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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 241**

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

**PART 6**

Transfers

**CHAPTER 1**

General

**Interpretation of Part 6**

**44.—(1)** In this Part—

“receiving scheme”, in relation to a remediable value, means the scheme to which the remediable value was, or is to be, paid,

“reformed public service pension scheme” means—

- (a) a Chapter 1 scheme<sup>(1)</sup>,
- (b) a judicial scheme within the meaning of section 70(1) of PSPJOA 2022,
- (c) a local government scheme within the meaning of section 86(1) of PSPJOA 2022,

“remediable club transfer value”, in relation to a member, means the payment or acceptance by the scheme manager of a club transfer value under—

- (a) Chapter 2 of Part G of the 2005 Regulations,
- (b) Chapter 3 of Part 10 of the 2014 Regulation,

so far as the club transfer value relates to the member's remediable rights,

“remediable rights”, in relation to a member, means the member's rights to benefits under a reformed public service pension scheme secured by virtue of the member's remediable service,

“remediable transfer value”, in relation to a member, means the payment or acceptance by the scheme manager of a transfer value under—

- (a) Chapter 4 of Part G of the 2005 Regulations,
- (b) Chapter 2 of Part 10 of the 2014 Regulations,

so far as the transfer value relates to the member's remediable rights,

“remediable value” means a remediable club transfer value or a remediable transfer value,

“sending scheme”, in relation to a remediable value, means the scheme which paid, or is to pay, the remediable value.

(2) Where a provision of this Part requires the scheme manager to calculate a club transfer value or a transfer value (including a remediable club transfer value or a remediable transfer value) in

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(1) See section 33 of PSPJOA 2022 for the meaning of “Chapter 1 scheme”.

relation to rights secured in a teacher pension scheme, that value is to be calculated in accordance with—

- (a) the provisions of the teacher pension scheme which apply to the calculation of values of that type, and
- (b) the guidance and tables provided for the purpose of calculating such values that were, or are, in use on the date used for the calculation of the value which originally secured rights under a teacher pension scheme.

### **Transferred out remediable service statements**

45. Where a remedy member has transferred any rights in respect of remediable service out of a teacher pension scheme, the scheme manager must provide a transferred out remediable service statement in accordance with direction 6(2) to (4) of the PSP Directions 2022 (and direction 6(4) applies as if the reference to “any provision made by virtue of section 29(1) of PSPJOA 2022” were a reference to regulation 4).

## CHAPTER 2

### Transfers on a cash equivalent basis

#### SECTION 1

##### *Transfers before 1 October 2023*

### **Transfers out before 1 October 2023**

46.—(1) This regulation applies in relation to each member (“M”) in respect of whom the scheme manager paid a remediable transfer value before 1 October 2023.

(2) The scheme manager, having consulted the scheme actuary, must calculate the transfer value of M’s remediable rights as if they were secured in—

- (a) M’s legacy scheme,
- (b) the reformed scheme.

(3) The scheme manager must notify the receiving scheme of the results of the calculation mentioned in paragraph (2).

(4) Where—

- (a) the greater of the amounts calculated under paragraph (2) (“x”) is greater than
- (b) the amount of the remediable transfer value (“y”),

the scheme manager must take reasonable steps to pay the receiving scheme an amount equal to  $x - y$ .

(5) A payment made under paragraph (4) is subject to the same conditions as the remediable transfer value.

(6) Where—

- (a) paragraph (4) applies, and
- (b) the scheme manager, having taken reasonable steps, is unable to make the payment required by that paragraph,

the scheme manager owes M or, where M is deceased, M’s personal representatives an amount by way of compensation equal to  $x - y$  (“the compensation amount”) reduced in accordance with paragraph (7).

