

**2023 No. 240**

**PUBLIC SERVICE PENSIONS**

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

*Made - - - - at 11.28 a.m. on 30th August 2023*

*Laid before the Scottish Parliament at 4.30 p.m. on 30th August 2023*

*Coming into force - - - - 1st October 2023*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1(1) and (2)(c), 3 and 8(1)(a) and (2)(a), and paragraph 3(b) of schedule 2 and schedule 3 of the Public Service Pensions Act 2013(a) and sections 78, 80(1), 81(1), 83(1), 84(1) and 129(1) of the Public Service Pensions and Judicial Offices Act 2022(b).

In accordance with section 21(1) of the Public Service Pensions Act 2013, the Scottish Ministers have consulted such persons or the representatives of such persons as appeared to the Scottish Ministers likely to be affected by these Regulations.

These Regulations are made in accordance with Treasury Directions made under section 85 of the Public Service Pensions and Judicial Offices Act 2022.

**PART 1**

**General provision**

**Citation, commencement, extent and interpretation**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Remediable Service) (Scotland) Regulations 2023.

(2) These Regulations come into force on 1 October 2023.

(3) These Regulations extend to Scotland.

(4) In these Regulations—

“the 2014 Regulations” means the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014(c),

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(a) 2013 c. 25; section 3 was amended by section 94 of the Public Service Pensions and Judicial Offices Act 2022 (c. 7). Section 3(3)(b) allows these Regulations to have retrospective effect.

(b) 2022 c. 7.

(c) S.S.I. 2014/233.

“the 2018 Regulations” means the Local Government Pension Scheme (Scotland) Regulations 2018(a).

## PART 2

### Amendments relating to the statutory underpin

#### **Amendment of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014**

2.—(1) The 2014 Regulations are amended as follows.

(2) In regulation 1 (citation, extent, commencement and interpretation)—

(a) in paragraph (4)—

(i) after the definition of “the Earlier Regulations” insert—

““eligible member” has the meaning given in regulation 4A(2);

“final assumed benefits” means the benefits calculated in accordance with regulation 4K;

“final guarantee amount” is the amount by which the eligible member’s final assumed benefits are exceeded by their final underpin amount (if at all) in respect of a pension account;

“final underpin amount” means the amount calculated in accordance with regulation 4L;

“final underpin date” has the meaning given in regulation 4H(1);

“provisional assumed benefits” means the benefits calculated in accordance with regulation 4I;

“provisional underpin amount” means the amount calculated in accordance with regulation 4J;

“PSP Directions 2022” means the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022(b);

“PSPJOA 2022” means the Public Service Pensions and Judicial Offices Act 2022(c);”,

(ii) after the definition of “public service pension scheme”, insert—

““underpin date” has the meaning given in regulation 4G;

“underpin period” has the meaning given in regulation 4A(3).”,

(b) after paragraph (5) insert—

“(6) Where these Regulations refer to the PSP Directions 2022, a reference to “scheme manager” in those Directions is to be read as “administering authority”.”.

(3) Omit regulation 4 (statutory underpin).

(4) Before regulation 5 insert—

#### **“Statutory underpin: general**

**4A.**—(1) Regulations 4B to 4T (provisions relating to the statutory underpin) apply in relation to an eligible member’s remediable service(d) during the underpin period.

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(a) S.S.I. 2018/141.

(b) The\_Public\_Service\_Pensions\_\_Exercise\_of\_Powers\_Compensation\_and\_Information\_\_Directions\_2022.pdf (publishing.service.gov.uk) . A hard copy is available on request to His Majesty’s Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

(c) 2022 c. 7.

(d) For the meaning of remediable service, see section 77 of the Public Service Pensions and Judicial Offices Act 2022.

- (2) An “eligible member” is a person who—
- (a) has remediable service in relation to the 2015 Scheme; or
  - (b) has transferred remediable service into the 2015 Scheme from—
    - (i) a Chapter 1 scheme<sup>(a)</sup>;
    - (ii) a judicial scheme<sup>(b)</sup>; or
    - (iii) another local government scheme.
- (3) The “underpin period” is the period—
- (a) beginning with 1 April 2015; and
  - (b) ending with the earlier of—
    - (i) 31 March 2022; and
    - (ii) the date on which the eligible member attains—
      - (aa) the normal retirement age applicable to the eligible member under the 2009 Scheme; or
      - (bb) where the person was not a member of the 2009 Scheme, the age of 65.

#### **Statutory underpin: retirement, redundancy, ill health**

**4B.**—(1) This regulation applies in relation to an eligible member whose final underpin date is that in regulation 4H(1)(a), (c), (d) or (e) (statutory underpin: final underpin date).

(2) The pension account to which the final underpin date relates is to be increased by the final guarantee amount calculated in relation to that pension account.

(3) The pension account is to be increased on the day after the eligible member’s final underpin date.

#### **Statutory underpin: flexible retirement**

**4C.**—(1) This regulation applies in relation to an eligible member whose final underpin date is that in regulation 4H(1)(b) (statutory underpin: final underpin date – flexible retirement).

(2) The eligible member’s flexible retirement pension account to which the final underpin date relates is to be increased by a percentage of the final guarantee amount that is equal to the percentage of the retirement pension that the eligible member takes under regulation 29(7) of the 2018 Regulations.

(3) On each occasion where the amount of pension taken by the eligible member under regulation 29(7) of the 2018 Regulations is less than 100% of the member’s relevant pension, at the next occurring final underpin date (“the subsequent final underpin date”), a further calculation of the eligible member’s final assumed benefits and final underpin amount relating to the flexible retirement is to be completed in accordance with regulations 4K and 4L.

(4) Where, on the subsequent final underpin date, the eligible member’s final assumed benefits are exceeded by their final underpin amount, the eligible member’s pension account is to be increased by a percentage of the final guarantee amount that is equal to the percentage of the original retirement pension that the eligible member took on the subsequent final underpin date.

(5) Where paragraphs (2) or (4) apply, the eligible member’s pension account is to be increased on the day after the eligible member’s final underpin date or subsequent final underpin date, as the case may be.

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(a) For the meaning of “Chapter 1 scheme” see section 33 of the Public Service Pensions and Judicial Offices Act 2022.

(b) For the meaning of “judicial scheme” see section 70 of the Public Service Pensions and Judicial Offices Act 2022.

(6) In paragraph (4), “original retirement pension” means the amount of the eligible member’s retirement pension as at the day of the eligible member’s first final underpin date.

(7) In paragraph (3), “relevant pension” is the pension built up in the 2015 Scheme before the member’s first final underpin date.

(8) Paragraphs (9) to (11) apply where the eligible member—

- (a) began their reduced working hours or grade of employment during the underpin period; and
- (b) accrued benefits—
  - (i) after taking payment of a retirement pension under regulation 29(7); but
  - (ii) before the end of the underpin period.

(9) At the eligible member’s next occurring underpin date (the “additional underpin date”), the eligible member’s provisional assumed benefits and provisional underpin amount are calculated in accordance with regulations 4I and 4J, but—

- (a) the underpin period for the purpose of those calculations begins with the day on which the eligible member’s reduced hours or grade began; and
- (b) those calculations are not to include any period which has already been used in the calculation of a final guarantee amount in relation to the pension account.

(10) At the eligible member’s next occurring final underpin date (which may be on the same day as the additional underpin date, or after), the eligible member’s final assumed benefits and final underpin amount in relation to the eligible member’s pension account are calculated in accordance with regulations 4K and 4L but using the provisional assumed benefits and provisional underpin amounts as provided for in paragraph (9).

