
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 19

The Firefighters' Pension Scheme (Scotland) Regulations 2015

PART 12

Supplementary

CHAPTER 1

Payment of pensions

Late payment of retirement index adjustment

154. Nothing in these Regulations requires any part of a pension attributable to a retirement index adjustment to be paid before the end of the last active scheme year.

Recovery of overpayment of benefits

155.—(1) This regulation applies in respect of a financial year for which a percentage decrease in earnings is specified in an order made under section 9 of the 2013 Act⁽¹⁾.

(2) The scheme manager must recover any overpayment of benefits that has occurred as a result of the application of the retirement index adjustment for that year.

(3) When this regulation applies the scheme manager must notify the member in writing that the amount of the overpayment is to be recovered by reducing the amount of each instalment of pension until the amount of the overpayment is recovered or by omitting to pay any increase in the amount of any pension due until the amount of the overpayment is recovered.

Guaranteed minimum pension

156.—(1) If a member has a guaranteed minimum in relation to benefits under this scheme—

- (a) nothing in these Regulations permits or requires anything that would cause requirements made by or under the PSA 1993 in relation to such a member and such a member's rights under this scheme not to be met in the case of the member;
- (b) nothing in these Regulations prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the member; and
- (c) the following provisions are subject to the generality of this paragraph.

(2) If apart from this regulation—

- (a) no pension would be payable to the member under this scheme; or
- (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,

(1) Under section 9 of the 2013 Act, the change in earnings to be applied in a period is the percentage increase or decrease as a Treasury order under that section may specify in relation to the period.

a pension at a weekly rate equal to the guaranteed minimum is payable to the member for life from the date on which the member reaches GMP age or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable.

(3) Subject to paragraph (4), if—

- (a) on reaching GMP age the member is still in employment (whether or not it is scheme employment); and
- (b) if it is not scheme employment, the member consents to a postponement of the member's entitlement under paragraph (2),

paragraph (2) does not apply until the member leaves employment.

(4) If the member continues in employment for a further five years after reaching GMP age and does not then leave employment, the member is entitled from the end of that period to so much of the member's pension under Part 5 (retirement benefits) and Part 7 (benefits for pension credit members) as equals the member's guaranteed minimum (or, as the case may be, to so much of the member's pensions under Part 5 and Part 7 as together have a weekly rate equal to the member's guaranteed minimum), unless the member consents to a further postponement of the entitlement.

(5) In the circumstances provided for in paragraph (3) or (4), the amount of the guaranteed minimum to which the member is entitled under this regulation is increased in accordance with section 15 (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed) of PSA 1993.

(6) If—

- (a) before reaching the age of 65 the member becomes entitled to the immediate payment of a pension; and
- (b) the member has a guaranteed minimum in relation to the whole or part of a pension as a result of receipt by this scheme of a transfer payment from another pension scheme in respect of which the member had such a guaranteed minimum,

the weekly rate of the pension, so far as attributable to that service, must not be less than the guaranteed minimum, multiplied by such factor as is indicated in tables included in actuarial guidance for a person of the member's age and sex at the date on which the pension becomes payable.

(7) This paragraph applies if a person has ceased to be in employment that is contracted-out employment, within the meaning of Part 3 of PSA 1993 (certification of pension schemes and effects on members' state scheme rights and duties), by reference to this scheme and either—

- (a) a transfer payment in respect of all the person's rights to benefits under this scheme, except the person's rights in respect of the person's guaranteed minimum or rights under section 9(2B)(requirements for certification of schemes; general) of PSA 1993(2) ("the person's contracting-out rights") has been made; or
- (b) the person has no rights to benefits under this scheme apart from the person's contracting-out rights.

(8) If paragraph (7) applies—

- (a) from the date on which the person reaches GMP age the person is entitled to a pension payable for life at a weekly rate equal to the person's guaranteed minimum, if any; and
- (b) from the date on which the person reaches normal pension age under this scheme the person is entitled to a lump sum and pension in respect of that person's rights under section 9(2B) of PSA 1993,

(2) Subsection (2B) was inserted by the Pensions Act 1995 (c.26), section 136(3) and amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2), Schedule 1, paragraph 35.

but a person falling with paragraph (7) is not to be regarded as a pensioner member for the purposes of Part 6 (death benefits).

