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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 241**

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

**PART 3**

Decisions about the treatment of remediable service

**CHAPTER 1**

Opted-out service elections

**Application and interpretation of Chapter 1**

**5.—**(1) This Chapter applies to and in respect of a member (“M”) with opted-out service<sup>(1)</sup> in an employment or office in relation to the legacy scheme.

(2) In this Chapter—

“opted-out service decision-maker” means the person who may make an opted-out service election under regulation 6(2),

“relevant opted-out service” means the service referred to in paragraph (1).

**Election in relation to relevant opted-out service**

**6.—**(1) An election (an “opted-out service election”) may be made in relation to M’s relevant opted-out service in accordance with this Part and section 5 of PSPJOA 2022.

(2) An opted-out service election may be made—

(a) by M, or

(b) where M is deceased, by the eligible decision-maker determined in accordance with the schedule.

(3) Where a person (“P”) other than the scheme manager is the opted-out service decision-maker, an opted-out service election may only be made after the scheme manager determines an application which is—

(a) made by or behalf of M,

(b) in a form and manner determined by the scheme manager,

(c) received by the scheme manager during the period beginning on 1 October 2023 and ending at the end of 30 September 2024, and

(d) accompanied by such information—

(i) which is within P’s possession, or

(ii) which P may reasonably be expected to obtain,

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(1) See section 36 of PSPJOA 2022 for the meaning of “opted-out service”.

that the scheme manager may by written notice require P to provide in relation to the decision which caused the service in question to become opted-out service.

(4) As soon as is reasonably practicable after receipt of an application, the scheme manager must—

- (a) determine whether an opted-out service election may be made in relation to M, and
- (b) notify the person who made the application whether such an opted-out service election may be made.

(5) Where the scheme manager is the opted-out service decision-maker, the scheme manager must, as soon as is reasonably practicable after determining that they are the opted-out service decision-maker, determine whether to make an opted-out service election in relation to M.

(6) The scheme manager must refuse an application unless both the following conditions are met—

- (a) the decision by virtue of which the member’s service became opted-out service was communicated to the scheme manager on or after 10 March 2012, and
- (b) the decision by virtue of which the member’s service became opted-out service was made pursuant to a relevant breach of a non-discrimination rule<sup>(2)</sup>.

(7) An opted-out service election to be made by—

- (a) a person other than the scheme manager is made when the person confirms that an opted-out service election is to be made following receipt of the notification mentioned in paragraph (4)(b),
- (b) the scheme manager is made at the time determined by the scheme manager.

(8) See section 5(2) to (4) of PSPJOA 2022 about the effect, timing and irrevocability of an opted-out service election.

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(2) See section 25(8) of PSPJOA 2022 for the meaning of “non-discrimination rule” and section 25(9) for the circumstances in which breach of a non-discrimination rule is “relevant”.