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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 242**

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

**PART 8**

Liabilities and payment

**CHAPTER 1**

Application of Part 8

**Application of Part 8**

**56.** This Part applies in relation to a relevant amount<sup>(1)</sup> owed in respect of the remediable service as a firefighter of a remedy member.

**CHAPTER 2**

Interest, compensation and netting off

**Interest**

**57.**—(1) The scheme manager must calculate interest on a relevant amount described in direction 15 of the PSP Directions 2022 in accordance with the provisions of directions 14 and 15 which apply to that description of relevant amount.

(2) In relation to a relevant amount not described in direction 15 of the PSP Directions 2022, the scheme manager must determine whether interest is paid and, if so, what rate of interest applies and how it is calculated.

(3) The following provisions of the PSP Directions 2022 apply in relation to a determination under paragraph (2) as if it were a determination under direction 16(1) of those Directions—

- (a) direction 16(2) (provision of explanation);
- (b) direction 16(3) and (4) (appeals).

**Indirect compensation**

**58.**—(1) This regulation applies where, pursuant to an application under regulation 59, the scheme manager determines that an immediate choice member (“M”) has incurred a compensatable loss<sup>(2)</sup> that is a Part 4 tax loss<sup>(3)</sup> (a “relevant loss”).

(2) M is not to be paid an amount under section 24 of PSPJOA 2022 by way of compensation in respect of the relevant loss.

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<sup>(1)</sup> See section 26(3) of PSPJOA 2022 for the meaning of “relevant amounts”.

<sup>(2)</sup> See section 23 of PSPJOA 2022 and direction 11 of the PSP Directions 2022 for the meaning of “compensatable loss”.

<sup>(3)</sup> See section 23(9) of PSPJOA 2022 for the meaning of “Part 4 tax loss”.

(3) Instead, the amount of benefit payable under a firefighters' pension scheme is to be increased to reflect the amount of the relevant loss in such manner as determined by the scheme manager in accordance with direction 10(2) to (4) of the PSP Directions 2022.

### **Applications for compensation or indirect compensation**

**59.**—(1) This regulation applies in relation to—

- (a) the payment of a relevant amount by way of compensation under section 23(1) of PSPJOA 2022;
- (b) the increase of benefits by way of indirect compensation under regulation 58.

(2) The relevant amount is not payable, or (as the case may be) the benefits are not to be increased, except where—

- (a) an application is made in accordance with direction 18(1) and (2) of the PSP Directions 2022,
- (b) the application is accompanied by such information that the scheme manager by written notice requires the person making the application (“P”) to provide in relation to the proposed compensation which is—
  - (i) information within P’s possession, or
  - (ii) information which P may reasonably be expected to obtain, and
- (c) the scheme manager makes a determination in accordance with direction 18(3) of those Directions.

(3) The following apply in relation to a determination under direction 18(3) of the PSP Directions 2022—

- (a) direction 18(4) (provision of explanation);
- (b) direction 18(5) and (6) (appeals).

### **Netting off**

**60.**—(1) This regulation applies where—

- (a) relevant amounts owed by and to a person (“P”) fall to be paid at the same time or similar times, and
- (b) the scheme manager has—
  - (i) determined the interest (if any) that is to be paid in the relevant amounts in accordance with regulation 57, and
  - (ii) reduced the relevant amounts by tax relief amounts in accordance with regulation 61.

(2) The scheme manager may determine, in accordance with direction 19(2) to (5) of the PSP Directions 2022, that the relevant amounts (and any interest on them) must be aggregated and that the difference must be paid by P to the scheme or (as the case may be) by the scheme to P.

(3) The following provisions of the PSP Directions 2022 apply to a determination under paragraph (2) as if it were a determination under direction 19(1) of those Directions—

- (a) direction 19(6) (provision of explanation);
- (b) direction 19(7) and (8) (appeals).

## CHAPTER 3

### Reduction and waiver of liabilities

#### **Requirement to reduce liabilities by tax relief amounts**

- 61.**—(1) This regulation applies where—
- (a) a person owes a liability to pay pension contributions in relation to the remediable service as a firefighter of a remedy member, or
  - (b) the scheme manager owes a liability to pay compensation in relation to such service,
- under section 15, 16 or 17 of PSPJOA 2022.
- (2) The scheme manager must reduce the liability by tax relief amounts—
- (a) determined in accordance with direction 4(5) to (9) of the PSP Directions 2022, and
  - (b) before the liability is netted off in accordance with regulation 60.
- (3) The following provisions of the PSP Directions 2022 apply where the scheme manager makes a determination under direction 4(8)—
- (a) direction 4(10) (provision of explanation);
  - (b) direction 4(11) and (12) (appeals).

#### **Power to reduce or waive amounts owed by a person to the scheme manager**

- 62.**—(1) The scheme manager may reduce or waive an amount owed by a person to the scheme under—
- (a) section 14, 15, 16 or 17 (“the corrections provisions”) of PSPJOA 2022, or
  - (b) these Regulations.
- (2) When reducing or waiving an amount under paragraph (1), the scheme manager must comply with the requirements set out in direction 4(1)(a) to (c) of the PSP Directions 2022 (and the reference in direction 4(1)(c) to “any scheme regulations made by virtue of section 26(1)(b) of PSPJOA 2022” is to be read as a reference to regulation 63).

