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WELSH STATUTORY INSTRUMENTS

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**2023 No. 961**

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

**PART 3**

Decisions in relation to remediable service

**CHAPTER 1**

Opted-out service elections

**Application and interpretation of Chapter 1**

**5.—**(1) This Chapter applies to and in respect of a member (“M”) with opted-out service in an employment in relation to a legacy scheme<sup>(1)</sup>.

(2) In this Chapter—

“opted-out service decision-maker” (*“penderfynwr gwasanaeth a otiwyd allan”*) means the person who may make an opted-out service election in accordance with regulation 6(2);

“relevant opted-out service” (*“gwasanaeth a otiwyd allan perthnasol”*) means the service referred to in paragraph (1).

**Election in relation to opted-out service**

**6.—**(1) An election (an “opted-out service election”) may be made in relation to M’s relevant opted-out service in accordance with this Chapter and section 5 of the PSPJOA 2022.

(2) An opted-out service election may be made—

(a) by M, or

(b) where M is deceased, by the eligible decision-maker determined in accordance with the Schedule.

(3) Where the scheme manager is the eligible decision-maker, they must decide not to make an opted-out service election.

(4) See section 5(2) to (4) of the PSPJOA 2022 about the effect, timing and irrevocability of an opted-out service election.

**Opted-out service election: additional requirements**

**7.—**(1) An opted-out service election must not be made unless a remediable service statement has been provided in accordance with regulation 4.

(2) An opted-out service election must be made—

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(1) See sections 5(7) (read with section 4) and 36 of the PSPJOA 2022 for the meaning of relevant opted-out service in relation to a Chapter 1 legacy scheme (such as the 1992 and the 2007 schemes).

- (a) in writing to the scheme manager;
- (b) by the end of 12 months beginning with the date of receiving a remedial service statement in accordance with regulation 4(2)(a), or within such longer period as the scheme manager considers reasonable in all the circumstances.

**Opted-out service election: lapse**

**8.** Where—

- (a) the end of the election period in relation to M has passed, and
- (b) no opted-out service election has been communicated to the scheme manager in accordance with regulation 7(2),

the entitlement to make an opted-out service election under regulation 6 lapses.

CHAPTER 2

Immediate choice decision for 2015 scheme or legacy scheme benefits

**Application and interpretation of Chapter 2**

**9.—(1)** This Chapter applies in respect of the remediable service of an immediate choice member (“M”).

(2) Where M has remediable service in multiple employments, this Chapter applies separately in relation to the remediable service in each employment.

**Immediate choice decision for 2015 scheme or legacy scheme benefits**

**10.—(1)** A decision (an “immediate choice decision”) may be made in accordance with this Chapter—

- (a) to make an election (“a section 6 election”) by virtue of section 6 of the PSPJOA 2022 for 2015 scheme benefits in relation to M’s remediable service, or
- (b) that no section 6 election is to be made in relation to that service.

(2) An immediate 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) Where the scheme manager is the eligible decision-maker, they must make an election for 2015 scheme benefits in relation to M’s remediable service, as soon as reasonably practicable.

(4) An immediate choice decision is made when it is communicated in writing to, and received by, the scheme manager.

(5) An immediate choice decision may only be made before the end of the section 6 election period<sup>(2)</sup>.

(6) An immediate choice decision is irrevocable.

(7) An immediate choice decision to make a section 6 election takes effect as a section 6 election (see sections 6(5) and (7), 7(1)(b) and 9 of the PSPJOA 2022 about the effect of a section 6 election).

(8) Where—

- (a) immediately before 1 October 2023, M has remediable service in the 2015 scheme, and

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(2) See section 7(2) of the PSPJOA 2022 for the meaning of “the end of the section 6 election period”.

(b) an immediate choice decision is that no section 6 election is to be made in relation to M's remediable service,  
section 6(4) of the PSPJOA 2022 does not apply in relation to M's 2015 scheme service (and, accordingly, section 2(1) of the PSPJOA 2022 has effect in relation to M's 2015 scheme service for the purposes mentioned in section 2(3)(b) of that Act from the time the immediate choice decision is made).

