

**2009 No. 185**

**PENSIONS**

**The Police Pensions Amendment (Increased Pension Entitlement) (Scotland) Regulations 2009**

<i>Made</i> - - - -	<i>14th May 2009</i>
<i>Laid before the Scottish Parliament</i>	<i>15th May 2009</i>
<i>Coming into force</i> - -	<i>26th June 2009</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1, 3 and 7 of the Police Pensions Act 1976(a), and all other powers enabling them to do so.

In accordance with section 1(1) of that Act they have consulted with the Police Negotiating Board for the United Kingdom(b).

**Citation, commencement, effect and extent**

1.—(1) These Regulations may be cited as the Police Pensions Amendment (Increased Pension Entitlement) (Scotland) Regulations 2009.

(2) These Regulations come into force on 26th June 2009 and, subject to paragraph (3), have effect from 6th April 2009(c).

(3) (a) Regulation 4, in so far as required to give effect to regulation 5, and regulation 5 have effect from 12th November 1979 to 5th April 2009; and

(b) Regulation 7 has effect from 6th April 2006.

(4) These Regulations extend to Scotland only.

**Amendment of the Police Pensions Regulations 1987**

2. The Police Pensions Regulations 1987(d) are amended in accordance with regulations 3 to 6.

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- (a) 1976 c.35 (“the Act”). Section 1 is amended by section 2(3) of the Police Negotiating Board Act 1980 (c.10), section 103 and paragraph 28 of Schedule 7 to the Police Act 1996 (c.16) and section 1(1) of the Police and Firemen’s Pensions Act 1997 (c.52). These powers are extended by section 42 of the Welfare Reform and Pensions Act 1999 (c.30). The functions of the Secretary of State under the Act as regards Scotland are transferred to the Scottish Ministers by S.I. 1999/1750, article 2, Schedule 1. The requirement for consent by the Minister for the Civil Service under section 1 of the Act was transferred to Treasury by virtue of S.I. 1981/1670, and such consent is not required in the exercise by the Scottish Ministers of the transferred functions by virtue of S.I. 1999/1750 and section 63 of the Scotland Act 1998 (c.46).
- (b) See section 61 of the Police Act 1996 (c.16).
- (c) Retrospective effect is permitted by section 1(5) of the Police Pensions Act 1976.
- (d) S.I. 1987/257; relevant amendments were made by S.I. 1987/341 and 2215, 1988/1339, 1989/733, 1990/805, 1991/1517, 1992/1343 and 2349, 1994/641, 1996/867, 1997/1429 and 2852 and 1998/577 and S.S.I. 2000/93, 2001/459, 2003/406, 2004/486, 2005/200 and 495, 2006/285 and 2008/387.

3. In regulation E8 (increase of widow's pension or child's allowance during first 13 weeks)–

(a) for paragraph (2) substitute–

“(2) A widow's pension to which this Regulation applies shall, so far as necessary, be increased in respect of the first 13 weeks after which it is payable so as to secure that, in respect of each such week, the aggregated amount of the pension and of any children's allowances payable in respect of the same person's death is not less than–

(a) in the case mentioned in paragraph (1)(a), the policeman's relevant emoluments for a week immediately before he died; or

(b) in the case mentioned in paragraph (1)(b)–

(i) the weekly amount of his pension together with any increase therein, immediately before he died, under the Pensions (Increase) Acts; and

(ii) where he was, immediately before he died, entitled to an Increased Pension Entitlement, the weekly amount of his Increased Pension Entitlement.”; and

(b) after paragraph (2A) insert–

“(2B) For the purposes of paragraph (2)(b)–

(a) there shall be disregarded any reduction in the member's pension in consequence of Part VIII of Schedule B (reduction of pension related to uprating of widow's pension) or his entitlement to any additional benefit within the meaning of paragraph 4 of Part V of that Schedule (member's injury award); and

(b) where the member died while in receipt of both an ordinary, short service or ill-health pension and of an injury pension, the reference therein to the weekly amount of his pension shall be construed as a reference to the aggregate weekly amount of those pensions.”.

