
STATUTORY INSTRUMENTS

2023 No. 985

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

PART 12

Retirement pensions

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

- 76.**—(1) This regulation applies to or in respect of 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 (where relevant) 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 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 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 1st 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 Part 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 E2A of the 1995 Regulations⁽¹⁾ (ill health pension on early retirement);
- (b) regulation L1⁽³⁾ of the 1995 Regulations⁽²⁾ (preserved pension: entitlement to pension and retirement lump sum before age 60);
- (c) regulation 2.D.8 or 3.D.7 of the 2008 Regulations⁽³⁾ (early retirement on ill-health: active members and non-contributing members);
- (d) regulation 2.D.10 or 3.D.9 of the 2008 Regulations⁽⁴⁾ (early retirement on ill-health (deferred members));
- (e) regulation 90 of the 2015 Regulations⁽⁵⁾ (entitlement to ill-health pension); or
- (f) regulation 94 of the 2015 Regulations⁽⁶⁾ (early retirement on ill-health (deferred members));

“M’s alternative scheme or section” means—

- (a) where M’s eligibility for an ill-health pension was assessed under the 1995 Section or the 2008 Section, the 2015 scheme;
- (b) where M’s eligibility for an 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 15 to the 2015 Regulations.

(1) Regulation E2A was inserted by [S.I. 2008/654](#) and subsequently amended by [S.I. 2009/2446](#), [2019/418](#).
(2) Regulation L1 was amended by [S.I. 2000/605](#), [2003/631](#), [2004/665](#), [2006/600](#), [2008/654](#), [2009/381](#) and [2446](#), [2015/95](#), [2019/418](#).
(3) Regulations 2.D.8 and 3.D.6 and their headings were amended by [S.I. 2009/381](#) and [2446](#), [2010/492](#), [2021/631](#).
(4) Regulations 2.D.10 and 3.D.9 were amended by [S.I. 2008/2263](#), [2009/2446](#).
(5) Regulation 90 was amended by [S.I. 2017/275](#).
(6) Regulation 94 was amended by [S.I. 2016/245](#).