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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 186**

**PENSIONS**

**The Local Government Pension Scheme 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 7 and 12 of, and Schedule 3 to, the Superannuation Act 1972<sup>(1)</sup>, and of all other powers enabling them to do so.

In accordance with section 7(5) of that Act, they have consulted such associations of local authorities as appeared to them to be concerned, such local authorities with whom consultation appeared to them to be desirable, and such representatives of other persons likely to be affected by the proposed regulations as appears to them to be appropriate.

**Citation, commencement, effect and extent**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme 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<sup>(2)</sup>.

(3) Regulation 4 in so far as required to give effect to regulation 5, regulation 9 in so far as required to give effect to regulation 10, regulation 5 and regulation 10 have effect from 12th November 1979 to 5th April 2009.

(4) These Regulations extend to Scotland only.

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(1) 1972 c. 11. The functions of the Secretary of State exercised in the making of these Regulations were transferred to the Scottish Ministers as regards Scotland by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, article 2 and Schedule 1 (S.I. 1999/1750).

(2) Retrospective effect is permitted by section 12(1) of the Superannuation Act 1972.

## **Amendment of the Local Government Pension Scheme**

2. The Local Government Pension Scheme (Scotland) Regulations 1998(3) are amended in accordance with regulations 3 to 6.

3. For regulation 39(5) (surviving spouse's or civil partner's short term pension), substitute—

“(5) Where the deceased was a pensioner member, the short-term pension is equal to—

(a) his retirement pension (but see regulation 41); and

(b) where he was entitled to an Increased Pension Entitlement, his Increased Pension Entitlement,

immediately before the death.”.

4. After regulation 160 (application of Part VI to deferred members and pensioner members under the 1987 Regulations), insert—

## **“PART VII**

### **INCREASED PENSION ENTITLEMENT**

#### **Interpretation**

**161.** In this Part—

“the 1971 Act” means the Pensions (Increase) Act 1971(4);

“administering authority” means a body required to maintain a pension fund under these Regulations or the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008(5);

“appropriate fund”, in relation to a person to whom these regulations apply, has the meaning given in regulation 73 (appropriate funds);

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

“the existing Orders” means the Pensions Increase (Review) Order 1979(6), the Pensions Increase (Review) Order 1980(7), the Pensions Increase (Review) Order 1981(8), the Pensions Increase (Review) Order 1982(9), the Pensions Increase (Review) Order 1983(10), the Pensions Increase (Review) Order 1984(11), the Pensions Increase (Review) Order 1985(12), the Pensions Increase (Review) Order 1986(13), the Pensions Increase (Review) Order 1987(14), the Pensions Increase (Review) Order 1988(15), the Pensions Increase (Review) Order 1989(16), the Pensions Increase (Review) Order 1990(17), the Pensions Increase (Review) Order

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(3) S.I. 1998/366, relevant amending instruments are S.S.I. 2000/199, 2001/23, 2002/311, 2005/293, 315 and 554, 2006/123, 468 and 514, and 2007/71.

(4) 1971 c. 56.

(5) S.S.I. 2008/228.

(6) S.I. 1979/1047.

(7) S.I. 1980/1302.

(8) S.I. 1981/1217.

(9) S.I. 1982/1178.

(10) S.I. 1983/1264.

(11) S.I. 1984/1307.

(12) S.I. 1985/1575.

(13) S.I. 1986/1116.

(14) S.I. 1987/130.

(15) S.I. 1988/217.

(16) S.I. 1989/477.

(17) S.I. 1990/483.

1991(18), the Pensions Increase (Review) Order 1992(19), the Pensions Increase (Review) Order 1993(20), the Pensions Increase (Review) Order 1994(21), the Pensions Increase (Review) Order 1995(22), the Pensions Increase (Review) Order 1996(23), the Pensions Increase (Review) Order 1997(24), the Pensions Increase (Review) Order 1998(25), the Pensions Increase (Review) Order 1999(26), the Pensions Increase (Review) Order 2000(27), the Pensions Increase (Review) Order 2001(28), the Pensions Increase (Review) Order 2002(29), the Pensions Increase (Review) Order 2003(30), the Pensions Increase (Review) Order 2004(31), the Pensions Increase (Review) Order 2005(32), the Pensions Increase (Review) Order 2006(33), the Pensions Increase (Review) Order 2007(34), the Pensions Increase (Review) Order 2008(35) and the Pensions Increase (Review) Order 2009(36) 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(37);

“relevant administering authority” means the body maintaining the appropriate fund;

“the scheme” means the occupational pension scheme constituted by the 1987 Regulations or these Regulations; and

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

### **Application of this Part**

**162.** This part applies to a person who—

- (a) was entitled to a pension under the scheme on 5th April 2009;
- (b) was entitled to a guaranteed minimum pension on that date(38); and
- (c) has in any tax year since entitlement to the guaranteed minimum pension commenced received a GMP-related payment.