4. After regulation M19 (application of general regulations to pension credit benefits and pension credit members), insert–

## “PART N

### INCREASED PENSION ENTITLEMENT

#### Interpretation

**N1.** In this Part–

“the 1971 Act” means the Pensions (Increase) Act 1971(a);

“basic rate” has the meaning given by section 17(1) of the 1971 Act;

“the existing Orders” means the Pensions Increase (Review) Order 1979(b), the Pensions Increase (Review) Order 1980(c), the Pensions Increase (Review) Order 1981(d), the Pensions Increase (Review) Order 1982(e), the Pensions Increase

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(a) 1971 c.56.  
(b) S.I. 1979/1047.  
(c) S.I. 1980/1302.  
(d) S.I. 1981/1217.  
(e) S.I. 1982/1178.

(Review) Order 1983(a), the Pensions Increase (Review) Order 1984(b), the Pensions Increase (Review) Order 1985(c), the Pensions Increase (Review) Order 1986(d), the Pensions Increase (Review) Order 1987(e), the Pensions Increase (Review) Order 1988(f), the Pensions Increase (Review) Order 1989(g), the Pensions Increase (Review) Order 1990(h), the Pensions Increase (Review) Order 1991(i), the Pensions Increase (Review) Order 1992(j), the Pensions Increase (Review) Order 1993(k), the Pensions Increase (Review) Order 1994(l), the Pensions Increase (Review) Order 1995(m), the Pensions Increase (Review) Order 1996(n), the Pensions Increase (Review) Order 1997(o), the Pensions Increase (Review) Order 1998(p), the Pensions Increase (Review) Order 1999(q), the Pensions Increase (Review) Order 2000(r), the Pensions Increase (Review) Order 2001(s), the Pensions Increase (Review) Order 2002(t), the Pensions Increase (Review) Order 2003(u), the Pensions Increase (Review) Order 2004(v), the Pensions Increase (Review) Order 2005(w), the Pensions Increase (Review) Order 2006(x), the Pensions Increase (Review) Order 2007(y), the Pensions Increase (Review) Order 2008(z) and the Pensions Increase (Review) Order 2009(aa); and “existing Order” shall be construed accordingly;

“guaranteed minimum pension” has the same meaning as in section 181(1) of the Pension Schemes Act 1993(bb);

“pension authority” has the same meaning as given by section 7(1) of the 1971 Act;

“police fund” means the funds provided to pay police pensions;

“relevant police authority” means, in relation to a person, the authority responsible for payment of that person’s pension as determined by regulation L1 (authorities responsible for payment of awards) of these Regulations;

“the scheme” means the Police Pension Scheme in Scotland established by these Regulations; and

“tax year” means a period of 12 months beginning on 6th April and ending on the following 5th April.

## Application of Part

**N2.** This Part applies to a person who—

- (a) was entitled to a pension under the scheme on 5th April 2009;

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(a)	S.I. 1983/1264.
(b)	S.I. 1984/1307.
(c)	S.I. 1985/1575.
(d)	S.I. 1986/1116.
(e)	S.I. 1987/130.
(f)	S.I. 1988/217.
(g)	S.I. 1989/477.
(h)	S.I. 1990/483.
(i)	S.I. 1991/684.
(j)	S.I. 1992/198.
(k)	S.I. 1993/779.
(l)	S.I. 1994/776.
(m)	S.I. 1995/708.
(n)	S.I. 1996/800.
(o)	S.I. 1997/634.
(p)	S.I. 1998/503.
(q)	S.I. 1999/522.
(r)	S.I. 2000/672.
(s)	S.I. 2001/664.
(t)	S.I. 2002/669.
(u)	S.I. 2003/681.
(v)	S.I. 2004/758.
(w)	S.I. 2005/858.
(x)	S.I. 2006/741.
(y)	S.I. 2007/801.
(z)	S.I. 2008/711.
(aa)	S.I. 2009/692.
(bb)	1993 (c.48).