(7) Where, if the compensatable amount was paid immediately after the requirement to pay it arose, the payment—

- (a) would be a payment described in regulation 6 of the Registered Pension Schemes (Authorised Payments) Regulations 2009(2) (“the 2009 Regulations”) as if regulation 6(1)(a) of those Regulations were omitted, the compensatable amount is to be reduced by the amount equal to the income tax that would be chargeable on it as if regulation 3(b) of the 2009 Regulations applied to it,
- (b) would not be a payment so described, the compensatable amount is to be reduced by an amount equal to the income tax that would be charged on the amount if it were taxed as pension income under Part 9 of the Income Tax (Earnings and Pensions) Act 2003(3).

### **Transfers in before 1 October 2023**

**47.**—(1) This regulation applies in relation to each payment of a remediable transfer value in respect of a member (“M”) which was accepted by the scheme manager before 1 October 2023.

(2) The scheme manager, having consulted the scheme actuary, must determine the amount of pension M is entitled to count if the remediable transfer value together with any payment accepted under paragraph (3) were applied in respect of rights in—

- (a) M’s legacy scheme,
- (b) the reformed scheme.

(3) Where the sending scheme was a reformed public service pension scheme, the scheme manager may accept a payment—

- (a) in respect of the remediable rights to which the remediable transfer value relates, and
- (b) which is made by the sending scheme pursuant to, or to provision made under, PSPJOA 2022.

(4) A payment accepted under paragraph (3) is to be used for the purpose of determining the amount of pension M is entitled to count under a teacher pension scheme on the same terms as the remediable transfer value.

## *SECTION 2*

### *Transfers on or after 1 October 2023*

#### **Application of Section 2**

**48.** This Section applies in respect of a deferred choice member (“M”), where no pension benefits have become payable in relation to M’s remediable teacher service.

#### **Transfers out on or after 1 October 2023**

**49.**—(1) This regulation applies to a remediable transfer value paid in relation to M by the scheme manager on or after 1 October 2023.

(2) The scheme manager, having consulted the scheme actuary, must calculate the transfer value of M’s remediable rights as if those rights had been in—

- (a) M’s legacy scheme,
- (b) the reformed scheme.

(3) The amount of the remediable transfer value is the greater of the amounts calculated under paragraph (2).

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(2) S.I. 2009/1171. Regulation 6 was amended by section 42(6)(a) of the Finance Act 2014 (c. 26).

(3) 2003 c. 1.

## CHAPTER 3

### Transfers on a club basis

#### SECTION 1

##### *Club transfers before 1 October 2023*

#### **Club transfers out before 1 October 2023**

**50.**—(1) This regulation applies in relation to each member (“M”) in respect of whom the scheme manager paid a remediable club transfer value before 1 October 2023.

(2) The scheme manager must calculate the following amounts—

- (a) the club transfer value of M’s rights under a teacher pension scheme as if M’s remediable rights had been secured in M’s legacy scheme,
- (b) the club transfer value of M’s rights under a teacher pension scheme as if M’s remediable rights had been secured in the reformed scheme.

(3) The scheme manager must provide to the receiving scheme the result of the calculations mentioned in paragraph (2).

(4) Where the receiving is a local government scheme (within the meaning of section 86(1) of PSPJOA 2022), and—

- (a) the greater of the amounts calculated under paragraph (2) (“x”) is greater than
- (b) the amount of the remediable transfer value (“y”),

the scheme manager must pay the receiving scheme an amount equal to  $x - y$ .

(5) A payment made under paragraph (4) is subject to the same conditions as the remediable club transfer value.

#### **Club transfers in before 1 October 2023**

**51.**—(1) This regulation applies in relation to each remediable club transfer payment value in respect of a member (“M”) which was accepted by the scheme manager before 1 October 2023.

(2) The scheme manager may accept an adjustment in the value of a remediable club transfer value—

- (a) in respect of the remediable rights to which the remediable club transfer value relates, and
- (b) which is made by the sending scheme pursuant to, or to provision made under, PSPJOA 2022.

(3) An adjustment accepted under paragraph (2) is to be used for the purpose of determining the amount of pension M is entitled to count under a teacher pension scheme on the same terms as the remediable club transfer value mentioned in paragraph (1).

(4) The scheme manager must determine the amount of pension M is entitled to count if the remediable transfer value together with any adjustment accepted under paragraph (2) were applied in respect of rights in—

- (a) M’s legacy scheme,
- (b) the reformed scheme.

