
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 240

**The Local Government Pension Scheme
(Remediable Service) (Scotland) Regulations 2023**

PART 3

Retrospective application

Retrospective application and interpretation of this Part

- 4.—(1) A person in category A is a person—
- (a) who has, or, in the case of a deceased person or a person who transferred out of the 2015 Scheme, had, remediable service;
 - (b) to whom regulation 4 of the 2014 Regulations (statutory underpin) did not apply; and
 - (c) who died, or in relation to whom one of the dates set out in regulation 4H(1) of the 2014 Regulations (final underpin dates) occurred, before 1 October 2023.
- (2) A person in category B is a person—
- (a) who has, or, in the case of a deceased person or a person who transferred out of the 2015 Scheme, had, remediable service;
 - (b) to whom regulation 4 of the 2014 Regulations applied;
 - (c) who died, or in relation to whom one of the dates set out in regulation 4H(1) of the 2014 Regulations (final underpin dates) occurred, before 1 October 2023; and
 - (d) who was not entitled to an increase in their pension account under regulation 4 of the 2014 Regulations.
- (3) A person in category C is a person—
- (a) who has, or, in the case of a deceased person or a person who transferred out of the 2015 Scheme, had, remediable service;
 - (b) to whom regulation 4 of the 2014 Regulations applied;
 - (c) who died, or in relation to whom one of the dates set out in regulation 4H(1) of the 2014 Regulations (final underpin dates) occurred, before 1 October 2023; and
 - (d) who was, or, in spite of being deceased, would have been, entitled to an increase in their pension account under regulation 4 of the 2014 Regulations.
- (4) In their application in relation to the person in accordance with this Part, the amendments made by regulations 2 and 3 have effect as if they were in force from 1 April 2015.
- (5) In this Part, references to regulation 4 of the 2014 Regulations are to it as it had effect immediately before 1 October 2023.
- (6) In this Part, “final guarantee amount” has the meaning given in regulation 1(4) of the 2014 Regulations.

(7) References to being entitled to an increase in their pension account under regulation 4 of the 2014 Regulations in paragraphs (2)(d) and (3)(d) include an entitlement to an increase in respect of the person under that regulation which was added to a survivor member account.

Members who retired or died before 1 October 2023

5.—(1) This regulation applies to a person in category A, B or C.

(2) Regulations 4A to 4T of the 2014 Regulations (statutory underpin) are to be applied to the person and it is to be determined whether they are entitled to a final guarantee amount.

(3) Where the person is in category A or B but did not die before 1 October 2023, any final guarantee amount to which the person is or was entitled is to be added to the person's pension account without undue delay.

(4) Where the person is in category C but did not die before 1 October 2023 and the person is entitled to a final guarantee amount that exceeds the amount by which their pension was increased under regulation 4, the difference is to be added to the person's pension account without undue delay.

(5) Where the person is in category A or B and died before 1 October 2023, any final guarantee amount to which the person was entitled is to be paid to the person's personal representatives without undue delay.

(6) Where the person is in category C, died before 1 October 2023 and was entitled to a final guarantee amount that exceeds the amount by which their pension was, or would, in spite of their being deceased, have been, increased under regulation 4 of the 2014 Regulations, the difference is to be paid to the person's personal representatives without undue delay.

(7) Where the person elects or elected to commute the amount of pension payable under regulation 32 of the 2018 Regulations (election for lump sum instead of pension), that regulation is to be applied in relation to the final guarantee amount or, as the case may be, the difference between that and the amount payable under regulation 4 of the 2014 Regulations.

Death grants in respect of members who died before 1 October 2023

6.—(1) This regulation applies to a person in category A, B or C—

(a) who died before 1 October 2023; and

(b) in respect of whom a death grant was calculated under regulation 41 of the 2018 Regulations and paid, whether or not under that regulation.

(2) Provisional assumed benefits and a provisional underpin amount are to be calculated in relation to the person in accordance with regulations 4I and 4J respectively of the 2014 Regulations.

(3) Following this, regulation 4N of those Regulations (statutory underpin: death grants) is to be applied in relation to the person, subject to paragraphs (4) and (5).

(4) Where a deferred guarantee amount is payable in respect of the person, the death grant is to be recalculated in accordance with regulation 41 of the 2018 Regulations, with the deferred guarantee amount included in the amount the person would have been entitled to receive as retirement pension annually for the purposes of the recalculation.