- (b) was entitled to a guaranteed minimum pension on that date<sup>(a)</sup>; and
- (c) has in any tax year since entitlement to the guaranteed minimum pension commenced received a GMP-related payment.

### **GMP-related payment**

**N3.**—(1) Where, in any tax year, the relevant police authority has—

- (a) increased the annual rate of an official pension in accordance with the existing Order relevant to that tax year; but
- (b) the amount by reference to which that increase is calculated is not reduced by the GMP-related reduction,

the GMP-related payment for that tax year is the amount equal to the GMP-related reduction in that tax year.

(2) The GMP-related reduction for any tax year is the reduction in the amount by reference to which any increase in the rate of an official pension is calculated by the amount calculated in accordance with—

- (a) the existing Order for that tax year;
- (b) section 59(5) and (5ZA) of the Social Security Pensions Act 1975<sup>(b)</sup>, as modified by section 59A of that Act, as these sections have effect in relation to that tax year; and
- (c) any direction made under section 59A of that Act which has effect in relation to that tax year.”.

5. After regulation N3 (payments), insert—

### **“Authorisation of payment of GMP-related payments**

**N4.**—(1) The relevant police authority may pay GMP-related payments to—

- (a) a person to whom this Part applies; and
- (b) a deceased entitled member.

(2) Where a relevant police authority has paid GMP-related payments before 6th April 2009, the authority may not recover those payments after 6th April 2009.

(3) In this regulation, a deceased entitled member is a person who—

- (a) at the date of his death was entitled to a pension under the scheme;
- (b) at that date was entitled to a guaranteed minimum pension; and
- (c) has in any tax year since entitlement to the guaranteed minimum pension commenced received a GMP-related payment.”.

6. After regulation N4 (authorisation of payment of GMP-related payments), insert—

### **“Increased Pension Entitlement**

**N5.**—(1) Subject to paragraphs (3) and (4), a person to whom this Part applies is entitled to an Increased Pension Entitlement calculated in accordance with paragraph (2).

(2) The Increased Pension Entitlement is an amount equal to the basic rate of a pension which, if that pension had been increased by the amount of any increase under section 1 of the 1971 Act and the existing Orders, would result in an annual amount being paid to the person in relation to the tax year 2009–10 which equals the Protected Sum.

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<sup>(a)</sup> See section 17 of the Pension Schemes Act 1993 (c.48).  
<sup>(b)</sup> 1975 c.60.

(3) Where the person's pension is terminated under the scheme, the person is not entitled to receive any payment of an amount of the Increased Pension Entitlement in respect of any period after the date on which the pension is terminated.

(4) Where the person's pension, or any proportion of the pension, is forfeited, either permanently or temporarily, the same proportion of the person's Increased Pension Entitlement is forfeited for the same period of time.

(5) For the purposes of paragraph (2) of this Regulation "pension" has the meaning given by section 8 of the 1971 Act and begins at the time stated in section 8(2) of that Act.

(6) In this Regulation—

- (a) "Protected Sum" is the amount equal to the annual amount of the GMP-related payment for the tax year 2009–10; and
- (b) the annual amount of the GMP-related payment for the tax year 2009–10 is the amount equal to the GMP-related payment that the relevant police authority would have paid to the person in the tax year 2009–10 if that authority had, in relation to that complete tax year, applied the existing Orders as if the person was not entitled to a guaranteed minimum pension.

### **Increased Pension Entitlement – Further provision**

**N6.**—(1) An Increased Pension Entitlement is payable by the relevant police authority and shall be paid out of the police fund.

(2) An Increased Pension Entitlement is payable for life and shall be discharged by payments in advance at such reasonable intervals as the police authority may, in their discretion, determine except that payment on account of an Increased Pension Entitlement may be delayed, in whole or in part, pending the determination of any question as to the liability of the police authority in respect thereof, including any question as to the continuance of that liability.

(3) Neither the Increased Pension Entitlement nor any portion of that entitlement may be commuted for a lump sum."