(11) Where the eligible member’s final assumed benefits are exceeded by their final underpin amount, the eligible member’s pension account is to be increased on the day after the eligible member’s next occurring final underpin date.

#### **Statutory underpin: lump sum payments**

**4D.**—(1) This regulation applies to an eligible member who has a final underpin date by virtue of regulation 4H(1)(f) (statutory underpin: final underpin date - lump sum payment).

(2) Where this regulation applies the eligible member’s pension account is not to be increased by any final guarantee amount relating to the pension account. Instead, the final guarantee amount is to be used in the calculation of the lump sum(a).

#### **Statutory underpin: transfers**

**4E.**—(1) This regulation applies to an eligible member who has a final underpin date by virtue of regulation 4H(1)(g) or (h) (statutory underpin: final underpin date - transfer to a different scheme).

(2) Where this regulation applies—

- (a) no final guarantee amount is to be determined in relation to the pension account; and
- (b) either—
  - (i) where regulation 4H(1)(g) applies to the eligible member, regulation 91 of the 2018 Regulations (rights to payment out of pension fund) applies; or
  - (ii) where regulation 4H(1)(h) applies to the eligible member, regulation 93 of the 2018 Regulations (bulk transfer (transfer of undertakings etc)) applies.

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(a) See regulation 33(2A)(b) of the 2018 Regulations (as inserted by regulation 3(3) of these Regulations).

### **Statutory underpin: members taking a repayment of contributions**

**4F.**—(1) This regulation applies in relation to an eligible member who has a final underpin date by virtue of regulation 4H(1)(i) (statutory underpin: final underpin date – receipt of repayment under regulation 18 of the 2018 Regulations).

(2) An eligible member to whom this regulation applies is not entitled to a final guarantee amount in respect of any repaid contributions.

### **Statutory underpin: underpin date**

**4G.** An eligible member's underpin date, in relation to a pension account, is the earliest of—

- (a) the last day on which the eligible member is an active member of the 2015 Scheme;
- (b) the date on which the eligible member attains—
  - (i) the normal retirement age applicable to the eligible member under the 2009 Scheme; or
  - (ii) where the eligible member is not a member of the 2009 Scheme, the age of 65; and
- (c) where the eligible member elects to receive an immediate payment of all or part of their pension under regulation 29(7) of the 2018 Regulations, the day before the date on which the eligible member's reduced working hours or grade of employment begins.

### **Statutory underpin: final underpin date**

**4H.**—(1) An eligible member's final underpin date, in relation to a pension account, is the earliest of the following dates which occur either at the same time as, or after, an underpin date applicable to that pension account—

- (a) the day before the date on which a pension under regulation 29(1), (3), (4) or (6) of the 2018 Regulations (retirement pension) commences;
- (b) where the eligible member elects to receive an immediate payment of all or part of the retirement pension under regulation 29(7) of the 2018 Regulations (flexible retirement), the day before the date on which the eligible member's reduced working hours or grade of employment begins<sup>(a)</sup>;
- (c) the day before the date on which a pension under regulation 29(8) of the 2018 Regulations commences (pension by virtue of dismissal from employment);
- (d) the day before the date on which a pension under regulation 34(1) of the 2018 Regulations commences (pension on grounds of ill health for active members);
- (e) the day before the date on which a pension pursuant to a request made under regulation 36(1) of the 2018 Regulations commences (pension on grounds of ill health for deferred members);
- (f) where the eligible member takes payment of a lump sum under regulation 33(1)(a) or (c) of the 2018 Regulations (commutation and small pensions) in relation to the pension, the day before the date used to calculate the sum;
- (g) where, in accordance with regulation 91(1) of the 2018 Regulations (rights to payment out of pension fund), the eligible member applies for a transfer under Chapters 1 or 2 of Part 4ZA of the Pension Schemes Act 1993<sup>(b)</sup>, the date used to calculate the cash equivalent transfer value paid;

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(a) See regulation 4C for cases where the eligible member takes flexible retirement.

(b) 1993 c. 48; Part 4ZA was inserted by paragraphs 3 to 27 of schedule 4 of the Pension Schemes Act 2015 (c. 8).

- (h) where a transfer payment is made in respect of the eligible member under regulation 93 of the 2018 Regulations (bulk transfer), the date used to calculate the value of the transfer payment; and
- (i) the date on which the administering authority makes payment to the eligible member under regulation 18 of the 2018 Regulations (rights to return of contributions) relating to the pension account<sup>(a)</sup>.

(2) Where the eligible member has had a final underpin date by virtue of paragraph (1)(b), paragraph (1) applies as if for “the earliest of the following dates” there were substituted “the next occurring of the following dates”.

#### **Statutory underpin: calculation of provisional assumed benefits**

**4I.**—(1) The eligible member’s provisional assumed benefits are calculated by assessing, at the eligible member’s underpin date, the benefits the eligible member would have been entitled to under the 2015 Scheme over the underpin period if—

- (a) the eligible member had paid contributions under regulation 9 of the 2018 Regulations in respect of the underpin period—
  - (i) including—
    - (aa) in respect of any period of absence from work because of illness or injury, child-related leave or reserve forces service leave;
    - (bb) where, on the underpin date, the eligible member left active membership with an entitlement to Tier 1 or Tier 2 benefits under regulation 34(4) or (5) respectively of the 2018 Regulations, any adjustment under regulation 37 of those Regulations (calculation of ill-health pension amounts) in respect of the underpin period;
    - (cc) in respect of any period of absence from work with no pensionable pay in consequence of a trade dispute if the eligible member elected to cover that period by entering into an arrangement under regulation 16 of the 2018 Regulations (additional pension contributions); and
    - (dd) in respect of any period of absence from work with permission with no pensionable pay in respect of which the eligible member elected to cover that period by entering into an arrangement under regulation 16 of the 2018 Regulations; but
  - (ii) excluding—
    - (aa) any period where the eligible member was not an active member; and
    - (bb) any period of unpaid absence from work without permission;
- (b) the eligible member or their Scheme employer had, in respect of the underpin period, paid no additional contributions under—
  - (i) regulation 16 of the 2018 Regulations, other than additional contributions paid under that regulation to cover a period of absence from work with no pensionable pay, as is set out in sub-paragraph (a)(i);
  - (ii) regulation 17 of the 2018 Regulations (additional voluntary contributions);
  - (iii) regulation 22(1) of the Administration Regulations; or
  - (iv) regulation 59(1) of the 1998 Regulations;
- (c) the eligible member had not been awarded additional annual pension under regulation 30 of the 2018 Regulations;
- (d) the Scheme had received no transfer value payment in respect of the eligible member, except for a transfer value payment received from—

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<sup>(a)</sup> See regulation 4F for the effect of receiving that repayment on the final guarantee amount.

- (i) a Chapter 1 scheme<sup>(a)</sup>;
- (ii) a judicial scheme<sup>(b)</sup>;
- (iii) another local government scheme<sup>(c)</sup>,

where service in that scheme was remediable service and there was no continuous break of more than five years in active membership of a public service pension scheme since the remediable service was accrued;

- (e) the revaluation adjustment (as defined in Schedule 1 of the 2018 Regulations) that would have applied to the eligible member's provisional assumed benefits had they been benefits built up in an active member's pension account, had been made up to and including the eligible member's underpin date;
- (f) no transfer value payment had been credited to the eligible member's pension account under regulation 10(4), (5) or (6); and
- (g) where the balance in the eligible member's pension account at the underpin date had been adjusted on account of any pension debit or Scheme pays election<sup>(d)</sup>, that adjustment had not occurred.