(5) Where the recalculated death grant exceeds the death grant that has already been paid in respect of the person, the difference is to be paid by the administering authority, without undue delay—

(a) where there was a single recipient of the death grant, to that recipient; or

(b) where there was more than one recipient, to those recipients in the same proportions as they were paid the death grant.

(6) In this regulation “deferred guarantee amount” has the meaning given in regulation 4N(3) of the 2014 Regulations.

Pensioner member death grants in respect of members who died before 1 October 2023

7.—(1) This regulation applies to a person in category A, B or C—

- (a) who died before 1 October 2023; and
- (b) in respect of whom a death grant was calculated under regulation 44 of the 2018 Regulations before that date.

(2) Where a final guarantee amount is to be paid in respect of the person under regulation 5(5) or (6), the death grant is to be recalculated in accordance with regulation 44 of the 2018 Regulations, with the final guarantee amount included in the amount the person would have been entitled to receive as retirement pension annually, but with any increase under regulation 4 excluded, for the purposes of the recalculation.

(3) Where the recalculated death grant exceeds the death grant that has already been paid in respect of the person, the difference is to be paid by the administering authority, without undue delay—

- (a) where there was a single recipient of the death grant, to that recipient; or
- (b) where there was more than one recipient, to those recipients in the same proportions as they were paid the death grant.

Survivor benefits in respect of members who died before 1 October 2023

8.—(1) This regulation applies to a person in category A, B or C—

- (a) who is deceased; and
- (b) in respect of whom a survivor member’s pension was paid under regulation 39, 40, 42, 43, 45 or 46 of the 2018 Regulations before 1 October 2023.

(2) Provisional assumed benefits and a provisional underpin amount are to be calculated in relation to the person in accordance with regulations 4I and 4J respectively of the 2014 Regulations.

(3) Following this, regulation 4M of those Regulations is to be applied in relation to the person subject to paragraph (4).

(4) Notwithstanding regulation 4M(2) of the 2014 Regulations—

- (a) where the person is in category A or B and a proportion of a survivor guarantee amount is payable in respect of the person, it is to be added to the survivor member’s pension account in question without undue delay;
- (b) where the person is in category C and a survivor member’s pension, including any survivor guarantee amount, payable in respect of the person exceeds the annual rate of the survivor member’s pension which was previously payable, the difference is to be added to the survivor member’s pension account in question without undue delay.

(5) In this regulation “survivor guarantee amount” has the meaning given in regulation 4M(3) of the 2014 Regulations.

Members who transferred into the fund before 1 October 2023

9.—(1) This regulation applies to a transfer of remediable service into the 2015 Scheme—

- (a) from any of—
 - (i) a Chapter 1 scheme;
 - (ii) a judicial scheme;

- (iii) another local government scheme; and
 - (b) where the payment in respect of the remediable service was received before 1 October 2023.
- (2) Where a person made such a transfer that resulted in that person either—
- (a) being entitled under regulation 9(1) of the 2014 Regulations to benefits under the 2015 Scheme as if they were payable as final salary benefits under the 2009 Scheme; or
 - (b) being credited pension under the 2015 Scheme for the transferred service,
- that transfer is to be treated as a transfer to which regulation 9(1A) and, as the case may be, (1B) of the 2014 Regulations applies.

Members who took a transfer out of the fund before 1 October 2023

- 10.**—(1) This regulation applies to a person in category A, B or C—
- (a) who had a transfer out of the fund under regulation 91 of the 2018 Regulations before 1 October 2023;
 - (b) who had a transfer out of the fund under regulation 91 of the 2018 Regulations calculated as at a date before but paid on or after 1 October 2023; or
 - (c) in respect of whom a transfer payment was made under regulation 93 of the 2018 Regulations calculated as at a date before 1 October 2023.
- (2) The person’s provisional assumed benefits and a provisional underpin amount are to be calculated in accordance with regulations 4I and 4J respectively of the 2014 Regulations.
- (3) Where the transfer falls within paragraph (1)(a) or (b) and was a Club Transfer, the transfer value is to be recalculated in accordance with the Club Memorandum relating to that transfer.
- (4) Where the transfer falls within paragraph (1)(a) or (b) but was not a Club Transfer, the value of the transfer is to be recalculated in accordance with actuarial guidance issued by the Scottish Ministers, taking into account the member’s provisional underpin amount and provisional assumed benefits.
- (5) In paragraph (3) and (4), where the recalculated transfer value exceeds the value of the transfer falling within paragraph (1)(a) or (b) (as the case may be), the administering authority must take reasonable steps to pay the difference to the scheme that received the original transfer.
- (6) Where the transfer falls within paragraph (1)(c) an actuary appointed by the administering authority and an actuary appointed by the trustees or managers of the new scheme must seek to agree whether an additional payment should be made to reflect the value of any of the person’s rights under regulation 4A to 4T of the 2014 Regulations.
- (7) Where the actuaries agree that a payment must be made, it should be made without undue delay to the trustees or managers of the new scheme for the benefit of the person.
- (8) In this regulation—
- “Club Memorandum” and “Club Transfer” have the meanings given in schedule 1 of the 2018 Regulations;
 - “new scheme” has the meaning given in regulation 93(1) of the 2018 Regulations.

