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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 241**

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

**PART 7**

Provision about special cases

CHAPTER 1

Ill-health retirement

**Provisions about ill-health retirement benefits following reassessment**

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

- (a) a remedy member's ("M's") application for ill-health retirement benefits was determined under a teacher pension scheme before 1 October 2023,
- (b) it was determined that M did not meet the ill-health retirement criteria in that teacher pension scheme,
- (c) the scheme manager determines in accordance with regulation 623 that M would have met the ill-health retirement criteria in M's alternative scheme at the time the application was first determined, and
- (d) M is a deferred choice member.

(2) The scheme manager must, as soon as reasonably practicable following the determination mentioned in paragraph (1)(c), send to M a written notice setting out—

- (a) that an election (an "immediate IHR election") may be made,
- (b) the time by which an immediate IHR election must be received by the scheme manager, and
- (c) the consequences of making (or not making) an immediate IHR election.

(3) M may make an immediate IHR election by sending notice of the election to the scheme manager—

- (a) in a form and manner determined by the scheme manager, and
- (b) so that it is received by the scheme manager no later than the end of the period of three months beginning on the day the notice mentioned in paragraph (2) is sent.

(4) Where an immediate IHR election is made, M is to be treated—

- (a) for all purposes as if a deferred choice decision has been made—
  - (i) where M's alternative scheme is M's legacy scheme, that no section 10 election is to be made in relation to M's remediable teacher service (and, accordingly, the benefits payable in relation to M's remediable teacher service are legacy scheme benefits),
  - (ii) where M's alternative scheme is the reformed scheme, that a section 10 election is to be made in relation to M's remediable teacher service, and

- (b) as if M is entitled to the payment of ill-health retirement benefits under M's alternative scheme from the day after M's last day of service in an employment or office which is capable of being pensionable service in a teacher pension scheme.
- (5) Where M does not leave all service in an employment or office which is capable of being pensionable service in a teacher pension scheme before—
- (a) the end of the period of three months beginning on the day the immediate IHR election is received by the scheme manager, or
  - (b) such later time as the scheme manager considers reasonable in all the circumstances,
- M is to be treated as if the immediate IHR election had not been made (and no subsequent immediate IHR election may be made).
- (6) An immediate IHR election is irrevocable.
- (7) The provisions of Chapter 1 of Part 1 of PSPJOA 2022 and of these Regulations about the timing and effect of, as the case may be, a deferred choice decision and a section 10 election apply subject to this regulation.