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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 242**

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

**PART 4**

**Provision about divorce and dissolution arrangements**

**CHAPTER 1**

**Pension credit and pension debit members**

*SECTION 1*

*Application and interpretation of Chapter 1*

**Application and interpretation of Chapter 1**

**17.—**(1) This Chapter applies in relation to—

- (a) a pension credit member (“C”),
- (b) the corresponding pension debit member (“D”), and
- (c) the pension sharing agreement or pension sharing order by virtue of which C became a pension credit member in relation to D’s remediable service as a firefighter (the “relevant pension sharing arrangement”).

(2) In this Chapter—

“appropriate person” means—

- (a) D, or
- (b) where D is deceased, D’s personal representatives;

“C” means the pension credit member mentioned in paragraph (1)(a);

“cash equivalent” means an amount calculated in accordance with regulations made under section 30 of WRPA 1999<sup>(1)</sup>;

“corresponding pension debit member” means the member referred to in sub-paragraph (c) of the definition of “pension credit member”;

“D” means the corresponding debit member mentioned in paragraph (1)(b);

“pension credit member” means a member of a firefighters’ pension scheme who has rights under the scheme—

- (a) which are attributable (directly or indirectly) to a pension credit<sup>(2)</sup>;

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<sup>(1)</sup> In accordance with section 110(1) of the PSPJOA 2022, “WRPA 1999” means the Welfare Reform and Pensions Act 1999 (c. 30).

<sup>(2)</sup> See section 19(7) of the PSPJOA 2022 for the meanings of “pension debit” and “pension credit”.

(b) which arise by virtue of a pension sharing arrangement with a transfer day on or after 1 April 2015, and

(c) the value of which was determined (to any extent) by reference to the value of benefits payable in respect of the remediable service as a firefighter of another member;

“pension sharing agreement” means an agreement to which section 28 of WRPA 1999 applies in relation to a pension credit member and the corresponding pension debit member;

“pension sharing order” means the order or provision by virtue of which section 29 of WRPA 1999 applies in relation to a pension credit member and the corresponding pension debit member;

“relevant pension sharing arrangement” has the meaning given in paragraph (1)(c);

“remediable relevant benefits” means the benefits or future benefits described in section 29(4) and (5) of WRPA 1999 to which D is entitled by virtue of remediable shareable rights;

“remediable shareable rights” means D’s shareable rights secured by virtue of D’s remediable service as a firefighter during the period beginning on 1 April 2015 and ending on the earlier of—

(a) the day before the transfer date, or

(b) the last day of D’s remediable service as a firefighter;

“shareable rights” has the meaning given in section 27(2) of WRPA 1999;

“transfer day” means the day on which the relevant pension sharing arrangement takes effect;

“valuation day” has the meaning given in section 29(7) of WRPA 1999.

## SECTION 2

*Pension sharings orders and agreements: information provided before 1 October 2023*

### **Application and interpretation of Section 2**

**18.**—(1) This Section applies where, before 1 October 2023, the scheme manager has provided information for the purpose of determining amounts under section 29 of WRPA 1999 in respect of a remedy member’s remedial service as a firefighter.

(2) In this Section—

“alternative amount” has the meaning given in regulation 19;

“alternative reduction amount” and “alternative reduction amounts” have the meanings given in, respectively, regulation 22(3) and (4);

“alternative scheme”, in relation to a relevant pension sharing arrangement that does not relate to mixed service, means—

(a) where the initial scheme is D’s legacy scheme, the reformed scheme;

(b) where the initial scheme is the reformed scheme, D’s legacy scheme;

“C’s pension account” has the meaning given in regulation 21(4);

“initial amount” means the total amount determined for the purposes of the relevant pension sharing arrangement under section 29(2) and (3) of WRPA 1999 in relation to D’s remediable shareable rights;

“initial reduction amount” means the amount by which D’s remediable relevant benefits were reduced pursuant to the relevant pension sharing arrangement;

“initial scheme”, in relation to a relevant pension sharing arrangement that does not relate to mixed service, means the firefighters’ pension scheme in respect of which an initial amount or an initial reduction amount was determined;

“remediable credit adjustment” has the meaning given in regulation 20(2).

