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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 239**

**The Police 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) This Chapter applies in relation to an immediate choice member (“M”) who, during the period beginning on 1st April 2015 and ending on 31st March 2022, became entitled to—

- (a) an ill-health award under regulation B3(1) of the 1987 Regulations;
- (b) an ill-health pension under regulation 29 of the 2007 Regulations;
- (c) an ill-health pension under regulation 92 of the 2015 Regulations.

(2) In this Chapter—

“1987 IHR member” means a member described in paragraph (1)(a);

“2006 IHR member” means a member described in paragraph (1)(b);

“2015 IHR member” means a member described in paragraph (1)(c);

“alternative scheme” means, in relation to—

(a) a 1987 IHR member or a 2006 IHR member, the reformed scheme;

(b) a 2015 IHR member, the member’s legacy scheme;

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

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

“selected medical practitioner” means a duly qualified medical practitioner appointed by the relevant employer.

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

**50.**—(1) 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.

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

(3) In this regulation—

“equivalent ill-health award in M’s alternative scheme” means—

- (a) where M is entitled to an ill-health award under regulation B3 of the 1987 Regulations, a lower tier award under the reformed scheme;
- (b) where M is entitled to—
  - (i) a lower tier award under the 2006 scheme, a lower tier award under the reformed scheme;
  - (ii) an upper tier award under the 2006 scheme, an upper tier award under the reformed scheme;
- (c) where M is entitled to—
  - (i) a lower tier award under the reformed scheme, and—
    - (aa) M’s legacy scheme is the 1987 scheme, an award under regulation B3 of the 1987 Regulations;
    - (bb) M’s legacy scheme is the 2006 scheme, a lower tier award under that scheme;
  - (ii) an upper tier award under the reformed scheme and M’s legacy scheme is the 2006 scheme, an upper tier award under that scheme;

“lower tier award” means, in relation to—

- (a) the 2006 scheme, an award determined in accordance with regulation 29(3) of the 2007 Regulations;
- (b) the reformed scheme, an ill-health pension payable under regulation 92(3)(a) of the 2015 Regulations;

“upper tier award” means, in relation to—

- (a) the 2006 scheme, an award determined in accordance with regulation 29(4) of the 2007 Regulations;
- (b) the reformed scheme, an ill-health pension payable under regulation 92(3)(b) of the 2015 Regulations.

### **Deciding whether a 1987 IHR member is entitled to an upper tier award**

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

- (a) M is a 1987 IHR member, and
  - (b) the question of whether M is permanently medically unfit for engaging in any regular employment within the meaning of Part 6 of the 2015 Regulations has not been referred to a selected medical practitioner.
- (2) The employer must refer the following questions to a selected medical practitioner—
- (a) whether M was, at time of the original decision or at any time during the relevant period, medically unfit for engaging in any regular employment, and
  - (b) whether that medical unfitness was likely to be permanent.
- (3) The selected medical practitioner may—
- (a) examine or interview M as the selected medical practitioner thinks it is necessary to do so to decide either of the questions referred under paragraph (2),
  - (b) decide the questions referred under paragraph (2), and

- (c) give the employer and M a report containing a decision on those questions.
- (4) Regulation 71(3) of, and Schedule 1 to, the 2015 Regulations applies to the report mentioned in paragraph (3)(c) as they apply in relation to the report mentioned in regulation 71(2)(c) of those Regulations.
- (5) For the purpose of deciding the questions in paragraph (2)—
- (a) the selected medical practitioner may only have regard to information that was available or could have been produced at the time of the original decision;
  - (b) the following provisions of the 2015 Regulations apply as they apply for the purpose of deciding a question under Part 6 of those Regulations—
    - (i) regulation 65(2) to (4) (receipt of appropriate medical treatment);
    - (ii) regulation 66(3)(c) and (d) (criteria for deciding whether a member is permanently medically unfit for engaging in any regular employment).
- (6) Where the selected medical practitioner decides both of the questions referred under paragraph (2) in the affirmative, M is to be treated for the purposes of PSPJOA 2022 and of these Regulations as meeting the requirements for an upper tier award in the reformed scheme (as defined in regulation 50(3) of these Regulations).
- (7) In this regulation—
- “medical unfitness” has the meaning given in regulation 64 of the 2015 Regulations;
  - “original decision” means the decision under Part H of the 1987 Regulations by virtue of which M was deemed permanently disabled;
  - “progressive medical condition” means a medical condition which—
    - (a) of its nature could have been expected, as at the time of M’s retirement, to affect M with increasing severity, and
    - (b) is a progressive medical condition within the meaning given by regulation 112(6) of the 2015 Regulations.
  - “relevant period” means the period—
    - (a) beginning with the time of the original decision, and
    - (b) ending on the earlier of—
      - (i) except where the original decision attributed to M’s permanent disablement a progressive medical condition, 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, or deemed to be made, in relation to M’s remediable police service.

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

**52.** The scheme manager must, as soon as reasonably practicable after 1st 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.

## **CHAPTER 2**

### **Miscellaneous special cases**

### **Protection of the amount of pension payable to an eligible child**

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

- (a) immediately before 1st October 2023, benefits are in payment to an eligible child (“E”) in respect of the remediable police service of a deceased member,
  - (b) there is a surviving adult (“S”) in relation to the deceased member,
  - (c) S does not have parental responsibility for E, and
  - (d) S makes an immediate choice decision which would (disregarding this regulation) result in a decrease in the amount of benefits payable to E in relation to M’s remediable police 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 benefits received in relation to M’s remediable police service, and
  - (b) the amount of benefits payable continues to be the amount that was payable before the election was made.

#### **Payment of annual allowance tax charges and provision of information**

**54.** Where a remedy member is unable to give an effective notice to the scheme administrator under section 237B(3) of FA 2004 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 has passed, direction 7(2) to (6) of the PSP Directions 2022 applies in relation to the remedy member.