(9) The following provisions of the PSPJOA 2022 have effect in relation to a decision that no section 6 election is to be made as they have effect in relation to a section 6 election—

- (a) section 6(7) (section 6 election has effect in respect of all remediable service in the employment);
- (b) section 7(1)(b) (provision about when a section 6 election is to be treated as having taken effect);
- (c) section 9 (provision about persons with remediable service in more than one Chapter 1 legacy scheme).

#### **Immediate choice decision: additional requirements**

**11.**—(1) An immediate choice decision may not be made unless a remediable service statement has been provided in accordance with regulation 4(2)(a).

(2) The scheme manager must, together with that remediable service statement, provide to the immediate choice decision-maker information about the timing, effect and irrevocability of an immediate choice decision.

(3) An immediate choice decision is to be treated as having been made only if the immediate choice decision-maker (“D”) provides any information specified in a written request from the scheme manager that is—

- (a) information in D's possession, or
- (b) information which D can reasonably be expected to obtain.

#### **Immediate choice decision: deemed decision**

**12.**—(1) An immediate choice decision is treated as made in relation to M's remediable service immediately before the end of the section 6 election period where—

- (a) the end of the section 6 election period in relation to M has passed, and
- (b) no immediate choice decision has been communicated in relation to M's remediable service.

(2) In cases where M is not deceased, the immediate choice decision in paragraph (1) is that no section 6 election is made and the benefits payable in relation to M's remediable service are legacy scheme benefits.

(3) In cases where M is deceased, the immediate choice decision in paragraph (1) is that a section 6 election is made and the benefits payable in relation to M's remediable service are 2015 scheme benefits.

### **CHAPTER 3**

#### **Deferred choice decision for 2015 scheme or legacy scheme benefits**

#### **Application and interpretation of Chapter 3**

**13.**—(1) This Chapter applies in respect of the remediable service of a deferred choice member (“M”).

(2) Where M has remediable service in multiple employments, this Chapter applies separately in relation to the remediable service in each employment.

**Deferred choice decision for 2015 scheme or legacy scheme benefits: general**

**14.—(1)** A decision (a “deferred choice decision”) may be made in accordance with this Chapter—

(a) to make an election (a “section 10 election”) by virtue of section 10 of the PSPJOA 2022 in relation to M’s remediable service, 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) Where the scheme manager is the eligible decision-maker, they must make an election for 2015 scheme benefits in relation to M’s remediable service, as soon as reasonably practicable.

(4) A deferred choice decision is made when it is communicated in writing to, and received by, the scheme manager.

(5) A deferred choice decision may only be made before the end of the section 10 election period.

(6) 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) and (4) and (7) and 13 of the PSPJOA 2022 about the effect of a section 10 election).

(7) 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, are legacy scheme benefits.

(8) The following provisions of the 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 (provision about persons with remediable service in more than one Chapter 1 legacy scheme).

(9) 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 18 in relation to that service, or

(c) paragraph (10) applies.

(10) Where M is deceased, 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, pay to any person (“the beneficiary”) who is, or is to be, entitled to receive death benefits in relation to M’s pensionable service the lesser of—

(a) such lump sum or other pension benefits to which the beneficiary would be entitled if a section 10 election is made, or deemed to be made, in relation to M’s remediable service, or

- (b) such lump sum or other pension benefits 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.

(11) Where, at the operative time—

- (a) the aggregate of the lump sum or pension benefits that have been paid pursuant to paragraph (10) to a beneficiary, is less than
- (b) the aggregate of the lump sum or pension benefits to which (after taking into account the effect, if any, of paragraph (7) of this regulation or section 10(4) of the PSPJOA 2022) the beneficiary is entitled under a firefighters' pension scheme in respect of M's pensionable service,

the scheme manager must pay an amount equal to the difference to the beneficiary.

(12) In paragraph (11), "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, the time the decision or election is made;
- (b) otherwise, the end of the section 10 election period in relation to M.