(3) For the purposes of this Section, a relevant pension sharing arrangement relates to mixed service if it specifies an appropriate amount in accordance with section 29(2) or (3) of WRPA 1999 by reference to the value of remediable relevant benefits to which D is entitled by virtue of remediable shareable rights secured in both D’s legacy scheme and the reformed scheme (and, accordingly, a relevant pension sharing arrangement does not relate to mixed service if it specifies an appropriate amount by reference to remediable shareable rights secured in only one of those schemes).

### **Meaning of “alternative amount”**

**19.—(1)** “Alternative amount” means—

- (a) in relation to a relevant pension sharing arrangement that does not relate to mixed service—
  - (i) where an initial amount was determined under section 29(2) of WRPA 1999 in relation to a percentage value to be transferred from the initial scheme, the amount that would have been determined applying the relevant percentage value under section 29(2) on the valuation day if the remediable relevant benefits had been secured in the alternative scheme;
  - (ii) where an initial amount was determined under section 29(3) of WRPA 1999 in relation to an amount to be transferred from the initial scheme, the amount equal to the implied percentage of the cash equivalent of the remediable relevant benefits on the valuation day determined as if all of those benefits had been secured in the alternative scheme;
- (b) in relation to a relevant pension sharing arrangement that relates to mixed service, the greater of—
  - (i) the legacy scheme amount, and
  - (ii) the reformed scheme amount.

(2) In paragraph (1)(b)—

“legacy scheme amount” means, where the initial amount was determined in relation to—

- (a) a percentage value to be transferred from both the legacy scheme and the reformed scheme, the amount that would have been determined applying—
  - (i) in relation to pre-taper date remediable relevant benefits, the legacy scheme percentage value, and
  - (ii) in relation to post-taper date remediable relevant benefits, the reformed scheme percentage value,under section 29(2) of WRPA 1999 on the valuation day if all of the remediable relevant benefits had been secured in the legacy scheme;
- (b) an amount to be transferred from both the legacy scheme and the reformed scheme, the amount equal to the implied percentage of the cash equivalent of the remediable relevant benefits on the valuation day determined as if all the remediable relevant benefits had been secured in the legacy scheme;

“reformed scheme amount” means, where the initial amount was determined under section 29(2) or WRPA 1999 in relation to—

- (a) a percentage value to be transferred from both the legacy scheme and the reformed scheme, the amount that would have been determined applying—
    - (i) in relation to pre-taper date remediable relevant benefits, the legacy scheme percentage value; and
    - (ii) in relation to post-taper date remediable relevant benefits, the reformed scheme percentage value;
 under that section on the valuation day if all of the remediable relevant benefits had been secured in the reformed scheme;
  - (b) an amount to be transferred from both the legacy scheme and the reformed scheme, the amount equal to the implied percentage of the cash equivalent of the remediable relevant benefits on the valuation day determined as if all the remediable relevant benefits had been secured in the reformed scheme.
- (3) In this regulation—
- “implied percentage” in relation to the value of benefits under a firefighter pension scheme, means the percentage that an initial amount determined under section 29(3) of WRPA represented of the cash equivalent of the remediable relevant benefits under that scheme on valuation day;
- “legacy scheme percentage value” means the percentage value specified in a relevant pension sharing arrangement in relation to D’s legacy scheme for the purpose of determining an amount under section 29(2) of WRPA 1999;
- “post-taper date remediable relevant benefits” means remediable relevant benefits to which a corresponding pension debit member (“D”) is entitled by virtue of remediable shareable rights secured by virtue of D’s remediable service as a firefighter after D’s tapered protection closing date;
- “pre-taper date remediable relevant benefits” means remediable relevant benefits to which D is entitled by virtue of remediable shareable rights secured by virtue of D’s remediable service as a firefighter on or before D’s tapered protection closing date;
- “reformed scheme percentage value” means the percentage value specified in a relevant pension sharing arrangement in relation to the reformed scheme for the purpose of determining an amount under section 29(2) of WRPA 1999;
- “relevant percentage value” means—
- (a) where the relevant pension sharing arrangement specifies a percentage value in relation to only the initial scheme for the purpose of determining an amount under section 29(2) of WRPA 1999, that percentage value;
  - (b) otherwise, the percentage value that is specified in relation to the alternative scheme;
- “tapered protection closing date”, in relation to D, has the meaning given in paragraph 3 of schedule 2 of the 2015 Regulations.

