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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 242**

**The Firefighters' Pensions (Remediable Service) (Scotland) Regulations 2023**

**PART 7**

Provision about special cases

**CHAPTER 1**

Ill-health retirement

**Application and interpretation of Chapter 1**

**49.**—(1) In this Chapter—

“1992 IHR member” means a member entitled to an ill-health award under rule B3(1) of Schedule 2 of the 1992 Order;

“2007 IHR member” means a member entitled to an ill-health pension under rule 2 of Part 3 of schedule 1 of the 2007 Order;

“2015 IHR member” means a member entitled to an ill-health pension under regulation 65 of the 2015 Regulations;

“alternative scheme” means in relation to—

- (a) a 1992 IHR member or a 2006 IHR member, the reformed scheme; and
- (b) a 2015 IHR member, the legacy scheme.

“higher tier award” means, in relation to—

- (a) the 1992 scheme, an award determined in accordance with rule B3(5)(b) of Schedule 2 of the 1992 Order;
- (b) the 2007 scheme, an award determined in accordance with rule 2(4) of Part 3 of schedule 1 of the 2007 Order;
- (c) the reformed scheme, an ill-health pension payable under regulation 65(2) of the 2015 Regulations;

“authority” has the meaning given in regulation 3 of the 2015 Regulations;

“ill-health benefits” means benefits payable by virtue of an entitlement mentioned in paragraph (1);

“IQMP” has the meaning given in regulation 3 of the 2015 Regulations;

“lower tier award” means, in relation to—

- (a) the 1992 scheme, an award determined in accordance with rule B3(5)(a) of schedule 2 of the 1992 Order;

- (b) the 2007 scheme, an award determined in accordance with rule 2(2) of Part 3 of schedule 1 of the 2007 Order;
- (c) the reformed scheme, an ill-health pension payable under regulation 65(1) of the 2015 Regulations;

“remediable ill-health benefits” means ill-health benefits payable in relation to the member’s remediable service as a firefighter.

### **M’s entitlement to ill-health benefits to be treated as equivalent in M’s alternative scheme**

**50.**—(1) This regulation applies in relation to an immediate choice member (“M”) who, during the period beginning on 1 April 2015 and ending on 31 March 2022 was—

- (a) A 2007 IHR member;
- (b) A 2015 IHR member.

(2) For the purposes of PSPJOA 2022 and these Regulations, M is to be treated as meeting the requirements for an equivalent ill-health award in M’s alternative scheme.

(3) In paragraph (2), “equivalent ill-health award in M’s alternative scheme” means, where M is entitled to—

- (a) a lower tier award under the 2007 scheme, a lower tier award under the reformed scheme;
- (b) a higher tier award under the 2007 scheme, a higher tier award under the reformed scheme;
- (c) a lower tier award under the reformed scheme, and—
  - (i) M’s legacy scheme is the 1992 scheme, a lower tier award under that scheme;
  - (ii) M’s legacy scheme is the 2007 scheme, a lower tier award under that scheme;
- (d) a higher tier award under the reformed scheme, and—
  - (i) M’s legacy scheme is the 1992 scheme, a higher tier award under that scheme;
  - (ii) M’s legacy scheme is the 2007 scheme, a higher tier award under that scheme;

(4) No question relating to M’s entitlement to ill-health benefits that has been decided following referral to an IQMP is to be re-opened by virtue of any provision of PSPJOA 2022 or of these Regulations.

### **Entitlement to ill-health benefits where a remedy member’s legacy scheme is the 1992 scheme**

**51.**—(1) Paragraph (2) applies where—

- (a) a remedy member (“M”) is a 1992 IHR member, and
- (b) M’s entitlement to an ill-health award has not been assessed under regulation 65 of the 2015 Regulations.

(2) The authority must obtain the opinion of an IQMP on the following questions—

- (a) whether M would, at any time during the relevant period, have met the criteria to be entitled to a lower tier award under the reformed scheme, and
- (b) whether M would, at any time during the relevant period, have met the criteria to be entitled to a higher tier award under the reformed scheme.