## SECTION 2

### *Club transfers on or after 1 October 2023*

#### **Application of Section 2**

**52.** This Section applies in respect of a deferred choice member (“M”), where no pension benefits have become payable in relation to M’s remediable teacher service.

#### **Club transfers out on or after 1 October 2023**

**53.**—(1) This regulation applies in relation to a remediable club transfer value payment to be made by the scheme manager on or after 1 October 2023.

(2) The scheme manager must calculate the following amounts—

- (a) the club transfer value of M’s rights under a teacher pension scheme as if M’s remediable rights had been secured in M’s legacy scheme,
- (b) the club transfer value of M’s rights under a teacher pension scheme as if M’s remediable rights had been secured in the reformed scheme.

(3) The amount of the remediable club transfer value is the greater of the amounts calculated under paragraph (2).

(4) The scheme manager must provide to the receiving scheme the result of the calculations mentioned in paragraph (2).

#### **Club transfers in on or after 1 October 2023**

**54.**—(1) This regulation applies in relation to a remediable club transfer value payment which is accepted by the scheme manager on or after 1 October 2023.

(2) The scheme manager must determine the amount of pension M is entitled to count if the remediable club transfer value were applied in respect of rights in—

- (a) M’s legacy scheme,
- (b) the reformed scheme.

## CHAPTER 4

### Variation of transfer application periods

#### **Variation of transfer application periods**

**55.**—(1) Regulations 198(2)(a) and 206(2)(a) of the 2014 Regulations apply in relation to—

- (a) the relevant remediable teacher service of a relevant member as if, in each of those provisions, for “after the day on which P enters pensionable service under this scheme” there were substituted “from 1 October 2023”,
- (b) the local government pension scheme service of a remedy member with relevant excess teacher service as if, in each of those provisions, for “after the day on which P enters pensionable service under this scheme” there were substituted “from the day on which the remediable service statement mentioned in regulation 4(2)(a) of the Teachers’ Pensions (Transitional Protection Remedy) (Scotland) Regulations 2023 is issued in respect of the relevant member”.

(2) In this regulation—

“local government pension scheme service” means service in an employment or office which is pensionable service under a scheme described in section 86 of PSPJOA 2022,

“relevant excess teacher service” means excess teacher service which is, by virtue of sections 2(1) and 4(4) of PSPJOA 2022, treated as being pensionable service in the local government new scheme mentioned in section 110(2) of PSPJOA 2022,

“relevant remediable teacher service” means the remediable teacher service of a relevant member that is not relevant excess teacher service.

## CHAPTER 5

### Treatment of rights secured by virtue of a remediable value

#### Application and interpretation of Chapter 5

**56.**—(1) This Chapter applies in relation to the following accepted by the scheme manager in respect of a member (“M”)—

- (a) a remediable transfer value payment, together with any payment accepted under regulation 47(3),
- (b) a remediable club transfer value payment, together with any adjustment accepted under regulation 51(2).

(2) In this Chapter, “transferred in remediable rights” means M’s remediable rights in a teacher pension scheme secured by virtue of a remediable value together with any payment or, as the case may be, adjustment under regulation 47(3) or 51(2).

#### Transferred in remediable rights treated as being in the legacy scheme

**57.**—(1) Where M’s transferred in remediable rights would, apart from this regulation, be rights to benefits under the reformed scheme, the rights—

- (a) are not, and are treated as never having been, rights under the reformed scheme, and
- (b) are treated as being, and as always having been, rights under M’s legacy scheme.

(2) Paragraph (1) has effect—

- (a) for the purposes of determining which teacher pension scheme is (or at any time was) required to pay benefits to or in respect of M’s transferred remediable rights, and
- (b) subject to regulation 58, for all other purposes.