### **Information provided before 1 October 2023: calculating a remediable credit adjustment**

- 20.**—(1) The scheme manager must determine the alternative amount in relation to C’s pension credit—
- (a) as soon as reasonably practicable after 30 September 2023, and
  - (b) having consulted the scheme actuary.
- (2) Where—
- (a) the alternative amount is greater than the initial amount, or

- (b) the relevant pension sharing arrangement relates to mixed service and the alternative amount is lower than the initial amount,

C's pension account is subject to an adjustment (a "remediable credit adjustment") equal to the difference.

(3) The scheme manager must, by the end of 30 September 2024, provide C with a statement setting out—

- (a) the alternative amount,
- (b) any remediable credit adjustment, and
- (c) where regulation 21(4)(b) applies in relation to C, an explanation of the request that may be made in accordance with regulation 21(5) and the consequences of making, or not making, such a request.

### **Information provided before 1 October 2023: applying a remediable credit adjustment**

**21.—**(1) This regulation applies where C's pension credit account is subject to a remediable credit adjustment.

(2) The scheme manager must adjust C's pension account by an amount equal to the remediable credit adjustment.

(3) An adjustment made under paragraph (2) has effect as if it had been made on the transfer day.

(4) In paragraph (2), "C's pension account" means, where C has, in relation to the relevant pension sharing arrangement—

- (a) a pension credit in only one firefighter pension scheme, C's pension credit member account under that scheme;
- (b) a pension credit in D's legacy scheme and the reformed scheme—
  - (i) the pension credit member account identified by C in a request made in accordance with paragraph (5), or
  - (ii) if no request is made in accordance with paragraph (5), C's pension credit member account under the legacy scheme.

(5) A request is made in accordance with this paragraph if—

- (a) it is made in writing to the scheme manager for the purpose of paragraph (4)(b),
- (b) it is in a form determined by the scheme manager,
- (c) it unambiguously identifies only one of C's pension credit member accounts, and
- (d) it is received by the scheme manager by—
  - (i) the end of the day 6 months after the date the statement required by regulation 20(3) was provided to C, or
  - (ii) the end of such later day that the scheme manager considers reasonable in all the circumstances.

(6) A request made in accordance with paragraph (5) is irrevocable.

(7) Section 14(3) to (6) of PSPJOA 2022 applies in relation to C as it applies in relation to a member described in section 14(1) as if—

- (a) a reference to a Chapter 1 legacy scheme were a reference to the firefighters' pension scheme in which C has a pension credit;
- (b) a reference to M's remediable service in an employment or office were a reference to C's pension credit;

- (c) a reference to the effect, if any, of sections 2(1) and 6(4) were a reference to the effect, if any, of this regulation;
- (d) the term “operative time” means the time at which the adjustment mentioned in paragraph (2) is made (disregarding paragraph (3)).

### **Information provided before 1 October 2023: recalculating D’s reduction of benefit**

**22.**—(1) This regulation applies where D’s remediable relevant benefits have been reduced by an initial reduction amount.

(2) The scheme manager must determine the alternative reduction amount or, where the relevant pension sharing arrangement relates to mixed service, the alternative reduction amounts, in relation to D’s remediable relevant benefits—

- (a) as soon as reasonably practicable after 30 September 2023, and
- (b) having consulted the scheme actuary.

(3) Where the relevant pension sharing arrangement does not relate to mixed service, the “alternative reduction amount” is such amount as the scheme manager considers appropriate having regard to—

- (a) the cash equivalent of the remediable relevant benefits on the valuation day as if they had been secured in the alternative scheme.
- (b) the percentage value or the amount to be transferred specified in the relevant pension sharing arrangement, and
- (c) the provisions of sections 29 and 31 of WRPA 1999.

(4) Where the relevant pension sharing arrangement relates to mixed service, the “alternative reduction amounts” are such amounts as the scheme manager considers appropriate having regard to—

- (a) the cash equivalent of the remediable relevant benefits on the valuation day as if they had all been secured in—
  - (i) the legacy scheme, and separately,
  - (ii) the reformed scheme, and
- (b) the matters mentioned in paragraph (3)(b) and (c).

