpha in relation to their remediable service.
- (2) Where the benefits payable in relation to M's remediable service are, by virtue of these Regulations and PSPJOA 2022, PCSPS benefits, M is to be treated as entitled to the payment of ill-health benefits—

- (a) of an amount that would have been determined under the PCSPS if the relevant time had been 31st March 2022, and
- (b) payable—
 - (i) from alpha, and
 - (ii) from the day M became a pensioner member of alpha in relation to their remediable service.
- (3) M is not entitled to the payment of ill-health benefits from the PCSPS.

Remedy members with provisional awards of ill-health pension

57.—(1) This regulation applies in relation to a remedy member who, immediately before 1st October 2023, is treated as being entitled to ill-health benefits pursuant to—

- (a) rule D.6 of Section I;
 - (b) rule E.11 of Section III;
 - (c) regulation 75 of the 2014 Regulations.
- (2) The scheme manager must—
- (a) determine whether M meets the IHR criteria in M’s alternative scheme, and
 - (b) in making that determination, obtain the opinion of the scheme medical adviser about whether M meets the IHR criteria in M’s alternative scheme.

Disapplication of certain requirements

58.—(1) This regulation applies where, by virtue of these Regulations or PSPJOA 2022, ill-health benefits determined by reference to a remedy member’s alternative scheme are payable to a person.

(2) Such ill-health benefits are payable irrespective of non-compliance with a requirement imposed by the PCSPS or the 2014 Regulations for—

- (a) the scheme manager to approve an entitlement to ill-health benefits;
- (b) a person to make an application in relation to an entitlement to ill-health benefits.

CHAPTER 2

Miscellaneous special cases

Protection of the amount of pension in payment to an eligible child

59.—(1) This regulation applies where—

- (a) immediately before 1st October 2023, a pension (a “child pension”) is in payment to an eligible child (“E”) in respect of the remediable 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 the child pension payable to E in respect of M’s remediable 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 the child pension continues to be the rate that was payable before the immediate choice decision was made.

Modification of nomination rules for Section II members

60.—(1) The regulation applies in relation to a remedy member (“M”) who is entitled to nominate a person under rule 3.8 of Section II to receive a death benefit.

(2) Rule 3.8 of Section II applies as if it allows—

(a) M to nominate—

(i) one or more individuals,

(ii) one incorporated or unincorporated body, or

(iii) one or more individuals and one incorporated or unincorporated body, and

(b) for the nomination to specify how payments are to be apportioned between—

(i) two or more individuals or,

(ii) one or more individuals and one incorporated or unincorporated body.

(3) Where—

(a) M has made a nomination (“the original nomination”) in relation to remediable service in alpha pursuant to regulation 122 of the 2014 Regulations, and

(b) M is, by virtue of the operation of PSPJOA 2022 or these Regulations, entitled to nominate a person under rule 3.8 of Section II in relation to that remediable service,

the original nomination continues as if it were made under rule 3.8 of Section II as that rule applies by virtue of paragraph (2).

Aggregation of PCSPS membership

61.—(1) This regulation applies in relation to a remedy member (“M”)—

(a) who left pensionable service under Section I, Section II or Section III (“the relevant Section”) before 1st April 2022,

(b) who, during the period beginning with 1st April 2015 and ending at the end of 31st March 2022, began service (“subsequent service”) in an employment or office which was pensionable under alpha,

(c) whose subsequent service would, but for a relevant breach of a non-discrimination rule, have been pensionable under the relevant Section, and

(d) who would, had their subsequent service been pensionable under the relevant Section, have been entitled to exercise an aggregation option.

(2) When making a relevant remedy decision, the relevant decision-maker may elect that M’s eligible remediable service is to be treated as if an aggregation option had been exercised in relation to that service.

(3) An election under paragraph (2) may only be made and revoked in the same circumstances as the relevant remedy decision.

(4) Where an election is made under paragraph (2), M’s eligible remediable service is to be treated for all purposes as if the aggregation option had been exercised in relation to that service.

(5) In this regulation—

“aggregation option” means—

(a) where the relevant Section is Section I, an option in accordance with rule G.2, G.3 or G.4 of that Section;

(b) where the relevant Section is Section II, an option in accordance with rule 3.35 of that Section;

- (c) where the relevant Section is Section III, an option in accordance with rule H.5 of that Section.

“eligible remediable service” means so much of M’s remediable service as was, immediately before 1st April 2022, service under alpha;

“relevant decision-maker” means, where M is—

- (a) an immediate choice member, the immediate choice decision-maker;
- (b) a deferred choice member, the deferred choice decision-maker;

“relevant remedy decision” means—

- (a) an immediate choice decision that no section 6 election is to be made in relation to M’s remediable service, or
- (b) a deferred choice decision that no section 10 election is to be made in relation to M’s remediable service.

Payment of annual allowance tax charges and provision of information

62. 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) has passed, direction 7(2) to (6) of the PSP Directions 2022 applies in relation to the remedy member.

(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).