#### Varying the value of benefits secured by virtue of transferred in remediable rights

**58.**—(1) Where—

- (a) M is a deferred choice member, and
- (b) M’s transferred in remediable rights are treated as rights to benefits under the legacy scheme by virtue of regulation 57,

the scheme manager must vary the value of those rights so that they are of an equivalent value to rights M would have secured under the legacy scheme if the rights had been transferred into that scheme.

(2) A variation under paragraph (1) is to be treated as having taken effect when these Regulations come into force.

(3) Where M is—

- (a) an immediate choice member, and—
  - (i) an immediate choice decision has been made that no section 6 election is to be made in relation to M’s remediable teacher service, or

(ii) the section 6 election period in relation to M has passed and no section 6 election has been made (or deemed to have been made) in relation to M's remediable teacher service, and

(b) M's transferred in remediable rights are treated as rights to benefits under M's legacy scheme by virtue of regulation 57,

the scheme manager must vary the value of those rights so that they are of an equivalent value to rights M would have secured under M's legacy scheme if the rights had been transferred into that scheme.

(4) A variation under paragraph (3) is to be treated as having taken effect on the earlier of—

(a) the time that an immediate choice decision (including a deemed section 6 election) is treated as having taken effect in relation to M's remediable teacher service,

(b) the end of the section 6 election period in relation to M.

(5) Where—

(a) the benefits payable to or in respect of M's remediable teacher service are reformed scheme benefits by virtue of a section 6 election or a section 10 election (including, in either case, a deemed election), and

(b) the benefits payable in relation to M's transferred in remediable rights would otherwise be legacy scheme benefits,

the scheme manager must vary the value of those rights so that they are of an equivalent value to rights M would have secured under the reformed scheme if the rights had been transferred into that scheme.

(6) A variation under paragraph (5) is to be treated as having taken effect when the election (or deemed election) is treated as having taken effect in relation to M's remediable teacher service.

(7) Where the scheme manager is required to vary the value of any rights under this regulation so that they are equivalent to rights that would have been secured in another scheme ("the alternative scheme"), the scheme manager must—

(a) where the rights are secured by virtue of a remediable transfer value, first consult the scheme actuary, and

(b) calculate the varied rights as if the remediable transfer value which originally secured rights under a teacher pension scheme were transferred into the alternative scheme in the relevant pension year that the transfer occurred.

(8) In paragraph (7), "relevant pension year" has the meaning given by direction 4(14)(f)(i) of the PSP Directions 2022.

### **Benefits already paid in relation to transferred in remediable rights**

**59.**—(1) Paragraph (2) applies in relation to any benefits ("the paid benefits") that the reformed scheme has at any time paid to a person ("P") so far as—

(a) they are calculated by reference to P's, or where P is not M, M's transferred in remediable rights, and

(b) they are benefits that, as a result of regulation 57(1)(a), P was not entitled to receive from the scheme.

(2) The paid benefits are to be treated for all purposes—

(a) as not having been paid to P by the reformed scheme, but

(b) as having been paid to P instead by the legacy scheme.

### **Pension benefits and lump sum benefits in relation to transferred in remediable rights**

**60.**—(1) This regulation applies—

- (a) where M is an immediate choice member, and
- (b) in relation to any benefits that have been paid to or in respect of the transferred in remediable rights of M.

(2) Where, at the operative time—

- (a) the aggregate of benefits that (after taking into account the effect, if any, of regulation 57) have been paid under the legacy scheme to any person (“the beneficiary”) in respect of M’s transferred in remediable rights, exceeds
- (b) the aggregate of the benefits to which (after taking into account the effect, if any, of regulation 58(3) or (5) in relation to the rights) the beneficiary is entitled under the scheme in respect of the rights,

the beneficiary must pay an amount equal to the difference to the scheme.

(3) Where, at the operative time—

- (a) the amount mentioned in paragraph (2)(a), is less than
- (b) the amount mention in paragraph (2)(b),

the scheme manager must pay an amount equal to the difference to the beneficiary.

(4) In this regulation, “the operative time” means—

- (a) if an immediate choice decision is made in relation to M’s remediable teacher service, the time the decision is made,
- (b) otherwise, the end of the section 6 election period in relation to M.