#### **Agreement to waive a liability owed by the scheme manager in respect of an immediate correction**

- 63.**—(1) This regulation applies where the scheme manager owes a liability to pay compensation to a person (“P”) under section 16(3) of PSPJOA 2022.
- (2) The scheme manager and P may agree to waive the liability.
- (3) Such agreement—
- (a) must be in writing,
  - (b) may be rescinded with the agreement of the scheme manager and P, and
  - (c) in any event ceases to apply where—
    - (i) the end of the section 10 election period in relation to the remediable service as a firefighter in respect of which compensation is payable has passed, and
    - (ii) no section 10 election has been made (or deemed to have been made) in relation to that service.
- (4) Where an agreement is rescinded or otherwise ceases to apply, the scheme manager owes P the liability mentioned in paragraph (1).

## CHAPTER 4

### Payment of net liabilities

#### **Application of Chapter 4**

**64.** This Chapter applies in respect of a relevant amount (together with any interest on that amount) owed after taking into account the effect, if any, of regulations 57 to 63 (“a net liability”).

#### **Payment of amounts owed to the scheme manager**

**65.**—(1) This regulation applies where a person (“P”) owes a net liability to the scheme manager.

(2) The scheme manager must send notice in writing to P setting out—

- (a) how the net liability has been calculated,
- (b) an explanation of the circumstances in which the net liability may be reduced or waived under regulation 62,
- (c) where the net liability has been calculated by reference to an amount by way of compensation under section 16(3) of PSPJOA 2022, an explanation of the agreement that may be made under regulation 63,
- (d) when and how the net liability must be paid, and
- (e) the consequences of not paying the net liability.

(3) Where—

- (a) the scheme manager has sent a notice under paragraph (2), and
- (b) the amount of the net liability is subsequently adjusted,

the scheme manager must send another notice in writing to P under paragraph (2).

(4) P must pay the amount of the net liability to the scheme manager—

- (a) where the net liability relates to the remediable service as a firefighter of—
  - (i) an immediate choice member, before the end of the period of six months beginning with the day after the day on which P receives the most recent notice under paragraph (2);
  - (ii) a deferred choice member, in accordance with paragraph (5),
- (b) where a net liability includes an amount owed by way of corrections to pension contributions that are owed by virtue of an opted-out service election, in accordance with an agreement under paragraph (6), or
- (c) in accordance with an agreement under paragraph (7).

(5) Where paragraph (4)(a)(ii) applies, P must pay the full amount of the net liability—

- (a) before the end of the period of three months beginning with the day on which any remediable service statement is provided under regulation 4(2)(a) or (b) in relation to the remediable firefighter service in respect of which the net liability is owed;
- (b) where paragraph (4)(b) also applies, in accordance with an agreement under paragraph (6);
- (c) in any event, before benefits become payable in relation to the remediable firefighter service in respect of which the liability is owed.

(6) Where paragraph (4)(b) applies, P and the scheme manager may agree that the net liability is to be paid in full by way of instalments over the period—

- (a) beginning on a date specified in the agreement (“the start date”), and
- (b) ending on the earlier of—

- (i) the day 14 years after the start date;
  - (ii) the day before it is reasonably expected that, if a section 10 election were made in relation to the remediable firefighter service to which the net liability relates, reformed scheme benefits would become payable to or in respect of that member.
- (7) P and the scheme manager (or the employer where responsibility is delegated) may agree that the net liability is to be paid in part or in full by way of—
- (a) deductions from any benefits (including a lump sum benefit) to which P is entitled under a firefighters’ pension scheme;
  - (b) instalments over the period—
    - (i) beginning on the date specified in the agreement (“the start date”), and
    - (ii) a day agreed between P and the scheme manager (or, where relevant, the employer) that is no later than the day five years after the start date, or
    - (iii) where it occurs sooner, the day before it is reasonably expected that, if a section 10 election were made in relation to the remediable firefighter service to which the net liability relates, reformed scheme benefits would become payable to or in respect of that member.
- (8) The amount of each instalment to be paid in accordance with an agreement under paragraph (6) is to be determined having consulted the scheme actuary.
- (9) P and the scheme manager may agree to vary an agreement under paragraph (5).
- (10) Where P does not pay any part of a net liability by the time specified in paragraph (4)(a) (i) or (5)(c), or in accordance with an agreement under paragraph (6) or (7), the scheme manager may deduct such sums from benefits payable to P under a firefighters’ pension scheme as seem reasonable to the scheme manager for the purpose of discharging P’s liability.
- (11) P has no liability to pay an amount on account of the net liability until the time for payment arises in accordance with this regulation or an agreement under this regulation, and until that time the scheme manager has no cause of action for the recovery of any such amount (whether for the purposes of the Prescription and Limitation (Scotland) Act 1973(4) or otherwise).

### **Payment of amounts owed to a person**

- 66.**—(1) This regulation applies where the scheme manager owes a net liability to a person (“P”).
- (2) The scheme manager must pay the amount of the net liability to P—
- (a) as soon as reasonably practicable after the scheme manager determines the amount of the net liability, or
  - (b) where the scheme manager requires P to provide information in accordance with paragraph (3), as soon as reasonably practicable after receipt of that information.
- (3) Before paying the amount of a net liability owed to P, the scheme manager may, by written notice given as soon as reasonably practicable after the scheme manager determines the amount of the net liability, require P to provide information in relation to the payment of the net liability which is—
- (a) information within P’s possession, or
  - (b) information which P may reasonably be expected to obtain.