(2) Where paragraph (1)(a)(i)(cc) or (dd) apply, the additional pension purchased is to be included in the provisional assumed benefits as if it was pension credited to the eligible member's pension account on the earliest of—

- (a) 31 March in the scheme year in which the absence ended;
- (b) 31 March 2022; and
- (c) the eligible member's underpin date.

(3) Where paragraph (2) applies, if the eligible member fails to pay all of the additional pension contributions due, only the amount of additional pension credited to the pension account is to be included in the provisional assumed benefits.

(4) Paragraph (3) does not apply if the eligible member fails to pay all the additional pension contributions due because—

- (a) the eligible member left active membership of the 2015 Scheme under regulation 34 of the 2018 Regulations with an entitlement to Tier 1 or Tier 2 benefits under regulation 34(4) or (5) of those Regulations respectively; or
- (b) the eligible member died as an active member.

(5) Where paragraph (3) does not apply, the eligible member is treated as having paid the additional pension contributions referred to in paragraph (1)(a)(i)(cc) or (dd) in full.

(6) Where paragraph (1)(a)(i)(cc) or (dd) apply in relation to a period during which the eligible member was paying reduced contributions under regulation 10 of the 2018 Regulations, the additional pension included in the provisional assumed benefits for that period is that which would have been payable had the eligible member not been paying reduced contributions.

(7) Where the eligible member has qualifying service for less than a period of two years, the member is treated as having qualifying service for a period of two years for the purpose of calculating their provisional assumed benefits.

(8) Paragraph (9) applies where, after the eligible member's underpin date, the eligible member completes—

- (a) a transfer in of remediable service from—
  - (i) a Chapter 1 scheme;

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(a) For the meaning of "Chapter 1 scheme" see Chapter 1 of the Public Service Pensions and Judicial Offices Act 2022.  
(b) For the meaning of "judicial scheme" see Chapter 2 of the Public Service Pensions and Judicial Offices Act 2022.  
(c) For the meaning of "local government scheme" see section 86(1) of the Public Service Pensions and Judicial Offices Act 2022.  
(d) For the meaning of "Scheme pays election" see Schedule 1 to S.S.I. 2018/141.

- (ii) a judicial scheme; or
  - (iii) another local government scheme; or
  - (b) the aggregation of remediable service from the 2015 Scheme.
- (9) Where this paragraph applies—
- (a) the eligible member’s provisional assumed benefits are to be calculated as at the eligible member’s underpin date taking into account their transferred in or aggregated remediable service; and
  - (b) any calculation of provisional assumed benefits done in respect of the pension account into which the remediable service has been transferred or aggregated is set aside.

(10) Paragraph (9) does not apply if there has been a continuous break in active membership of a public service pension scheme of more than five years since the remediable service was accrued.

**Statutory underpin: calculation of the provisional underpin amount**

**4J.**—(1) The eligible member’s provisional underpin amount is calculated by assessing the benefits the eligible member would have been entitled to under the 2009 Scheme over the underpin period at the eligible member’s underpin date if—

- (a) the member had accrued membership under the 2009 Scheme, rather than the 2015 Scheme;
- (b) the period of membership taken into account for the purposes of sub-paragraph (a) was—
  - (i) the period during which the member has paid, or is treated as having paid, contributions under regulations 9 or 10 of the 2018 Regulations (contributions and reduced contributions);
  - (ii) any period of unpaid absence due to a trade dispute, or absence from work with permission, otherwise than because of illness or injury, child related leave, or reserve forces service leave, if the eligible member elected to cover that period by entering into an arrangement under regulation 16 of the 2018 Regulations (additional pension contributions); and
  - (iii) where the member became entitled to Tier 1 or Tier 2 benefits under regulation 34 of the 2018 Regulations, any additional period of membership that would have been added to the member’s total membership under regulation 20(2) (in respect of a Tier 1 pension) or regulation 20(3) (in respect of a Tier 2 pension) of the Benefits Regulations (early leavers: ill-health), up to the end of the underpin period, as if the member had been entitled to an increase in benefits under the provision in question at the underpin date;
- (c) the eligible member’s final pay used to calculate the provisional underpin amount is calculated in accordance with regulations 9 to 11 of the Benefits Regulations (final pay) or, in the case of a councillor member, career average pay is calculated in accordance with paragraph 1 of the schedule to the Benefits Regulations and those provisions apply in relation to the eligible member as if those provisions were still in force at the underpin date;
- (d) the eligible member had been credited with 2009 Scheme benefits in respect of remediable service transferred from—
  - (i) a Chapter 1 scheme;
  - (ii) a judicial scheme; or
  - (iii) another local government scheme; and
 there was no continuous break of more than five years in active membership of a public service pension scheme since the remediable service was accrued; and



- (e) where the balance in the eligible member's pension account at the underpin date had been adjusted on account of any pension debit or Scheme pays election, that adjustment had not occurred.

(2) Where paragraph (1)(b)(ii) applies, the unpaid period to be used in relation to the provisional underpin amount is the proportion of the period of absence that is equal to the proportion of the full amount of contributions to be paid under the arrangement that have been paid by the eligible member.

(3) Paragraph (2) does not apply if the eligible member fails to pay all the additional pension contributions due because—

- (a) the eligible member left active membership of the 2015 Scheme under regulation 34 of the 2018 Regulations with an entitlement to Tier 1 or Tier 2 benefits under regulation 34(4) or (5) of those Regulations respectively; or
- (b) the eligible member died as an active member.

(4) Where paragraph (2) does not apply, any part of the period of absence falling within the underpin period that is covered by the arrangement under regulation 16(1) or (3) of the 2018 Regulations (additional pension contributions) entered into by the eligible member is to be included in the calculation of the provisional underpin amount.

(5) Where the eligible member has qualifying service for less than a period of two years, the member is treated as having qualifying service for a period of two years for the purpose of calculating their provisional underpin amount.

(6) Paragraph (7) applies where, after the eligible member's underpin date, the eligible member completes—

- (a) a transfer in of remediable service from—
  - (i) a Chapter 1 scheme;
  - (ii) a judicial scheme; or
  - (iii) another local government scheme; or
- (b) the aggregation of remediable service from the 2015 Scheme.

(7) Where this paragraph applies—

- (a) the eligible member's provisional underpin amount is to be calculated as at the eligible member's underpin date taking into account their transferred in or aggregated remediable service; and
- (b) any calculation of a provisional underpin amount done in respect of the pension account into which the remediable service has been transferred or aggregated is set aside.

(8) Paragraph (7) does not apply if there has been a continuous break in active membership of a public service pension scheme of more than five years since the remediable service was accrued.

### **Statutory underpin: calculation of final assumed benefits**

**4K.**—(1) An eligible member's final assumed benefits are calculated by adjusting their provisional assumed benefits at the eligible member's final underpin date in accordance with this regulation.

(2) Where the eligible member's underpin date is not the same date as their final underpin date, apply any revaluation adjustment or index rate adjustment to provisional assumed benefits that would have applied to a deferred benefit in the 2015 Scheme as if the last day of scheme membership was the underpin date.

(3) Where regulation 29(5) of the 2018 Regulations (pension taken later than normal pension age) applies to the eligible member, apply the enhancement as set out in that provision to provisional assumed benefits.

(4) Where regulation 29(6) (pension taken earlier than normal pension age) or (7) (pension by virtue of flexible retirement) of the 2018 Regulations applies to the eligible member and their benefits under the 2015 Scheme are being reduced as set out in that provision, apply an equivalent reduction to provisional assumed benefits.

(5) Where paragraph (4) applies, also reflect in the reduction such transitional provisions under Schedule 2 as apply (if any).