Commutation payments taken before 1 October 2023

- 11.**—(1) This regulation applies to a person in category A, B or C in respect of whom a lump sum is calculated under regulation 33(1) of the 2018 Regulations (trivial commutation) before 1 October 2023 (“the original payment”).

(2) Regulations 4A to 4T of the 2014 Regulations are to be applied to the person and it is to be determined whether they are entitled to a final guarantee amount.

(3) The original payment is to be recalculated in accordance with actuarial guidance issued by the Scottish Ministers.

(4) Notwithstanding regulation 33(3) of the 2018 Regulations (member entitled to no further benefits after payment), where the recalculated payment exceeds the original payment, the difference is to be paid to the person without undue delay.

Divorce or dissolution of civil partnership before 1 October 2023

12.—(1) This regulation applies to a person with remediable service—

- (a) who was divorced, or dissolved a civil partnership, before 1 October 2023 and, in respect of that divorce or dissolution, has a pension sharing order with an effective date on or after 1 April 2015 but before 1 October 2023; and
- (b) whose relevant benefits were, because of that divorce or dissolution of civil partnership, calculated for the purpose of section 29 of the Welfare Reform and Pensions Act 1999 (“the original calculation”).

(2) The cash equivalent value of the person’s relevant benefits for the purpose of section 29 of the Welfare Reform and Pensions Act 1999 is to be recalculated as at the date on which the original calculation was made in accordance with actuarial guidance issued by the Scottish Ministers.

(3) Where one of the dates set out in regulation 4H(1) of the 2014 Regulations (statutory underpin: final underpin date) occurred in relation to the person before the date on which the pension sharing order in respect of their divorce or the dissolution of their civil partnership took effect, the recalculation must take into account any final guarantee amount to which the person is entitled.

(4) Where one of the dates set out in regulation 4G of the 2014 Regulations (statutory underpin: underpin date) occurred in relation to the person before the date on which the pension sharing order in respect of their divorce or the dissolution of their civil partnership took effect, the recalculation must take into account the provisional assumed benefits and provisional underpin amount calculated under regulations 4I and 4J respectively of the 2014 Regulations.

(5) If the recalculated cash equivalent value exceeds the original calculation, the annual pension deriving from the pension credit awarded to their spouse or civil partner (“the pension credit member”) is to be recalculated based on the recalculated cash equivalent value and on the same basis as that which applied for the purposes of the original calculation.

(6) If the pension credit member’s pension is in payment on 1 October 2023—

- (a) it is to be recalculated based on the recalculated pension credit;
- (b) the difference between the recalculated annual pension and the pension in payment is to be added to the retirement pension account, from the date that they first took payment of the pension.

(7) In this regulation—

- “pension sharing order” has the meaning given in schedule 1 of the 2018 Regulations;
- “relevant benefits” has the same meaning as in section 29 of the Welfare Reform and Pensions Act 1999.

Persons with underpin dates before 1 October 2023

13.—(1) This regulation applies to a person—

- (a) in relation to whom one of the dates in regulation 4G of the 2014 Regulations occurred before 1 October 2023 (statutory underpin: underpin date);

- (b) in relation to whom one of the dates set out in regulation 4H(1) of those Regulations (statutory underpin: final underpin date) has not occurred before 1 October 2023; and
- (c) who was not deceased before 1 October 2023.

(2) The 2014 Regulations apply in relation to the person with the following modifications, which have effect as if they were in force from 1 April 2015 (this does not affect the operation of regulation 4(4)) of these Regulations.

