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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 242**

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

**PART 3**

Decisions about the treatment of remediable service as a firefighter

**CHAPTER 3**

Deferred choice decision for reformed scheme or legacy scheme benefits

**Application and interpretation of Chapter 3**

**11.**—(1) This Chapter applies in respect of the remediable service as a firefighter of a deferred choice member (“M”).

(2) Where M has remediable service as a firefighter in multiple employments or offices, this Chapter applies separately in relation to the remediable service as a firefighter in each employment or office.

**Deferred choice decision for reformed scheme or legacy scheme benefits: general**

**12.**—(1) A decision (a “deferred choice decision”) may be made—

- (a) to make an election (“a section 10 election”) by virtue of section 10 of PSPJOA 2022 in relation to M’s remediable service as a firefighter, or
- (b) that no section 10 election is to be made in relation to that service.

(2) A deferred choice decision may be made—

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

(3) A deferred choice decision made by—

- (a) a person other than the scheme manager is made when it is received by the scheme manager in a form and manner determined by the scheme manager;
- (b) the scheme manager is made at a time determined by the scheme manager.

(4) A deferred choice decision may only be made before the end of the section 10 election period.

(5) A deferred choice decision to make a section 10 election takes effect as a section 10 election (see sections 10(4) and (5), 11(3)(b), (4) and (7) and 13 of PSPJOA 2022 about the effect of a section 10 election).

(6) Where the deferred choice decision is that no section 10 election is to be made, the benefits payable to or in respect of M, so far as they are determined by reference to M’s remediable service as a firefighter, are legacy scheme benefits.

(7) The following provisions of PSPJOA 2022 have effect in relation to a decision that no section 10 election is to be made as they have effect in relation to a section 10 election—

- (a) section 10(5) (section 10 election has effect in respect of all remediable service in the employment or office);
- (b) section 11(3)(b), (4) and (7) (provision about when a section 10 election takes effect, and the effect of lapse or revocation of a section 10 election);
- (c) section 13 (persons with remediable service in more than one Chapter 1 legacy scheme).

(8) No benefits are payable under the legacy scheme in respect of M’s pensionable service under that scheme unless—

- (a) a deferred choice decision is made in relation to M’s remediable service,
- (b) a section 10 election is deemed to have been made under regulation 15 in relation to that service, or
- (c) M has notified the scheme manager that they intend to claim benefits under a firefighters’ pension scheme in respect of their remediable service as a firefighter and it was not reasonably practicable for the scheme manager to provide a remediable service statement in respect of M in accordance with regulation 4(2)(c)(i) before the date on which such benefits become payable, or
- (d) M is deceased.

(9) Where M is a person described in paragraph (8)(c) or (d), the scheme manager may, before a deferred choice decision is made or a section 10 election is deemed to have been made in relation to M’s remediable service as a firefighter, pay to any person (“the beneficiary”) who is, or is to be, entitled to receive death benefits in relation to M’s pensionable service such benefits (whether by way of lump sum or otherwise) to which the beneficiary would be entitled if no section 10 election is made, or deemed to be made, in relation to M’s remediable service as a firefighter.

(10) The scheme manager may not pay benefits under paragraph (9) which are determined by reference to any voluntary contribution<sup>(1)</sup> paid by M pursuant to an arrangement which commenced during the period of M’s remediable service as a firefighter.

(11) Where, at the operative time—

- (a) the aggregate of the lump sum or pension benefits that have been paid pursuant to paragraph (9) to a beneficiary, exceeds
- (b) the aggregate of the lump sum or pension benefits to which (after taking into account the effect, if any, of paragraph (6) of this regulation or section 10(4) of PSPJOA 2022) the beneficiary is entitled under a firefighters’ pension scheme in respect of M’s pensionable service,

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

(12) Where, at the operative time—

- (a) the amount mentioned in paragraph (11)(a), is less than
- (b) the amount mentioned in paragraph (11)(b),

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

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

- (a) if—
  - (i) a deferred choice decision is made, or
  - (ii) a section 10 election is deemed to have been made,

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(1) See section 110(1) of the PSPJOA 2022 for the meaning of “voluntary contributions”.

in relation to M's remediable service as a firefighter, the time the decision or election is made;

- (b) otherwise, the end of the section 10 election period in relation to M.

### **Deferred choice decision to be made by M**

**13.**—(1) This regulation applies where M is the deferred choice decision-maker.

(2) M must notify the scheme manager in a form and manner determined by the scheme manager that M intends to claim benefits in relation to M's remediable service as a firefighter—

- (a) during the period between 12 and 6 months before the date M intends such benefits to become payable, or
- (b) during such other period that the scheme manager considers reasonable in all the circumstances.

(3) A deferred choice decision may only be made during the period—

- (a) beginning on the date a remediable service statement is issued under regulation 4(2)(c)(i), and
- (b) ending—
  - (i) at the end of the day 12 weeks after that date;
  - (ii) subject to paragraph (5), at the end of such other day as the scheme manager considers reasonable in all the circumstances;
  - (iii) if earlier than the time which applies by virtue of paragraph (i) or (ii), at the end of the day before benefits become payable in relation to M's remediable service as a firefighter.

(4) The end of the period during which a deferred choice election decision may be made must not be more than one year before the day on which it is reasonably expected that, if a section 10 election were made, reformed scheme benefits would become payable to or in respect of M.

(5) A deferred choice decision made by M may be revoked—

- (a) up to 10 working days before benefits become payable in relation to M's remediable service as a firefighter, and
- (b) by M communicating to the scheme manager notice of the revocation in a form and manner determined by the scheme manager.

(6) Where the scheme manager receives notice that M has died before any benefits have become payable in relation to M's remediable service as a firefighter—

- (a) any deferred choice decision made by M lapses, and
- (b) any period that has begun (whether or not it has also ended) in accordance with paragraph (3) is to be treated as never having begun (or ended).

### **Deferred choice decision to be made by a person other than M**

**14.**—(1) This regulation applies where a person other than M is the deferred choice decision-maker.

(2) A deferred choice decision may only be made during the period—

- (a) beginning, where the deferred choice decision-maker is—
  - (i) a person other than the scheme manager, on the date a remedial service statement is issued under regulation 4(2)(c)(ii);
  - (ii) the scheme manager, on the date the scheme manager receives notice that M has died, and

- (b) ending—
  - (i) at the end of the day 12 weeks after that date;
  - (ii) except where the scheme manager is the deferred choice decision-maker, at such other time as the scheme manager considers reasonable in all the circumstances;
  - (iii) if earlier than the time which applies under paragraph (i) or (ii), immediately after a deferred choice decision is made.
- (3) A deferred choice decision made by a person other than M is irrevocable.

**Deferred choice decision: additional requirements**

**15.** Where the deferred choice decision-maker (“D”) is a person other than the scheme manager, a deferred choice decision is to be treated as having been made only if D provides any information specified in a written request from the scheme manager that is—

- (a) information in D’s possession, or
- (b) information which D can reasonably be expected to obtain.

**Deferred choice election: deemed election**

**16.** Where—

- (a) the end of the section 10 election period in relation to M has passed,
- (b) no deferred choice election decision has been made, and
- (c) it appears to the scheme manager, having consulted the scheme actuary, that the value of reformed scheme benefits payable if a deferred choice election is made is greater than the value legacy scheme benefits payable if a deferred choice election is not made,

a deferred choice election is treated as having been made immediately before the end of the section 10 election period.