
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 242

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

PART 3

Decisions about the treatment of remediable service as a firefighter

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 in an employment or office in relation to M’s legacy scheme⁽¹⁾.

(2) In this Chapter—

“opted-out service decision-maker” means the person who may make an opted-out service election in accordance with regulation 6(2);

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

Election in relation to 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 Chapter 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 M 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 on behalf of M,

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

(c) received by the scheme manager during the period of 12 months beginning with the day on which a remediable service statement is provided in relation to M under regulation 4(2) (a), and

(d) accompanied by such information—

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

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

⁽¹⁾ See sections 5(7) (read with section 4) and 36 of the PSPJOA 2022 for the meaning of relevant opted-out service in relation to a Chapter 1 legacy scheme (such as the 1992 and 2007 schemes).

that the scheme manager may by written notice require the person 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) Except where M meets the third condition in section 1(5) of PSPJOA 2022 by virtue of falling into section 1(5)(b) of that Act, the scheme manager must refuse an application where either of the following conditions are not met—

- (a) the decision by virtue of which M’s service became opted-out service was communicated to the scheme manager on or after 12 March 2012;
- (b) the decision by virtue of which M’s service became opted-out service was made pursuant to a relevant breach of a non-discrimination rule(2).

(6) But the scheme manager must not refuse an application where the decision by virtue of which M’s service became opted-out service was communicated to the scheme manager during the period—

- (a) beginning on the day six months before M would have (but for the opt-out decision) become a member of the reformed scheme, and
- (b) ending at the end of 28 February 2022.

(7) 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.

(8) 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.

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

CHAPTER 2

Immediate choice decision for reformed scheme or legacy scheme benefits

Application and interpretation of Chapter 2

7.—(1) This Chapter applies in respect of the remediable service as a firefighter of an immediate 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.

Immediate choice decision for reformed scheme or legacy scheme benefits

8.—(1) A decision (“an immediate choice decision”) may be made in accordance with this Chapter—

(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”.

- (a) to make an election (“a section 6 election”) by virtue of section 6 of PSPJOA 2022 in relation to M’s remediable service as a firefighter, or
 - (b) that no section 6 election is to be made in relation to that service.
- (2) An immediate 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) An immediate 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 the time determined by the scheme manager.
- (4) An immediate choice decision may only be made before the end of the section 6 election period⁽³⁾.
- (5) An immediate choice decision is irrevocable.
- (6) An immediate choice decision to make a section 6 election takes effect as a section 6 election (see sections 6(5) and (7), 7(1)(b) and 9 of PSPJOA 2022 about the effect of a section 6 election).
- (7) Where—
- (a) immediately before 1 October 2023, M has remediable service as a firefighter in the reformed scheme (“reformed scheme service”), and
 - (b) an immediate choice decision is made that no section 6 election is to be made in relation to M’s remediable service as a firefighter,
- section 6(4) of PSPJOA 2022 does not apply in relation to M’s reformed scheme service (and, accordingly, section 2(1) of PSPJOA 2022 has effect in relation to M’s reformed scheme service for the purposes mentioned in section 2(3)(b) of that Act from the time the immediate choice decision is made).
- (8) The following provisions of PSPJOA 2022 have effect in relation to an immediate choice decision that no section 6 election is to be made as they have effect in relation to a section 6 election—
- (a) section 6(7) (section 6 election has effect in respect of all remediable service in the employment or office);
 - (b) section 7(1)(b) (provision about when a section 6 election is to be treated as having taken effect);
 - (c) section 9 (provision about persons with remediable service in more than one Chapter 1 legacy scheme).

Immediate choice decision: additional requirements

- 9.—(1) This regulation applies where the immediate choice decision-maker (“D”) is a person other than the scheme manager.
- (2) An immediate choice decision may not be made unless a remediable service statement has been provided in accordance with regulation 4(2)(a).
- (3) An immediate 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.

(3) See section 7(2) of the PSPJOA 2022 for the meaning of “the end of the section 6 election period”.

Immediate choice decision: deemed section 6 election

10. Where—

- (a) the end of the section 6 election period in relation to M has passed,
- (b) no immediate choice decision has been communicated to the scheme manager, and
- (c) it appears to the scheme manager, having consulted the scheme actuary, that the value of reformed scheme benefits payable if an immediate choice election is made is greater than the value of legacy scheme benefits payable if an immediate choice election is not made,

a section 6 election is treated as having been made immediately before the end of the section 6 election period.

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(4) 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,

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.

(4) See section 110(1) of the PSPJOA 2022 for the meaning of "voluntary contributions".

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.