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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

**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,

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.

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