(9) Paragraphs (2) to (8) do not apply to a pension—

(a) that is forfeited—

(i) as a result of a conviction for treason, or

(ii) in a case where the relevant offence under regulation 161 (forfeiture: offences committed by members, surviving partners or eligible children) falls under paragraph (b) of the definition in that regulation of “relevant offence” (Official Secrets Acts offences);

(b) where that pension is commuted under regulation 157 (commutation of small pensions) and where the conditions in regulation 60 of the Occupational Pension Schemes(Contracting-out) Regulations 1996(3) are met,

and if any other provision of this scheme is inconsistent with this regulation, this regulation prevails.

(10) In this regulation, references to the amount of a pension are to its amount after the subtraction of the commutation amount, if any (but before the subtraction of the allocation amount, if any).

Commutation of small pensions

157.—(1) This regulation applies if the pension entitlement of a member of the scheme or the pension entitlement of a member’s beneficiary does not exceed the small pensions commutation maximum.

(2) Unless the member has reached deferred pension age, this regulation does not apply if the pension entitlement of the member or the member’s beneficiary is equal to or exceeds the member’s guaranteed minimum.

(3) The scheme manager may pay the member, surviving partner or eligible child a lump sum of an amount as represents the cash value of the pension calculated in accordance with actuarial guidance if—

(a) the person consents to receipt of a lump sum in respect of the pension; and

(b) the requirements of the commutation provisions that apply in the circumstances are met.

(4) The payment of a lump sum under this regulation in place of a pension discharges all liabilities under this scheme in respect of that pension.

(5) In this regulation—

“the commutation provisions” means the provisions permitting the commutation of pensions set out in—

(a) regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997(4);

(b) paragraph 7 of Schedule 29 (authorised lump sums-supplementary) to FA 2004 (which defines trivial commutation lump sums for the purposes of Part 4 of that Act)(5) and, in relation to a pension payable under Part 6 (death benefits), paragraph 20 of that Schedule (which defines trivial commutation lump sum death benefit for the purposes of Part 4 of that Act)(6); and

(3) S.I. 1996/1172. Regulation 60 was substituted by S.I. 2006/744 and amended by S.I. 2006/1337, S.I. 2009/2930 and S.I. 2010/499.

(4) S.I. 1997/785. Regulation 2 was amended by S.I. 2002/681, S.I. 2005/706, S.I. 2006/744, S.I. 2006/778 and S.I. 2009/2930.

(5) Paragraph 7 was amended by Finance Act 2011 (c.11), Schedule 16, paragraphs 23 and 29 and Schedule 18, paragraphs 1, 3 and 4 and S.I. 2006/572.

(6) Paragraph 20 was amended by Finance Act 2011 (c.11), Schedule 16, paragraphs 32 and 39 and Schedule 18, paragraphs 1, 3 and 6.

- (c) regulation 3 of the Pension Sharing (Pension Credit Benefit) Regulations 2000⁽⁷⁾; and “the small pensions commutation maximum” means the amount that is permitted to be commuted, having regard to the commutation provisions that apply in the circumstances.

Payments for persons incapable of managing their affairs

158. If it appears to the scheme manager that a person other than an eligible child is entitled to payment of benefits under this scheme but is, by reason of mental incapacity or otherwise, incapable of managing his or her affairs—

- (a) the scheme manager may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the scheme manager may determine, to be applied for the benefit of the person entitled; and
- (b) in so far as the scheme manager does not pay the benefits in that manner, the scheme manager may apply them in such manner as the scheme manager may determine, for the benefit of the person entitled, or any beneficiaries of the person entitled.

Payments due in respect of deceased persons

159.—(1) Paragraph (2) applies if, when a person dies, the total amount due to that person’s executors under this scheme (including anything due at that person’s death) does not exceed the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965⁽⁸⁾ and applying in relation to that person’s death.

(2) A scheme manager may pay the whole or part of the amount due to—

- (a) a person’s executors; or
- (b) any person or persons appearing to the scheme manager to be beneficially entitled to the estate,

without the production of a grant of confirmation to the person’s estate.

Limitation on assignation of benefits

160. An assignation of an award under these Regulations is void to the extent that it is in favour of a person other than a dependant of the person entitled to the award.

(7) S.I. 2000/1054. Regulation 3 was amended by S.I. 2009/2930.

(8) 1965 c.32; there are amendments to section 6 which are not relevant to this instrument.