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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 241**

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

**PART 5**

Voluntary contributions

**CHAPTER 3**

Deferred choice members

*SECTION 1*

*Application of Chapter 3*

**Application of Chapter 3**

**36.** This Chapter applies in relation to the remedial voluntary contributions of a deferred choice member ("M").

*SECTION 2*

*Provision about remedial voluntary contributions on the entry into force of section 2(1) of PSPJOA 2022*

**Application of Section 2**

**37.—(1)** This Section applies where M has paid remediable voluntary contributions to secure a reformed scheme flexibility.

(2) This Section applies separately in relation to each type of reformed scheme flexibility secured by M's remediable voluntary contributions.

**Treatment of rights to reformed scheme flexibilities on the entry into force of section 2(1) of PSPJOA 2022**

**38.—(1)** Paragraph (2) applies in relation to rights to reformed scheme flexibilities in respect of which—

- (a) an RVC election is made under regulation 29(5)(a), or
- (b) the period mentioned in regulation 29(6) has expired and no RVC election has been made.

(2) Where this paragraph applies—

- (a) the scheme manager must confer rights to alternative legacy scheme additional pension,
- (b) the rights to reformed scheme flexibilities mentioned in paragraph (1) are extinguished, and

- (c) if the arrangement under which remediable voluntary contributions are paid to secure the reformed scheme flexibilities is continuing, any remediable voluntary contributions paid under that arrangement are to be treated as being paid to secure rights to legacy scheme additional pension.
- (3) Paragraph (4) applies in relation to rights to reformed scheme flexibilities in respect of which an RVC election is made under regulation 29(5)(b) or (c).
- (4) Where this paragraph applies—
  - (a) the scheme manager owes to M or, where M is deceased, to M’s personal representatives an amount equal to the compensatable amount except in accordance with the terms of an agreement under regulation 39(2),
  - (b) the rights to reformed scheme flexibilities mentioned in paragraph (3) are extinguished, and
  - (c) if the arrangement under which remediable voluntary contributions are paid to secure the reformed scheme flexibilities is continuing, that arrangement is terminated.

**Agreement to waive payment of a compensatable amount**

- 39.**—(1) This regulation applies in relation to rights to reformed scheme flexibilities in respect of which an RVC election is made under regulation 29(5)(c).
- (2) The scheme manager and M may agree to waive the compensatable amount otherwise owed under regulation 38(4)(a).
  - (3) Such an agreement—
    - (a) must be in writing, and
    - (b) must provide that the waiver ceases to apply where—
      - (i) the end of the section 10 election period in relation to the remediable teacher service has passed without a deferred choice decision having been made in relation to that service, or
      - (ii) a deferred choice decision is made in relation to that service.
  - (4) The agreement must provide that, where a waiver ceases to apply by virtue of the circumstances mentioned in paragraph (3) and the benefits payable in relation to M’s remediable teacher service are—
    - (a) legacy scheme benefits, the scheme manager owes M or, where M is deceased, M’s personal representatives the compensatable amount mentioned in paragraph (2),
    - (b) reformed scheme benefits—
      - (i) the scheme manager must, having consulted the scheme actuary, confer rights under the reformed scheme equivalent to the reformed scheme flexibilities mentioned in paragraph (1), and
      - (ii) any right to payment of the compensatable amount is extinguished.
  - (5) An agreement under this regulation may not be varied.

### SECTION 3

#### *Provision about remediable voluntary contributions on a deferred choice decision*

#### **Variation of legacy scheme additional pension where reformed scheme benefits chosen**

**40.**—(1) This regulation applies where M has paid remediable voluntary contributions to secure additional pension under the legacy scheme.

(2) When making a deferred choice decision, the deferred choice decision-maker may elect that—

- (a) the value of additional pension under the legacy scheme secured by virtue of M's remediable voluntary contributions is to be varied so that it is equivalent to the alternative reformed scheme additional pension value, or
- (b) the scheme manager must pay to M or, if M is deceased, M's personal representatives an amount by way of compensation equal to the compensatable amount.

(3) Paragraphs (4) and (5) apply where a section 10 election is made (or deemed to have been made) in relation to M's remediable teacher service.

(4) Where either—

- (a) an election is made in accordance with paragraph (2)(a), or
- (b) no election is made in accordance with paragraph (2),

the scheme manager must vary the value of additional pension under the legacy scheme secured by virtue of M's remediable voluntary contributions so that it is equivalent to the alternative reformed scheme additional pension value.

(5) Where an election is made in accordance with paragraph (2)(b)—

- (a) the scheme manager must pay to M or, if M is deceased, M's personal representatives an amount by way of compensation equal to the compensatable amount, and
- (b) the rights that would have been secured by payment of the remediable voluntary contributions are extinguished.

#### **Reinstatement of reformed scheme flexibilities where reformed scheme benefits chosen**

**41.**—(1) Paragraph (2) applies—

(a) in relation to—

- (i) rights to alternative legacy scheme additional pension conferred under regulation 38(2)(a), together with
- (ii) any rights treated as being rights to legacy scheme additional pension by virtue of regulation 38(2)(c), and

(b) where a section 10 election is made (or deemed to have been made) in relation to M's remediable teacher service.

(2) The scheme manager must, having consulted the scheme actuary, vary the rights mentioned in paragraph (1)(a) so that they are equivalent to the rights to reformed scheme flexibilities that would have been secured had regulation 38(2) never taken effect in relation those rights.

(3) Paragraph (4) applies—

- (a) in relation to rights which were extinguished under regulation 38(4)(b),
- (b) where payment of a compensatable amount in respect of those rights was waived in accordance with the terms of an agreement under regulation 39(2), and
- (c) where a section 10 election is made (or deemed to have been made) in relation to M's remediable teacher service.

- (4) Where this paragraph applies—
  - (a) the scheme manager must, having consulted the scheme actuary, confer rights under the legacy scheme that are equivalent to the extinguished rights mentioned in paragraph (3) (a), and
  - (b) the right to payment of the compensatable amount is extinguished.

**Treatment of waived compensatable amount where legacy scheme benefits take effect**

- 42.**—(1) This regulation applies where—
- (a) payment of a compensatable amount was waived in accordance with the terms of an agreement under regulation 39(2),
  - (b) the waiver under that agreement has ceased to apply, and
  - (c) the benefits payable in relation to M’s remediable teacher service are legacy scheme benefits.
- (2) The scheme manager owes M or, where M is deceased, M’s personal representatives the compensatable amount.