(6) Where—

- (a) the eligible member's provisional assumed benefits include an additional pension under regulation 16 of the 2018 Regulations;
- (b) the member is taking payment of their pension before the normal pension age applicable to them under the 2015 Scheme; and
- (c) regulation 29(8)(a) of the 2018 Regulations (pension by virtue of dismissal from employment) applies to reduce the amount of pension payable,

the additional pension referred to in paragraph (a) is to be reduced in accordance with regulation 29(8)(a) of the 2018 Regulations.

#### **Statutory underpin: calculation of final underpin amount**

**4L.**—(1) An eligible member's final underpin amount is calculated by adjusting their provisional underpin amount at the eligible member's final underpin date in accordance with this regulation.

(2) Add any amount by which their provisional underpin amount would be increased if it were a pension to which the Pensions (Increase) Act 1971(a) applied, which relates to the period—

- (a) beginning with the day after the day on which the period used for the purposes of calculating the eligible member's final pay or, as the case may be, career average pay under the Benefits Regulations ends; and
- (b) ending with the eligible member's final underpin date.

(3) Where an eligible member first receives payment of their retirement pension after the day on which they attain the age of 65, apply an enhancement calculated in accordance with actuarial guidance issued by the Scottish Ministers.

(4) Where—

- (a) regulation 29(6) (pension taken earlier than normal pension age) or (7) (pension by virtue of flexible retirement) of the 2018 Regulations applies to an eligible member;
- (b) the eligible member has not attained the age of 65; and
- (c) the eligible member's benefits under any of the Earlier Schemes are being reduced under regulation 3(5),

apply an adjustment calculated in accordance with actuarial guidance issued by the Scottish Ministers.

(5) Where paragraph (4) applies, the reduction is also to reflect such transitional provisions under Schedule 2 as apply (if any).

#### **Statutory underpin: survivor's guarantee amount calculation**

**4M.**—(1) This regulation applies where—

- (a) an eligible member dies; and

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(a) 1971 c. 56.

- (b) as a result, a survivor member's pension becomes payable under regulation 39, 40, 42, 43, 45 or 46 of the 2018 Regulations.
- (2) A proportion of a survivor guarantee amount is to be added to a survivor member's pension account in accordance with this regulation on the day after the eligible member's death.
- (3) A "survivor guarantee amount" is the amount by which an eligible member's adjusted assumed benefits are exceeded by their adjusted underpin amount.
- (4) The eligible member's adjusted assumed benefits are calculated by adjusting their provisional assumed benefits as follows—
- (a) where the eligible member's date of death is the same as their underpin date, increase the eligible member's provisional assumed benefits by an amount equivalent to 1/49th of their annual assumed pensionable pay, calculated in accordance with regulation 21(4) or, as appropriate, 21(9) of the 2018 Regulations as at the date of the eligible member's death;
  - (b) where the eligible member was working reduced contractual hours as a consequence of ill-health or infirmity of mind or body, the increase referred to in sub-paragraph (a) is to take no account of any reduction in the pensionable pay the eligible member incurred; and
  - (c) where the eligible member's date of death is not the same date as their underpin date, apply any revaluation adjustment or index rate adjustment that would have applied to a deferred benefit in the 2015 Scheme as if the last day of scheme membership was the underpin date.
- (5) The increase referred to in paragraph (4)(a) applies in relation to the period—
- (a) beginning with the day after the eligible member's death; and
  - (b) ending with the earlier of—
    - (i) 31 March 2022; and
    - (ii) the date on which the eligible member would have attained—
      - (aa) the normal retirement age applicable to them under the 2009 Scheme; or
      - (bb) where the eligible member was not a member of the 2009 Scheme, the age of 65.
- (6) The eligible member's adjusted underpin amount is calculated by adjusting their provisional underpin amount as follows—
- (a) where the eligible member's date of death is the same as their underpin date, increase the eligible member's provisional underpin amount according to any additional period of membership that would have been added to the eligible member's total membership under regulation 20(2) of the Benefits Regulations up to and including 31 March 2022 if the eligible member's employment had been terminated on grounds of ill-health or infirmity of mind or body; and
  - (b) add any increase that would apply were the adjusted underpin amount a pension to which the Pensions (Increase) Act 1971 applied, which relates to the period—
    - (i) beginning with the day after the day on which the period used for the purposes of calculating the eligible member's final pay or, as the case may be, career average pay under the Benefits Regulations ends; and
    - (ii) ending with the date of the eligible member's death.
- (7) A survivor pension paid under a provision listed in column 2 of the following table is to be increased by the proportion of the survivor guarantee amount specified in the corresponding entry in column 3 of the table—

<i>1. Type of survivor pension</i>	<i>2. Provision of the 2018 Regulations under which the pension is paid</i>	<i>3. Proportion of survivor guarantee amount to be added</i>
Partner pension: spouse, civil partner or cohabiting partner	39(4), 42(4), 45(4)	<b>60/160</b>
Child's pension: one eligible child	40(4), 43(4), 46(4)	<b>60/320</b>
Child's pension: more than one eligible child	40(5), 43(5), 46(5)	<b>60/160</b>
Child's pension: one eligible child and no survivor pension paid to deceased member's partner	40(9), 43(9), 46(9)	<b>60/240</b>
Child's pension: more than one eligible child and no survivor pension paid to deceased member's partner	40(10), 43(10), 46(10)	<b>60/120</b>

#### **Statutory underpin: death grants**

**4N.**—(1) This regulation applies where—

- (a) an eligible member who is a deferred member of the 2015 Scheme dies; and
- (b) as a result, a death grant becomes payable under regulation 41 of the 2018 Regulations.

(2) A deferred guarantee amount relating to the eligible member is to be included in the amount the eligible member would have been entitled to receive as retirement pension annually for the purposes of the calculation of a death grant under regulation 41(3) of the 2018 Regulations.

(3) A “deferred guarantee amount” is the amount by which the eligible member’s deferred assumed benefits are exceeded by their deferred underpin amount.

(4) An eligible member’s deferred assumed benefits are calculated by adjusting their provisional assumed benefits to apply any revaluation adjustment or index rate adjustment that would have applied to a deferred benefit in the 2015 Scheme as if the last day of scheme membership was the underpin date.

(5) An eligible member’s deferred underpin amount is calculated by adjusting their provisional underpin to apply any amount by which it would be increased if it were a pension to which the Pensions (Increase) Act 1971 applied, which relates to the period—

- (a) beginning with the day after the day on which the pay period used for the purposes of calculating the eligible member’s final pay or, as the case may be, career average pay under the Benefits Regulations ends; and
- (b) ending with the date of the eligible member’s death.

#### **Statutory underpin: multiple pension accounts**

**4O.**—(1) This regulation applies to an eligible member who has an aggregated pension account.

(2) Paragraphs (3) to (7) apply where the eligible member does not have a continuous break in active membership of a public service pension scheme of more than 5 years that began after the eligible member’s active membership of the inactive pension account that has been aggregated with the eligible member’s active pension account ceases.

(3) The provisional assumed benefits and the provisional underpin amount calculated in relation to the eligible member's inactive pension account prior to it being aggregated with the eligible member's active pension account are extinguished.

(4) The underpin date for the purpose of regulations 4I and 4J in their application to the aggregated account is the underpin date that relates to the active pension account.

(5) Where the pension accounts were held concurrently before being aggregated, paragraphs (3) and (4) do not apply if the eligible member had attained, before they ceased to be an active member in relation to each inactive pension account that has been aggregated with the active pension account—

- (a) the normal retirement age applicable to them under the 2009 Scheme; or
- (b) where the eligible member was not a member of the 2009 Scheme, the age of 65.