### **Amendment of the Police (Injury Benefit) (Scotland) Regulations**

7. In paragraph 6(1) of Schedule 3 to the Police (Injury Benefit) (Scotland) Regulations 2007<sup>(a)</sup> (police officer's injury award), for "of any other pension calculated by reference to Schedule B to the 1987 Regulations" substitute—

"of any—

- (a) other pension calculated by reference to Schedule B to the 1987 Regulations;
- (b) GMP-related payment made under regulation N4 (authorisation of payment of GMP-related payments) of the 1987 Regulations; and

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<sup>(a)</sup> S.S.I. 2007/68.

- (c) Increased Pension Entitlement calculated by reference to regulation N5 (increased pension entitlement) of the 1987 Regulations”.

St Andrew's House,  
Edinburgh  
14th May 2009

*JOHN SWINNEY*  
A member of the Scottish Executive

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Police Pensions Regulations 1987 (“the 1987 Regulations”) to authorise the payments made by police authorities between 12th November 1979 and 5th April 2009 of annual increases to certain persons who are entitled to a guaranteed minimum pension. They also introduce a new entitlement to an Increased Pension Entitlement (“IPE”).

Regulations 4, 5 and 6 introduce a new Part N (Increased Pension Entitlement) into the 1987 Regulations. New regulation N2 provides that Part N applies only to persons who, on 5th April 2009, were entitled to a pension (under the scheme established by the 1987 Regulations) and to a guaranteed minimum pension (“GMP”), and who have in any tax year since entitlement to that GMP began, received a GMP-related payment.

Section 5 of the Pensions (Increase) Act 1971 (“the 1971 Act”) requires pensions authorities to increase annually pensions to which that Act applies. The 1971 Act is modified by sections 59 and 59A of the Social Security Pensions Act 1975 (“the 1975 Act”). Pensions authorities pay annual increases on pensions in accordance with the annual Pensions (Increase) Review Orders (“the annual PIROs”) which are made under section 59 of the 1975 Act. The combined effect of section 59(5) of the 1975 Act, Directions by the Treasury made under section 59A of the 1975 Act and relevant provisions of the annual PIROs is that the amount of increase payable by a pensions authority under the annual PIROs is reduced by the amount equal to the rate of the GMP which is paid by the Department of Work and Pensions (“DWP”). Affected pensioners (to whom Part N applies) have received duplicate payments, from both DWP and the police authority.

New regulation N3 defines a GMP-related payment as a payment made by the police authority applying the annual PIROs as if no reduction fell to be made in relation to the person’s GMP.

New regulation N4 authorises the past payment of GMP-related payments. This provision has effect from 12th November 1979 until 5th April 2009. Paragraph (2) provides that where a police authority has made such payments to an affected pensioner, it may not recover them.

New regulation N5 sets out the entitlement to IPE. Although entitlement to IPE begins on 6th April 2009, the effect of the 1971 Act is that annual increases must apply to IPE from the beginning date of the pension (usually the day after the person’s date of retirement). IPE is therefore defined as the amount a pension would have to be at the beginning date of a pension in order for that amount, after annual increases have been applied under the annual PIROs, to equal the GMP-related payment for the tax year 2009-2010. The effect is that for the tax year 2009-10 the IPE that the affected pensioner will receive is equal to the GMP-related payment he or she would have received were the police authority to apply the 2009 PIRO as if no reduction fell to be made in relation to the person’s GMP. Thereafter, IPE will continue to be increased in line with the annual PIROs although future PIROs will no longer be applied as if no reduction fell to be made.

Regulation 3 amends regulation E8 of the 1987 Regulations so that the IPE is included in the increase paid for the first 13 weeks following the death of a member who is entitled to an IPE.

Regulation 7 amends paragraph 6(1) of Schedule 3 to the Police (Injury Benefits) (Scotland) Regulations 2007 so that any reduction of an injury award which is calculated by reference to pensions payable under Schedule B of the 1987 Regulations also takes an IPE entitlement into account.

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**PENSIONS**

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Entitlement) (Scotland) Regulations 2009