(3) Paragraph (4) applies where—

- (a) a remedy member’s (“M’s”) legacy scheme is the 1992 scheme,
- (b) M’s entitlement to an ill-health award was assessed under regulation 65 of the 2015 Regulations,

- (c) it was determined in accordance with that regulation that—
  - (i) M was not entitled to a lower tier award, or
  - (ii) M was entitled to a lower tier award but was not entitled to a higher tier award, and
- (d) M is a deferred or pensioner member of the reformed scheme.
- (4) The authority must obtain the opinion of an IQMP on the following questions—
  - (a) Where it was determined that M was not entitled to a lower tier award—
    - (i) whether M would, at any time during the relevant period, have met the criteria to be entitled to a lower tier ill health award under the 1992 scheme, and
    - (ii) whether M would, at any time during the relevant period, have met the criteria to be entitled to an higher tier ill health award under the 1992 scheme;
  - (b) where it was determined that M was entitled to a lower tier award but not to a higher tier award, whether M would, at any time during the relevant period, have met the criteria to be entitled to an higher tier ill health award under the 1992 scheme.
- (5) An IQMP who is to provide an opinion on a question in accordance with this regulation may—
  - (a) examine or interview M if the IQMP thinks it is necessary to provide an opinion on the question, and
  - (b) give the authority and M a written opinion containing a decision on the question.
- (6) For the purpose of providing an opinion in accordance with this paragraph, the IQMP may only have regard to information that was available or could have been produced during the relevant period.
- (7) Where, in an opinion provided in accordance with this paragraph, the IQMP concludes that M would have been entitled to an ill health award—
  - (a) that conclusion is to be treated as if it were a determination by the scheme manager in accordance with regulation 141 of the 2015 Regulations that M is entitled to that ill-health award, and
  - (b) M is to be treated for the purposes of the PSPJOA 2022 and of these Regulations as being entitled to that ill-health award from the time during the relevant period when they would first have become entitled to it.
- (8) In this regulation—
  - “original decision” means —
    - (a) for the purposes of paragraphs (1) and (2), the decision under Part H of schedule 2 of the 1992 Order by virtue of which M became entitled to that ill-health award, and
    - (b) for the purposes of paragraphs (3) and (4), the decision under Chapter 4 of Part 5 of the 2015 Regulations by virtue of which it was determined that M was not entitled to a lower tier award or, as the case may be, a higher tier award under the reformed scheme;
  - “relevant period” means the period—
    - (a) beginning with the time of the original decision, and
    - (b) ending on the earlier of—
      - (i) five years after the time of the original decision;
      - (ii) the beginning of the day on which M reaches 60 years of age;
      - (iii) the time when an immediate choice decision or a deferred choice decision is made.

**Assessment and reassessment of certain transitional ill-health cases**

**52.—**(1) This regulation applies where—

- (a) a remedy member (“M”) was, immediately before 1 April 2022, not a full protection member of the 1992 scheme or a full protection member of the 2007 scheme;
  - (b) an assessment (“the transitional assessment”) of M’s entitlement to an ill-health award under the reformed scheme began before 1 April 2022; and
  - (c) a determination had not been made by the scheme manager in relation to the transitional assessment by the end of 31 March 2022.
- (2) Where the transitional assessment has not been determined before 1 October 2023, the authority must secure that—
- (a) the transitional assessment is undertaken on the basis that M’s normal pension age is 55, and
  - (b) any steps in relation to the transitional assessment the outcome of which might have been different had they been taken on the basis that M’s normal pension age is 55 are retaken.
- (3) Paragraph (4) applies where—
- (a) the transitional assessment has been determined before 1 October 2023, and
  - (b) it was determined that—
    - (i) M was not entitled to a lower tier award in the reformed scheme, or
    - (ii) M was entitled to a lower tier award in the reformed scheme, but not a higher tier award in that scheme.
- (4) Where this paragraph applies, the authority must secure that—
- (a) M is assessed for entitlement to a relevant award under the reformed scheme on the basis that M’s normal pension age is 55, and
  - (b) M is treated as if the transitional assessment had not been undertaken so far as it relates to the relevant award.
- (5) In this regulation—
- “full protection member of the 1992 scheme” means a full protection member of the 1992 scheme within the meaning of paragraph 9 of schedule 2 of the 2015 Regulations;
- “relevant award” means—
- (a) where paragraph (3)(b)(i) applies, a lower tier award and a higher tier award; and
  - (b) where paragraph (3)(b)(ii) applies, a higher tier award.

### **Determining the value of M’s remediable ill-health benefits**

**53.** The scheme manager must, as soon as reasonably practicable after 1 October 2023 and having consulted the scheme actuary, determine the value of M’s remediable ill-health benefits as if they had been secured in M’s alternative scheme.