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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 242**

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

**PART 7**

Provision about special cases

CHAPTER 1

Ill-health retirement

**Entitlement to ill-health benefits where a remedy member's legacy scheme is the 1992 scheme**

**51.**—(1) Paragraph (2) applies where—

- (a) a remedy member (“M”) is a 1992 IHR member, and
- (b) M’s entitlement to an ill-health award has not been assessed under regulation 65 of the 2015 Regulations.

(2) The authority must obtain the opinion of an IQMP on the following questions—

- (a) whether M would, at any time during the relevant period, have met the criteria to be entitled to a lower tier award under the reformed scheme, and
- (b) whether M would, at any time during the relevant period, have met the criteria to be entitled to a higher tier award under the reformed scheme.

(3) Paragraph (4) applies where—

- (a) a remedy member’s (“M’s”) legacy scheme is the 1992 scheme,
- (b) M’s entitlement to an ill-health award was assessed under regulation 65 of the 2015 Regulations,
- (c) it was determined in accordance with that regulation that—
  - (i) M was not entitled to a lower tier award, or
  - (ii) M was entitled to a lower tier award but was not entitled to a higher tier award, and
- (d) M is a deferred or pensioner member of the reformed scheme.

(4) The authority must obtain the opinion of an IQMP on the following questions—

- (a) Where it was determined that M was not entitled to a lower tier award—
  - (i) whether M would, at any time during the relevant period, have met the criteria to be entitled to a lower tier ill health award under the 1992 scheme, and
  - (ii) whether M would, at any time during the relevant period, have met the criteria to be entitled to an higher tier ill health award under the 1992 scheme;

- (b) where it was determined that M was entitled to a lower tier award but not to a higher tier award, whether M would, at any time during the relevant period, have met the criteria to be entitled to an higher tier ill health award under the 1992 scheme.
- (5) An IQMP who is to provide an opinion on a question in accordance with this regulation may—
  - (a) examine or interview M if the IQMP thinks it is necessary to provide an opinion on the question, and
  - (b) give the authority and M a written opinion containing a decision on the question.
- (6) For the purpose of providing an opinion in accordance with this paragraph, the IQMP may only have regard to information that was available or could have been produced during the relevant period.
- (7) Where, in an opinion provided in accordance with this paragraph, the IQMP concludes that M would have been entitled to an ill health award—
  - (a) that conclusion is to be treated as if it were a determination by the scheme manager in accordance with regulation 141 of the 2015 Regulations that M is entitled to that ill-health award, and
  - (b) M is to be treated for the purposes of the PSPJOA 2022 and of these Regulations as being entitled to that ill-health award from the time during the relevant period when they would first have become entitled to it.
- (8) In this regulation—
  - “original decision” means —
    - (a) for the purposes of paragraphs (1) and (2), the decision under Part H of schedule 2 of the 1992 Order by virtue of which M became entitled to that ill-health award, and
    - (b) for the purposes of paragraphs (3) and (4), the decision under Chapter 4 of Part 5 of the 2015 Regulations by virtue of which it was determined that M was not entitled to a lower tier award or, as the case may be, a higher tier award under the reformed scheme;
  - “relevant period” means the period—
    - (a) beginning with the time of the original decision, and
    - (b) ending on the earlier of—
      - (i) five years after the time of the original decision;
      - (ii) the beginning of the day on which M reaches 60 years of age;
      - (iii) the time when an immediate choice decision or a deferred choice decision is made.