### **GMP-related payment**

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

- (a) increased the annual rate of an official pension in accordance with the existing Order relevant to that tax year; but

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(18) S.I. 1991/684.

(19) S.I. 1992/198.

(20) S.I. 1993/779.

(21) S.I. 1994/776.

(22) S.I. 1995/708.

(23) S.I. 1996/800.

(24) S.I. 1997/634.

(25) S.I. 1998/503.

(26) S.I. 1999/522.

(27) S.I. 2000/672.

(28) S.I. 2001/664.

(29) S.I. 2002/699.

(30) S.I. 2003/681.

(31) S.I. 2004/758.

(32) S.I. 2005/858.

(33) S.I. 2006/741.

(34) S.I. 2007/801.

(35) S.I. 2008/711.

(36) S.I. 2009/692.

(37) 1993 (c. 48).

(38) See section 17 of the Pension Schemes Act 1992 (c. 48).

- (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(39), 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 163 (payments), insert—

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

**164.**—(1) The relevant administering 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 administering authority has paid GMP-related payments before 6th April 2009, the authority may not, after 6th April 2009, recover those payments.

(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 164 (authorisation of payment of GMP-related payments), insert—

**“Increased Pension Entitlement**

**165.**—(1) Subject to paragraph (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.

(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 administering 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**

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

(2) An Increased Pension Entitlement is payable for life and shall be discharged by payments at such reasonable intervals as the administering 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 administering 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 Local Government Superannuation (Scotland) Regulations 1987**

**7.** The Local Government Superannuation (Scotland) Regulations 1987(**40**) are amended in accordance with regulations 8 to 11.

**8.** In regulation E6(1)(a) (amount of widow’s short term and long term pensions), for “, the annual rate of her husband’s retirement pension immediately before the date of his death, disregarding any reductions under regulation E15, or” substitute—

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- (i) the annual rate of her husband’s retirement pension immediately before the date of his death, disregarding any reduction under regulation E15; and
- (ii) where her husband was entitled to an Increased Pension Entitlement, his Increased Pension Entitlement immediately before the date of his death, or”.

**9.** After regulation T10 (Admission Agreements), insert—

### **“PART U**

### **INCREASED PENSION ENTITLEMENT**

#### **Interpretation**

**U1.** In this Part—

“the 1971 Act” means the Pensions (Increase) Act 1971(**41**);

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(40) S.I. 1987/1850.

(41) 1971 c. 56.

“administering authority” means a body required to maintain a pension fund under these Regulations or the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008(42);

“appropriate fund”, in relation to a person to whom these regulations apply, has the meaning given in regulation 73 of the Local Government Pension Scheme (Scotland) Regulations 1998(43) (appropriate funds);

“basic rate” has the meaning given by the 1971 Act;

“the existing Orders” means the Pensions Increase (Review) Order 1979(44), the Pensions Increase (Review) Order 1980(45), the Pensions Increase (Review) Order 1981(46), the Pensions Increase (Review) Order 1982(47), the Pensions Increase (Review) Order 1983(48), the Pensions Increase (Review) Order 1984(49), the Pensions Increase (Review) Order 1985(50), the Pensions Increase (Review) Order 1986(51), the Pensions Increase (Review) Order 1987(52), the Pensions Increase (Review) Order 1988(53), the Pensions Increase (Review) Order 1989(54), the Pensions Increase (Review) Order 1990(55), the Pensions Increase (Review) Order 1991(56), the Pensions Increase (Review) Order 1992(57), the Pensions Increase (Review) Order 1993(58), the Pensions Increase (Review) Order 1994(59), the Pensions Increase (Review) Order 1995(60), the Pensions Increase (Review) Order 1996(61), the Pensions Increase (Review) Order 1997(62), the Pensions Increase (Review) Order 1998(63), the Pensions Increase (Review) Order 1999(64), the Pensions Increase (Review) Order 2000(65), the Pensions Increase (Review) Order 2001(66), the Pensions Increase (Review) Order 2002(67), the Pensions Increase (Review) Order 2003(68), the Pensions Increase (Review) Order 2004(69), the Pensions Increase (Review) Order 2005(70), the Pensions Increase (Review) Order 2006(71), the Pensions Increase (Review) Order 2007(72), the Pensions Increase

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(42) S.S.I. 2008/228.