(6) Where the pension accounts were held consecutively before being aggregated, paragraphs (3) and (4) do not apply if the eligible member has attained, on the first day of their membership of the active pension account—

- (a) the normal retirement age applicable to them under the 2009 Scheme; or
- (b) where the eligible member was not a member of the 2009 Scheme, the age of 65.

(7) Where paragraphs (5) or (6) apply—

- (a) the provisional assumed benefits and provisional underpin amount calculated in relation to the inactive account prior to it being aggregated with the eligible member's active pension account are applied to the active pension account; and
- (b) that provisional underpin amount and provisional assumed benefits are to be used as the basis for the calculations of the final underpin amount and final assumed benefits, adjusted assumed benefits and adjusted underpin amount under regulation 4M, or deferred assumed benefits and deferred underpin amount under regulation 4N, as the case may be, for the active pension account.

(8) Paragraphs (9) and (10) apply where the eligible member has had a continuous break in active membership of a public service pension scheme of more than 5 years that began after the member's active membership of the inactive pension account that has been aggregated with the eligible member's active pension account ceased.

(9) The provisional assumed benefits and the provisional underpin amount calculated in relation to the eligible member's inactive pension account prior to it being aggregated with the eligible member's active pension account are extinguished.

(10) Any remediable service built up in the inactive pension account is ignored for the purposes of regulations 4A to 4T.

(11) In this regulation—

- (a) pension accounts are held concurrently if, immediately before the accounts are aggregated, the eligible member held active membership of the 2015 Scheme in the pension account that becomes the active pension account at the same time as holding active membership of the 2015 Scheme in the pension account that becomes the inactive pension account;
- (b) pension accounts are held consecutively before being aggregated if they are not held concurrently.

(12) In this regulation—

“active pension account” means a pension account in respect of which the eligible member is an active member;

“aggregated pension account” is a pension account that has been aggregated under regulation 22(5), (6), (7) or (8) of the 2018 Regulations;

“inactive pension account” means a pension account in respect of which the eligible member is no longer an active member.

### **Statutory underpin: divorce and dissolution of civil partnership**

**4P.**—(1) This regulation applies where the cash equivalent of an eligible member’s relevant benefits is, for the purpose of section 29 of the Welfare Reform and Pensions Act 1999(a) (creation of pension debits and credits), calculated in accordance with regulation 4 of the Pension Sharing (Valuation) Regulations 2000(b) (manner of calculation and verification of cash equivalents: occupational pension schemes).

(2) Where this regulation applies, the cash equivalent of the relevant benefits is to be calculated in accordance with actuarial guidance issued by the Scottish Ministers.

(3) “Relevant benefits” has the same meaning as in section 29 of the Welfare Reform and Pensions Act 1999.

### **Payment of indirect compensation**

**4Q.**—(1) An administering authority may, in respect of a compensatable loss that is a Part 4 tax loss(c) incurred by an eligible member—

(a) not pay an amount under section 82 of PSPJOA 2022 by way of compensation in respect of the loss; and

(b) instead pay the eligible member additional benefits under the 2015 Scheme.

(2) This regulation is subject to the requirements of regulation 4R (applications for compensation).

(3) When exercising the power in paragraph (1) to pay additional benefits, the administering authority must comply with the requirements contained in direction 33(1) of the PSP Directions 2022 in relation to the exercise of those powers as those requirements apply to the power to pay amounts by way of compensation by virtue of section 82(1) of PSPJOA 2022 (and the reference in direction 33(1)(f)(iii) to direction 34 is to be read accordingly).

(4) The administering authority must obtain advice from an actuary before determining what additional benefits to pay to a member.

(5) When determining what additional benefits to pay to a member under this regulation, the administering authority must, in accordance with the actuarial advice obtained under paragraph (4), apply any actuarial factors that were in force when the pension debit was calculated originally.

(6) Direction 36 of the PSP Directions 2022 (indirect compensation) applies to this regulation for the purpose of determining whether a Part 4 tax loss is compensatable(d).

### **Applications for compensation**

**4R.**—(1) An administering authority may pay compensation to a person in respect of the 2015 Scheme under section 82(1) of PSPJOA 2022 (power to pay compensation to members or personal representatives in respect of compensatable losses) or additional benefits payable by virtue of regulation 4Q only after the appropriate person has made an application to the administering authority in such form and manner as determined by the administering authority.

(2) Where compensation payable under section 82(1) or 83(1) (indirect compensation) of PSPJOA 2022 is in respect of a Part 4 tax loss mentioned in direction 34(4)(a) or (b) or 36(3)(a) or (b) of the PSP Directions 2022, the application mentioned in paragraph (1) must include the following—

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(a) 1999 c. 30.

(b) S.I. 2000/1052; regulation 4 was substituted by S.I. 2016/289.

(c) For the meaning of “Part 4 tax loss” see section 82(7) of the Public Service Pensions and Judicial Offices Act 2022.

(d) For the meaning of “compensatable”, see section 82(3) of the Public Service Pensions and Judicial Offices Act 2022.

- (a) a calculation obtained by the appropriate person from HMRC (by virtue of HMRC’s compensation function under section 104 of PSPJOA 2022), of any compensation or indirect compensation paid by the scheme to the person in relation to each out-of-scope tax year;
- (b) a signed declaration by the appropriate person that the information provided to HMRC in order to obtain the calculation mentioned in sub-paragraph (a), and the calculation itself, is correct and complete to the best of their knowledge and belief; and
- (c) a warning that, if false information is given, the appropriate person signing the declaration mentioned in sub-paragraph (b) may face civil action or prosecution, or both.

(3) The administering authority must determine the relevant amounts (if any) owed by the scheme to a person by virtue of section 82(1) or 83(1) of PSPJOA 2022 following receipt of the application mentioned in paragraph (1).

(4) The administering authority must provide the appropriate person with an explanation of how the relevant amounts (if any) have been determined under paragraph (3).

(5) The appropriate person may appeal against a determination by the administering authority under paragraph (3) by notice in writing to the administering authority, together with a reasoned explanation of a proposed alternative amount, supported by any evidence the appropriate person considers relevant.

(6) If an appeal is made under paragraph (5), the administering authority must decide whether to alter its determination, and provide to the appropriate person—

- (a) an altered determination, or confirmation that the original determination stands;
- (b) a reasoned explanation of its decision; and
- (c) a description of the dispute resolution arrangements that apply to the scheme under section 50 of the Pensions Act 1995(a).

(7) In this regulation, a tax year is “out-of-scope” in relation to an individual where—

- (a) that individual is unable to recover from HMRC the amount of overpaid income tax paid in relation to that tax year by that individual that gives rise to their Part 4 tax loss, and
- (b) the reason for that is because the individual may no longer make a claim under the Income Tax Acts to recover from HMRC the amount of overpaid income tax because the statutory time limit has passed.

(8) In this regulation—

“HMRC” means His Majesty’s Revenue and Customs;

“the appropriate person” means the eligible member or, if they are deceased, their personal representatives.

### **Payment of compensation or indirect compensation out of pension fund**

**4S.** An administering authority may pay compensation to a person in respect of the 2015 Scheme under section 82(1) of PSPJOA 2022 (power to pay compensation to members or personal representatives in respect of compensatable losses) or additional benefits payable by virtue of regulation 4Q from the pension fund concerned.

### **Interest on indirect compensation**

**4T.**—(1) This regulation applies where an administering authority pays additional benefits to an eligible member under regulation 4Q (indirect compensation).