## *SECTION 3*

### *Information provided on or after 1 October 2023*

#### **Application and interpretation of Section 3**

**23.**—(1) This Section applies where, on or after 1 October 2023, the scheme manager provides information for the purpose of determining amounts under section 29 of WRPA 1999 in respect of a remedy member’s remediable service as a firefighter.

(2) In this Section—

“alternative reduction amount” has the meaning given in regulation 25(3);

“appropriate amount” means an amount calculated for the purposes of section 29(1) of WRPA 1999;

“immediate choice pensioner member” means an immediate choice member who is, immediately before these Regulations come into force, a pensioner member in relation to their remediable service as a firefighter;

“legacy scheme cash equivalent” has the meaning given in regulation 24(2)(a);  
“reformed scheme cash equivalent” has the meaning given in regulation 24(2)(b).

**Information provided on or after 1 October 2023: calculation of pension credits and debits**

- 24.**—(1) This regulation applies where D is—
- (a) a deferred choice member and no pension benefits have become payable in relation to D’s remediable service as a firefighter, or
  - (b) an immediate choice pension member, and—
    - (i) the end section of the section 6 election period in relation to D has not passed, and
    - (ii) no immediate choice decision has been made in relation to D’s remediable service as a firefighter.
- (2) For the purpose of calculating the appropriate amount, the scheme manager must determine—
- (a) the cash equivalent of D’s remediable relevant benefits on the valuation day as if those remediable relevant benefits were in D’s legacy scheme (“the legacy scheme cash equivalent”), and
  - (b) the cash equivalent of those benefits on valuation day as if they were in the reformed scheme (“the reformed scheme cash equivalent”).
- (3) For the purpose of calculating the pension credit and the pension debit, the scheme manager must use the greater of—
- (a) the legacy scheme cash equivalent, or
  - (b) the reformed scheme cash equivalent.

**Information provided on or after 1st October 2023: recalculating D’s reduction of benefit**

- 25.**—(1) This regulation applies where D’s remediable relevant benefits are to be reduced in relation to a pension debit calculated under regulation 24(3).
- (2) The scheme manager must determine the alternative reduction amount in relation to D’s remediable relevant benefits—
- (a) as soon as reasonably practicable after the transfer day, and
  - (b) having consulted the scheme actuary.
- (3) The “alternative reduction amount” is such amount as the scheme manager considers appropriate having regard to—
- (a) the cash equivalent of the remediable relevant benefits on valuation day as if they had been remediable relevant benefits secured in—
    - (i) where the pension debit mentioned in paragraph (1) was calculated on the basis of the legacy scheme cash equivalent, the reformed scheme;
    - (ii) where the pension debit was calculated on the basis of the reformed scheme cash equivalent, the legacy scheme;
  - (b) the percentage value or the amount to be transferred specified in the relevant pension sharing arrangement, and
  - (c) the provisions of sections 29 and 31 of WRPA 1999.

## CHAPTER 2

Arrangements on divorce, annulment or dissolution other than a pension sharing arrangement

### **Arrangements other than a pension sharing arrangement: calculating the value of pension benefits**

26.—(1) This regulation applies where—

- (a) the value of the remediable rights of a member (“M”) must be determined for the purpose of proceedings connected to M’s divorce, annulment or the dissolution of M’s civil partnership,
- (b) the divorce, annulment or dissolution is to take effect—
  - (i) on or after 1 October 2023, and
  - (ii) before the earlier of—
    - (aa) a decision taking effect in relation to M’s remediable service as a firefighter, or
    - (bb) the end of the relevant election period, and
- (c) the value of M’s remediable rights is not to be subject to a pension sharing arrangement.

(2) The value of M’s remediable rights for the purpose of the proceedings is the greater of those rights valued by the scheme manager, having consulted the scheme actuary, as if they were—

- (a) secured in M’s legacy scheme, or
- (b) secured in the reformed scheme.

(3) In this regulation—

“decision” means an immediate choice decision or a deferred choice decision;

“pension sharing arrangement” means an agreement, order or provision by virtue of which section 29 of WRPA 1999 applies in relation to M’s remediable rights;

“relevant election period” means, where M is—

- (a) a deferred choice member, the section 10 election period in relation to M;
- (b) an immediate choice pensioner member, the section 6 election period in relation to M;

“remediable rights” means the rights secured by virtue of M’s remediable service as a firefighter.