(43) S.I. 1998/366. The definition of “appropriate superannuation fund” was substituted by the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998, Schedule 3, paragraph 1(9)(a).

(44) S.I. 1979/1047.

(45) S.I. 1980/1302.

(46) S.I. 1981/1217.

(47) S.I. 1982/1178.

(48) S.I. 1983/1264.

(49) S.I. 1984/1307.

(50) S.I. 1985/1575.

(51) S.I. 1986/1116.

(52) S.I. 1987/130.

(53) S.I. 1988/217.

(54) S.I. 1989/477.

(55) S.I. 1990/483.

(56) S.I. 1991/684.

(57) S.I. 1992/198.

(58) S.I. 1993/779.

(59) S.I. 1994/776.

(60) S.I. 1995/708.

(61) S.I. 1996/800.

(62) S.I. 1997/634.

(63) S.I. 1998/503.

(64) S.I. 1999/522.

(65) S.I. 2000/672.

(66) S.I. 2001/664.

(67) S.I. 2002/699.

(68) S.I. 2003/681.

(69) S.I. 2004/758.

(70) S.I. 2005/858.

(71) S.I. 2006/741.

(72) S.I. 2007/801.

(Review) Order 2008(73) and the Pensions Increase (Review) Order 2009(74); 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(75);

“relevant administering authority” means the body maintaining the appropriate fund;

“the scheme” means the occupational pension scheme constituted 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 this Part**

**U2.** This part applies to a person who—

- (a) was entitled to a pension under the scheme on 5th April 2009;
- (b) was entitled to a guaranteed minimum pension on that date(76); and
- (c) has in any tax year since entitlement to the guaranteed minimum pension commenced received a GMP-related payment.

### **GMP-related payment**

**U3.**—(1) Where, in any tax year, the relevant administering 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(77), 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.”.

**10.** After regulation U3 (payments), insert—

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

**U4.**—(1) The relevant administering authority may pay GMP-related payments to—

- (a) a person to whom this Part applies; and

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(73) S.I. 2008/711.

(74) S.I. 2009/692.

(75) 1993 (c. 48).

(76) See section 17 of the Pension Schemes Act 1992 (c. 48).

(77) 1975 c. 60.

(b) a deceased entitled member.

(2) Where a relevant administering 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.”.

11. After regulation U4 (authorisation of payment of GMP-related payments), insert—

**“Increased Pension Entitlement**

**U5.**—(1) Subject to paragraph (3), (4) and (5), 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.

(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 a person’s pension is not payable to the person<sup>(78)</sup>, the person is not entitled to receive any payment of an amount of the Increased Pension Entitlement during any period when the pension is not payable to the person.

(5) 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.

(6) 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.

(7) 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 administering 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**

**U6.**—(1) An Increased Pension Entitlement is payable by the relevant administering authority and shall be paid out of the appropriate fund.

(2) An Increased Pension Entitlement is payable for life and shall be discharged by payments at such reasonable intervals as the administering 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

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(78) See regulation E5(6) (entitlement to widow’s short term and long term pensions).



the administering 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.”.

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 Local Government Pension Scheme (Scotland) Regulations 1998 (S.I.1998/366) (“the 1998 Regulations”) and the Local Government Superannuation (Scotland) Regulations 1987 (S.I. 1987/1850) (“the 1987 Regulations”) to authorise the payments made by administering 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 VII (Increased Pension Entitlement) into the 1998 Regulations. Regulations 9, 10 and 11 introduce a new Part U into the 1987 Regulations which mirrors new Part VII of the 1998 Regulations. New regulation 162 provides that Part VII applies only to persons who, on 5th April 2009, were entitled to a pension (under the scheme established by the 1998 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. New regulation U2 makes the same provision in relation to the 1987 Regulations.

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 VII of the 1998 Regulations or Part U of the 1987 Regulations applies) have received duplicate payments, from both DWP and the administering authority.

New regulation 163 of the 1998 Regulations and new regulation U3 of the 1987 Regulations define a GMP-related payment as a payment made by the administering authority applying the annual PIROs as if no reduction fell to be made in relation to the person’s GMP.

New regulation 164 of the 1998 Regulations and new regulation U4 of the 1987 Regulations authorise the past payment of GMP-related payments. This provision has effect from 12th November 1979 until 5th April 2009. Paragraph (2) provides that where an administering authority has made such payments to an affected pensioner, it may not recover them.

New regulation 165 of the 1998 Regulations and new regulation U5 of the 1987 Regulations set 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 administering 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 39(5) of the 1998 Regulations and regulation 8 amends regulation E6 of the 1987 Regulations so that the IPE is included in the widow's short term pension following the death of a member who is entitled to an IPE.