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(a) 1995 c. 26. Section 50 was substituted by section 273 of the Pensions Act 2004 (c. 35) and amended by section 16 of the Pensions Act 2007 (c. 22).

(2) Interest is to be paid in respect of the additional benefits in accordance with regulation 14 of the Local Government Pension Scheme (Scotland) (Transitional Protection Remedy) Regulations 2023.”.

(5) In regulation 9—

- (a) In paragraph (1) for “before 1<sup>st</sup> April 2015” substitute “that is not remediable service”;
- (b) after paragraph (1) insert—

“(1A) Where a transfer payment is received into the 2015 Scheme in respect of a person from a different public service pension scheme which includes a payment in respect of remediable service, the payment in respect of remediable service entitles the person to benefits under the 2015 Scheme.

(1B) For the purposes of these Regulations, so long as there has been no continuous break in active membership of a public service pension scheme of more than five years since the remediable service was accrued, transferred remediable service to which paragraph (1A) applies is to be treated as a pension to which regulations 4A to 4T applies.”.

(6) Omit regulation 24(4)(a) (underpin age for a person in relation to whom regulation 16A to 16D of the Benefits Regulations has effect).

### **Amendment of the Local Government Pension Scheme (Scotland) Regulations 2018**

3.—(1) The 2018 Regulations are amended as follows.

(2) In regulation 29 (retirement benefits), after paragraph (14), insert—

“(15) The references to an enhancement in paragraph (5), a reduction in paragraph (6) and an adjustment in paragraph (7) do not apply to any final guarantee amount that has been added to the pension account under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014.”.

(3) In regulation 33 (commutation and small pensions)—

(a) after paragraph (2) insert—

“(2A) In the case of an eligible member, the pension used to calculate a payment under paragraph (1) is to include—

(a) where the pension is in payment—

- (i) any final guarantee amount calculated in respect of the eligible member’s pension account under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014; and
- (ii) any revaluation adjustment or index rate adjustment that has been applied to the retirement pension account as a consequence of a final guarantee amount;

(b) where the pension is not in payment, any final guarantee amount that would be paid were the payment under paragraph (1)(a) or (c) not to proceed; or

(c) where the eligible member is deceased—

- (i) any survivor guarantee amount payable to the survivor member in respect of the eligible member; and
- (ii) any revaluation adjustment or index rate adjustment that has been applied to a survivor member’s pension account as a consequence of the survivor guarantee amount.”.

(b) at the end insert—

“(4) In this regulation—

“eligible member” has the same meaning as in regulation 1(4) of the Transitional Provisions and Savings Regulations 2014;

“survivor guarantee amount” has the meaning given in regulation 4M(3) of the Transitional Provisions and Savings Regulations 2014.”.

(4) In regulation 39(4)(a) (survivor benefits: partners of active members)—



- (a) after “draw”, insert “, excluding any final guarantee amount under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014,”;
  - (b) after head (iv), insert “and”;
  - (c) in head (v), omit “and”;
  - (d) omit head (vi).
- (5) In regulation 40 (survivor benefits: children of active members)—
- (a) in sub-paragraph (4)(a)—
    - (i) after “draw”, insert “, excluding any final guarantee amount under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014,”;
    - (ii) after head (iv), insert “and”;
    - (iii) in head (v), omit “and”;
    - (iv) omit head (vi);
  - (b) in sub-paragraph (5)(a)—
    - (i) after “draw”, insert “, excluding any final guarantee amount under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014,”;
    - (ii) after head (iv), insert “and”;
    - (iii) in head (v), omit “and”;
    - (iv) omit head (vi);
  - (c) in sub-paragraph (9)(a)—
    - (i) after “draw”, insert “, excluding any final guarantee amount under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014,”;
    - (ii) after head (iv), insert “and”;
    - (iii) in head (v), omit “and”;
    - (iv) omit head (vi);
  - (d) in sub-paragraph (10)(a)—
    - (i) after “draw”, insert “, excluding any final guarantee amount under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014,”;
    - (ii) after head (iv), insert “and”;
    - (iii) in head (v), omit “and”;
    - (iv) omit head (vi).
- (6) In regulation 41 (death grants: deferred members and pension credit members)—
- (a) in paragraph (3)—
    - (i) after “annually” insert “, excluding any final guarantee amount under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014,”;
    - (ii) at the end of sub-paragraph (a), omit “and”;
    - (iii) at the end of sub-paragraph (b), insert “and”;
    - (iv) after sub-paragraph (b), insert—
      - “(c) it included any deferred guarantee amount calculated under regulation 4N of the Transitional Provisions and Savings Regulations 2014.”;
  - (b) after paragraph (3) insert—
    - “(3A) In paragraph (3) “deferred guarantee amount” has the meaning given in regulation 4N(3) of the Transitional Provisions and Savings Regulations 2014.”.
- (7) In regulation 42(4) (survivor benefits: partners of deferred members)—
- (a) in the words before sub-paragraph (a), after “draw”, insert “excluding any final guarantee amount under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014”;

- (b) at the end of sub-paragraph (d), insert “and”;
  - (c) in sub-paragraph (e), omit “and”;
  - (d) omit sub-paragraph (f).
- (8) In regulation 43 (survivor benefits: children of deferred members)—
- (a) in paragraph (4)—
    - (i) in the words before sub-paragraph (a), after “draw”, insert “excluding any final guarantee amount under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014”;
    - (ii) after sub-paragraph (d), insert “and”;
    - (iii) in sub-paragraph (e), omit “and”;
    - (iv) omit sub-paragraph (f);
  - (b) in paragraph (5)—
    - (i) in the words before sub-paragraph (a), after “draw”, insert “excluding any final guarantee amount under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014”;
    - (ii) after sub-paragraph (d), insert “and”;
    - (iii) in sub-paragraph (e), omit “and”;
    - (iv) omit sub-paragraph (f);
  - (c) in paragraph (9)—
    - (i) in the words before sub-paragraph (a), after “draw”, insert “excluding any final guarantee amount under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014”;
    - (ii) after sub-paragraph (d), insert “and”;
    - (iii) in sub-paragraph (e), omit “and”;
    - (iv) omit sub-paragraph (f);
  - (d) in paragraph (10)—
    - (i) in the words before sub-paragraph (a), after “draw”, insert “excluding any final guarantee amount under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014”;
    - (ii) after sub-paragraph (d), insert “and”;
    - (iii) in sub-paragraph (e), omit “and”;
    - (iv) omit sub-paragraph (f).
- (9) In regulation 45 (survivor benefits: partners of pensioner members)—
- (a) in paragraph (4)—
    - (i) after sub-paragraph (e), insert “and”;
    - (ii) in sub-paragraph (f), omit “and”;
    - (iii) omit sub-paragraph (g);
  - (b) after paragraph (8) insert—
 

“(9) The pension that the member would have been entitled to, for the purpose of calculating the amount of pension payable under paragraph (3), is not to include any final guarantee amount that has been added to the pension under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014.”.
- (10) In regulation 46 (survivor benefits: children of pensioner members)—
- (a) in paragraph (4)—
    - (i) after sub-paragraph (e), insert “and”;
    - (ii) in sub-paragraph (f), omit “and”;

- (iii) omit sub-paragraph (g);
- (b) in paragraph (5)—
  - (i) after sub-paragraph (e), insert “and”;
  - (ii) in sub-paragraph (f), omit “and”;
  - (iii) omit sub-paragraph (g);
- (c) in paragraph (9)—
  - (i) after sub-paragraph (e), insert “and”;
  - (ii) in sub-paragraph (f), omit “and”;
  - (iii) omit sub-paragraph (g);
- (d) in paragraph (10)—
  - (i) after sub-paragraph (e), insert “and”;
  - (ii) in sub-paragraph (f), omit “and”;
  - (iii) omit sub-paragraph (g);
- (e) after paragraph (10) insert—
 