(3) Regulation 4H (final underpin date) applies as if in paragraph (1), for the words before subparagraph (a), there were substituted—

“(1) An eligible member’s final underpin date, in relation to a pension account, is the first of the following dates which occur in relation to the eligible member in respect of the pension account to which the eligible member’s underpin date applies—”.

(4) Regulation 4I (calculation of provisional assumed benefits) applies as if at the end there were inserted—

“(11) The calculation in this regulation must be performed without undue delay following 1 October 2023 in respect of an eligible member to whom regulation 13 of the Local Government Pension Scheme (Remediable Service) (Scotland) Regulations 2023 applies.”.

(5) Regulation 4J (calculation of provisional underpin amount) applies as if at the end there were inserted—

“(9) The calculation in this regulation must be performed without undue delay following 1 October 2023 in respect of an eligible member to whom regulation 13 of the Local Government Pension Scheme (Remediable Service) (Scotland) Regulations 2023 applies.”.

Interest on payments under the statutory underpin

14.—(1) This regulation applies in relation to a person to whom regulation 5(3), (4), (5) or (6), 6(5), 7(3), 8(4)(a) or (b), 10(5), 11(4) or 12(6)(b) applies.

(2) An administering authority must pay interest in respect of the following sums—

- (a) the amount to be added to the person’s pension account under regulation 5(3) or (4) (retired members) relating to the period beginning with the date on which the pension in question was put into payment and ending with the date on which the final guarantee amount was added to the pension account;
- (b) the amount to be paid under regulation 5(5) or (6) (deceased members);
- (c) where regulation 5(7) applies (person who elected to commute an amount of their pension), any new lump sum arising from the amount added to the person’s account under regulation 5(3) or (4);
- (d) the amount to be paid under regulation 6(5) or 7(3) (death grants);
- (e) the amount to be added to the survivor member’s pension account under regulation 8(4)(a) or (b) (survivor member’s pension account) relating to the period beginning with the date on which the survivor pension was put into payment and ending with the date on which the survivor guarantee amount was added to the survivor pension account;
- (f) the amount to be paid to the member under regulation 11(4) (commutation payments);
- (g) the amount to be added under regulation 12(6)(b) (difference between recalculated pension credit and pension in payment) relating to the period beginning with the date on which the pension credit member’s pension was put into payment and ending with the date on which the difference between the recalculated annual pension and the pension in payment is to be added to the retirement pension account under regulation 12(6)(b).

(3) An administering authority must take reasonable steps to pay interest in respect of the amount to be paid to the scheme under regulation 10(5) (transfers out).

(4) The interest is to be paid—

- (a) where paragraph (2)(a), (c) or (f) applies, to the person;
- (b) where paragraph (2)(b) applies, to the personal representatives in question;
- (c) where paragraph (2)(d) applies, to the recipient of the death grant;
- (d) where paragraph (2)(e) applies, to the person who has the survivor member's pension account;
- (e) where paragraph (2)(g) applies, to the pension credit member;
- (f) where paragraph (3) applies, to the scheme that received the original transfer.

(5) Interest under this regulation is payable from the relevant date until the day on which the amount in respect of which the interest is payable and the accrued interest are repaid in full.

(6) The “relevant date” is—

- (a) where regulation 5(3), (4), (5) or (6) applies, the day that falls half-way through the period beginning with the day after the member's final underpin date and ending with the date on which payment is made;
- (b) where regulation 6(5), 7(3), 10(5) or 11(4) applies, the day that falls half-way through the period beginning with the day on which the original payment was made and ending with the date on which payment is made;
- (c) where regulation 8(4)(a) or (b) applies, the day that falls half-way through the period beginning with the day after the person's date of death and ending with the date on which payment is made;
- (d) where regulation 12(6)(b) applies, the day that falls half-way through the period beginning with the day on which the pension credit member's pension was put into payment and ending with the date on which payment is made.

(7) In paragraph (6)(b), “original payment” means—

- (a) the death grant;
- (b) the transfer out; or
- (c) the lump sum

that was paid, or, as the case may be, made before 1 October 2023.

(8) Interest payable under this regulation is to be calculated in accordance with direction 38 of the PSP Directions 2022.

(9) For the purposes of paragraph (6), where there is no day that falls half-way through the period in question, any reference to that day is to be read as a reference to the first day of the second half of the period.

(10) In this regulation—

- “final underpin date” has the meaning given in regulation 4H(1) of the 2014 Regulations;
- “pension credit member” has the meaning given in regulation 8(1) of the 2018 Regulations;
- “the PSP Directions 2022” means the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022.