#### **Deferred choice decision to be made by M**

**15.**—(1) This regulation applies where M is the deferred choice decision-maker.

(2) M must notify the scheme manager that they intend to claim benefits in relation to their remediable service—

- (a) during the period between 3 and 6 months before the date M intends such benefits to become payable, or
- (b) during such other period that the scheme manager considers reasonable in all the circumstances.

(3) A deferred choice decision may only be made during the period—

- (a) beginning with the date a remediable service statement is issued under regulation 4(2)(c)(i), and
- (b) ending—
  - (i) with the day 12 weeks after that date,
  - (ii) subject to paragraph (5), with such other day as the scheme manager considers reasonable in all the circumstances, or
  - (iii) if earlier than the time which applies by virtue of paragraph (i) or (ii), with the day before benefits become payable in relation to M's remediable service.

(4) The end of the period during which a deferred choice election decision may be made must not be more than one year before the day on which it is reasonably expected that, if a section 10 election were made, 2015 scheme benefits would become payable to or in respect of M.

(5) A deferred choice decision made by M—

- (a) may be revoked at any time before the cancellation deadline, and
- (b) lapses where 12 months after a deferred choice decision is made scheme benefits have not become payable.

(6) M must communicate the revocation of a deferred choice decision in writing to the scheme manager.

(7) Where paragraph (5) applies M may make a new deferred choice decision in accordance with paragraph (3).

(8) Where the scheme manager receives notice that M has died and M has made a deferred choice decision, that decision is irrevocable.

(9) In paragraph (5), “the cancellation deadline” means—

- (a) the beginning of the day two weeks before the day (“the payment day”) on which the first payment under a firefighters’ pension scheme becomes payable in relation to M’s remediable service, or
- (b) such later time before the payment day as the scheme manager considers reasonable in all the circumstances.

### **Deferred choice decision to be made by a person other than M**

**16.**—(1) This regulation applies where a person other than M is the deferred choice decision-maker (“D”).

(2) Where—

- (a) the period for making a deferred choice decision has begun in accordance with regulation 15(3)(a), and
- (b) the scheme manager receives notice that M has died before making a deferred choice decision in relation to M’s remediable service,

the period during which a deferred choice decision may be made by D is to be treated as ending in accordance with paragraph (3)(b) instead of regulation 15(3)(b).

(3) A deferred choice decision must be made during the period—

- (a) beginning with the date of issue of the remediable service statement issued under regulation 4(2)(c)(ii), and
- (b) ending—
  - (i) with the day 12 months after that date,
  - (ii) at such other time as the scheme manager considers reasonable in all the circumstances, or
  - (iii) if D makes a decision earlier, immediately after a deferred choice decision is made.

(4) A deferred choice decision made by D is irrevocable.

### **Deferred choice decision: additional requirements**

**17.** A deferred choice decision is to be treated as having been made only if the deferred choice decision-maker provides any information specified in a written request from the scheme manager that is—

- (a) information in the deferred choice decision-maker’s possession, or
- (b) information which they can reasonably be expected to obtain.

### **Deferred choice decision: deemed decision**

**18.**—(1) Where—

- (a) the end of the relevant section 10 election period in relation to M has passed, and
- (b) no deferred choice decision has been communicated,

a deferred choice decision is treated as having been made immediately before the end of the relevant section 10 election period.

(2) In cases where M is not deceased, the deferred choice decision in paragraph (1) is that no section 10 election is made and the benefits payable in relation to M's remediable service are legacy scheme benefits.

(3) In cases where M is deceased, the deferred choice decision in paragraph (1) is that a section 10 election is made and the benefits payable in relation to M's remediable service are 2015 scheme benefits.

**Deferred choice decision: transitional arrangements**

**19.**—(1) This regulation applies where, when these Regulations come into force, M—

- (a) is an active or a deferred member,
- (b) has notified the scheme manager that they intend to claim benefits in relation to their remediable service, and
- (c) the notification period in regulation 15(2) has lapsed in relation to that notification.

(2) M must make a deferred choice decision before the end of the period of one year beginning with the day on which a remediable service statement is first provided in respect of M.