“(10A) The pension that the member would have been entitled to, for the purpose of calculating the amount of pension payable under paragraphs (3) and (8), is not to include any final guarantee amount that has been added to the pension under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014.”.
- (11) In regulation 60 (actuarial valuations of pension funds), after paragraph (5) insert—
 

“(5A) Compensation paid by the scheme to a person by virtue of section 82(1) of PSPJOA 2022 or additional benefits payable by virtue of regulation 4Q of the Transitional Provisions and Savings Regulations 2014 are liabilities for the purpose of the actuarial valuation under paragraph (1)(a).”.
- (12) In regulation 61 (special circumstances where revised actuarial valuations and certificates must be obtained), after paragraph (2A) insert—
 

“(2B) Compensation paid by the scheme to a person by virtue of section 82(1) of PSPJOA 2022 or additional benefits payable by virtue of regulation 4Q of the Transitional Provisions and Savings Regulations 2014 are liabilities for the purpose of the actuarial valuation under paragraph (2)(a).”.
- (13) In regulation 76 (interest on late payment of certain benefits), before paragraph (1), insert—
 

“(A1) This regulation does not apply to sums in respect of which interest is payable under—

  - (a) regulation 4T of the Transitional Provisions and Savings Regulations 2014; or
  - (b) regulation 14 of the Local Government Pension Scheme (Scotland) (Transitional Protection Remedy) Regulations 2023.”.
- (14) In regulation 91 (rights to payment out of pension fund)—
  - (a) after paragraph (1) insert—
 

“(1A) Where a transfer under paragraph (1) is applied for by an eligible member and is not a Club Transfer, the value of the transfer is to be calculated in accordance with actuarial guidance issued by the Scottish Ministers, taking into account the member’s provisional underpin amount and provisional assumed benefits, which are calculated in accordance with regulations 4I and 4J of the Transitional Provisions and Savings Regulations 2014.”;
  - (b) after paragraph (3) insert—
 

“(4) “Eligible member” has the same meaning as in regulation 4A(2) of the Transitional Provisions and Savings Regulations 2014.”.
- (15) In regulation 93 (bulk transfers etc), at the end, insert—

“(9) This regulation is subject to regulation 10(6) of the Local Government Pension Scheme (Scotland) (Transitional Protection Remedy) Regulations 2023 (transfer payments out of the fund before 1 October 2023).”.

(16) In regulation 94 (calculation of amount of transfer payment), after paragraph (2) insert—

“(2A) The actuary must take into account the member’s provisional underpin amount and provisional assumed benefits, which are calculated in relation to the member in accordance with regulations 4I and 4J of the Transitional Provisions and Savings Regulations 2014.”.

(17) In schedule 1 (interpretation)—

(a) after the definition of “European pensions institution”, insert—

““final guarantee amount” has the meaning given in regulation 1(4) of the Transitional Provisions and Savings Regulations 2014;”;

(b) after the definition of “permanently incapable”, insert—

““PSPJOA 2022” means the Public Service Pensions and Judicial Offices Act 2022;”.

## 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 (Scotland) (Transitional Protection Remedy) 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.

*TOM ARTHUR*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
At 11.28 a.m. on 30th August 2023

## EXPLANATORY NOTE

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

The Public Service Pensions Act 2013 (c. 25) (“the 2013 Act”) makes provision, and confers further powers to make provision (in the form of “scheme regulations” as defined in section 1 of that Act) about the establishment of public service pension schemes. The Local Government Pension Scheme (Scotland) Regulations 2018 (S.S.I. 2018/141, “the 2018 Regulations”) are the scheme regulations consolidating the Local Government Pension Scheme (Scotland) Regulations 2014, which established the successor local government pension scheme (“the 2015 Scheme”) to the pension scheme constituted by the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008, the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 and the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008 (“the 2009 Scheme”). The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 (S.S.I. 2014/233, “the 2014 Regulations”) provide transitional protection (“the statutory underpin”) for 2009 Scheme members. Similar transitional protection was made under the 2013 Act for members of judicial pension schemes and members of firefighters pension schemes. The transitional protection for members of the judicial and firefighters schemes was subsequently found to unlawfully discriminate between members of the respective schemes on the basis of age. Although the statutory underpin was not subject to legal action, all schemes established under the 2013 Act are subject to review. These Regulations do this in relation to the 2015 Scheme.

The Public Service Pensions and Judicial Offices Act 2022 (c. 7) (“PSPJOA 2022”), at Chapter 3 of Part 1, makes provision, and confers powers for scheme regulations under the 2013 Act to make further provision, in relation to specified service (“remediable service”, as defined in section 77 of PSPJOA 2022) of members who benefitted from the statutory underpin or who did not by reason of their age. Section 85 of PSPJOA 2022 requires certain powers in chapter 3 of Part 1 to be exercised in accordance with Treasury Directions.

These Regulations are scheme regulations under the 2013 Act and in accordance with PSPJOA 2022 in relation to a member’s remediable service in the local government legacy schemes and the 2015 Scheme. They are, to the extent required by section 85 of PSPJOA 2022, made in accordance with Treasury Directions (in the form of the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022). These Regulations have retrospective effect, which is authorised by section 3(3)(b) of the 2013 Act.

Part 1 of these Regulations makes general provision.

Part 2 amends the 2014 Regulations in relation to the statutory underpin:

Regulation 2(2) amends regulation 1 of the 2014 Regulations and introduces the concept of the “final guarantee amount”. This is the amount by which a member’s benefits under the 2015 Scheme (as assessed in accordance with the amendments made by these Regulations) are exceeded by the amount the member should have been entitled under the local government legacy schemes.

Regulation 2(3) omits regulation 4 of those regulations (which contained the original provision relating to the statutory underpin).

Regulation 2(4) inserts regulations 4A to 4T, which, by their effect, replace regulation 4:

- Regulation 4A makes provision in relation to the application of the replacement statutory underpin provisions to certain members (“eligible members”) and in respect of a certain period (“the underpin period”).
- Regulation 4B makes provision for eligible members who become entitled to a pension on the basis of retirement, redundancy, or ill health to have their pension account increased by the final guarantee amount on the day after they become so entitled.
- Regulation 4C makes provision for eligible members who become entitled to a pension on the basis of taking flexible retirement under regulation 29(7) of the 2018 Regulations to have their pension account increased by the final guarantee amount on the day after they become so entitled. It makes further provision relating to the ability of an eligible

- member taking flexible retirement to elect to take less than 100% of the pension to which they are entitled.
- Regulation 4D prevents eligible members who take a lump sum payment from having their pension account increased by the final guarantee amount relating to the pension account.
  - Regulation 4E prevents eligible members who transfer to a different scheme from having a final guarantee amount determined in relation to their pension account.
  - Regulation 4F prevents eligible members who take a repayment of contributions from having a final guarantee amount calculated in respect of those repaid contributions.
  - Regulation 4G provides for an “underpin date” to be determined in respect of eligible members. The underpin date is the date in respect of which a provisional calculation of the member’s benefits under the 2015 Scheme and the 2009 Scheme in respect of the underpin period is made.
  - Regulation 4H provides for a “final underpin date” to be determined in respect of eligible members. The final underpin date is the date in respect of which the final calculation of the eligible members benefits under the 2015 Scheme and 2009 Scheme is made, out of which the final guarantee amount is calculated.
  - Regulation 4I contains the calculation of an eligible member’s provisional assumed benefits. This is the provisional calculation of the benefits a member is entitled to under the 2015 Scheme.
  - Regulation 4J contains the calculation of an eligible member’s provisional underpin amount. This is the provisional calculation of the benefits a member should otherwise have been entitled to under the 2009 Scheme.
  - Regulation 4K provides for the calculation of an eligible member’s “final assumed benefits” for the purpose of the statutory underpin. This is the final calculation of the benefits the person is entitled to under the 2015 Scheme.
  - Regulation 4L provides for the calculation of an eligible member’s “final underpin amount” for the purpose of the statutory underpin. This is the final calculation of the benefits the person should otherwise have been entitled to under the 2009 Scheme.
  - Regulation 4M makes provision for the calculation of a “survivor guarantee amount” and for that amount to be added to a survivor member’s pension in respect of a deceased eligible member’s entitlement to a final guarantee amount.
  - Regulation 4N makes provision for the calculation of a “deferred guarantee amount” relating to an eligible member who is deceased and for that amount to be included in the calculation of a death grant payable in respect of the member.
  - Regulation 4O makes provision in relation to the calculation of provisional assumed benefits and provisional underpin amount for eligible members who have a pension account that has been aggregated from two or more pension accounts.
  - Regulation 4P makes provision for the calculation of the cash equivalent value of an eligible member’s relevant benefits (as defined in section 29 of the Welfare Reform and Pensions Act 1999 (c. 30)) where the eligible member is divorced or dissolves a civil partnership.
  - Regulation 4Q empowers an administering authority to pay additional benefits under the 2015 Scheme, instead of an amount under section 82 of PSPJOA 2022, in respect of a compensatable loss that is a Part 4 tax loss.
  - Regulation 4R prevents an administering authority from paying an amount under section 82 of PSPJOA 2022, or additional benefits under regulation 4Q, unless the eligible member concerned or their personal representatives have made an application. It makes provision for the contents of such an application, requires administering authorities to determine the amounts payable to the eligible member or their personal representatives, and for appeals against such determinations.

- Regulation 4S provides that compensation under section 82 of PSPJOA 2022 or regulation 4Q may be paid from the pension fund concerned.
- Regulation 4T makes provision for the payment of interest in respect of the payment of an additional benefit under regulation 4Q.

Regulation 2(5) amends regulation 9 of the 2014 Regulations to provide that where a transfer payment is received into the 2015 Scheme, which includes a payment in respect of remediable service, in respect of a person from a different public service pension scheme, that payment entitles the person to benefits under the 2015 Scheme. So long as there has been no continuous break of more than 5 years in active membership since the remediable service was accrued, the transferred remediable service is included in the calculation of the provisional assumed benefits and the provisional underpin amount.

Regulation 3 makes consequential amendments to the 2018 Regulations, including the following:

Regulation 3(2) amends regulation 29 to provide that the enhancement of a member's pension received after their normal pension age, reduction, where the member receives their pension early, or adjustment, where the member reduces working hours or grade, does not apply to any final guarantee amount which has been added to the pension account in question.

Regulation 3(3) amends regulation 33 to provide that the pension used to calculate a member's commutation payments may under certain circumstances include a final guarantee amount or a survivor guarantee amount.

Regulation 3(4), (5), (7), (8), (9) and (10) exclude the final guarantee amount to which an eligible member may otherwise have been entitled from the pension the member would have been entitled to for the purpose of the calculation of survivor benefits.

Regulation 3(6) makes similar provision in relation to death grants.

Regulation 3(11) and (12) provides that compensation paid under section 82 of PSPJOA 2022 or additional benefits paid under regulation 4Q are liabilities for the purpose of actuarial valuations of a pension fund's liabilities.

Regulation 3(13) amends regulation 76 to disapply its provisions on the payment of interest in relation to sums in respect of which interest is payable under regulation 4T of the 2014 Regulations or regulation 14 of these Regulations.

Regulation 3(14) amends regulation 91 to provide that, where a non-Club Transfer out of the pension fund is applied for by an eligible member under paragraph (1) of that regulation, the value of the transfer is to be calculated in accordance with actuarial guidance issued by the Scottish Ministers, taking into account the member's provisional underpin amount and provisional assumed benefits.

Regulation 3(16) provides that an actuary determining the amount of a bulk transfer payment must take into account the member's provisional underpin amount and provisional assumed benefits.

Part 3 makes retrospective provision.

Regulation 4 makes general provision, including the persons to whom, or in respect of, the retrospective provision is made.

Regulation 5 makes provision in relation to members who retired or died before 1 October 2023. It is to be determined whether the person should be entitled to a final guarantee amount. If so, the amount is to be paid to the member's pension account or personal representatives.

Regulation 6 makes provision in relation to death grants in respect of members who died before 1 October 2023. Provisional assumed benefits and a provisional underpin amount are to be calculated in respect of the member and regulation 41 of the 2018 regulations is to be applied to recalculate the death grant, with any excess being paid to the original recipients of the death grant.

Regulation 7 makes provision in relation to pensioner member death grants in respect of members who died before 1 October 2023. The death grant payable in respect of the person is to be recalculated under regulation 44 of the 2018 regulations and the amount is to be paid to the original recipients of the death grant.

Regulation 8 makes provision in relation to survivor benefits in respect of members who died before 1 October 2023. Provisional assumed benefits and a provisional underpin amount are to be calculated in respect of the member and regulation 4M of the 2014 Regulations is to be applied to the person and any survivor guarantee amount is to be added to the original survivor member's pension account payable under regulation 39, 40, 42, 43, 45 or 46 of the 2018 Regulations.

Regulation 9 makes provision in relation to members who transferred into the fund before 1 October 2023 from certain schemes. Where that transfer results in the person being entitled to benefits or being credited pension under the 2015 Scheme, the 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.

Regulation 10 makes provision in relation to members who transferred out of the fund before 1 October 2023 under regulation 91 or 93 of the 2018 Regulations. Provisional assumed benefits and a provisional underpin amount are to be calculated in respect of the member and the transfer value is to be recalculated. Where a payment must be made, it is to be made to the trustees or manager of the new scheme for the benefit of the person.

Regulation 11 provides that where a person took a trivial commutation payment or lump sum under regulation 33(1) of the 2018 Regulations before 1 October 2023, it is to be determined whether the person is entitled to a final guarantee amount in accordance with regulations 4A to 4T of the 2014 Regulations.

Regulation 12 makes provision in relation to members who divorced or dissolved a civil partnership before 1 October 2023. 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 in accordance with actuarial guidance issued by the Scottish Ministers. Where the recalculated amount exceeds the original calculation, the annual pension awarded to the member's spouse or civil partner is to be recalculated based on that amount.

Regulation 13 makes provision for a member with underpin dates (within the meaning of regulation 4G of the 2014 Regulations) that occur before 1 October 2023, but who do not have a final underpin date (within the meaning of regulation 4H of those Regulations) before that date. This regulation makes provision for the calculation of a provisional underpin amount and provisional assumed benefits in relation to the member and for the modification of the provision applying a final underpin date to the member.

Regulation 14 makes provision for the payment of interest in respect of sums payable under this Part of the Regulations.

No impact assessment has been produced for this instrument as no, or no significant, impact on the private or voluntary sectors is foreseen.

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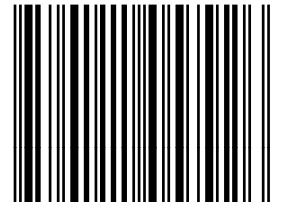
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