
STATUTORY INSTRUMENTS

2023 No. 972

**The Local Government Pension Scheme
(Amendment) (No. 3) Regulations 2023**

PART 2

Amendments relating to the statutory underpin

Amendment of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014

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

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

(a) in paragraph (6)—

(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(1);

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

(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 (6), insert—

(1) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1124480/The_Public_Service_Pensions_Exercise_of_Powers_Compensation_and_Information_Directions_2022.pdf. A hard copy is available on request to His Majesty’s Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

“(7) In regulations 4A to 4V, a reference to actuarial guidance issued by the Secretary of State has the meaning given in Schedule 1 to the 2013 Regulations.

(8) 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) This regulation and regulations 4B to 4V (provisions relating to the statutory underpin) apply in relation to an eligible member’s remediable service⁽²⁾ during the underpin period.

(2) An “eligible member” is a person who—

(a) has remediable service in relation to the 2014 Scheme; or

(b) has transferred remediable service into the 2014 Scheme from—

(i) a Chapter 1 scheme⁽³⁾,

(ii) a judicial scheme⁽⁴⁾, or

(iii) another local government scheme⁽⁵⁾.

(3) The “underpin period” is the period—

(a) beginning with 1st April 2014; and

(b) ending with the earlier of—

(i) 31st March 2022, and

(ii) the date on which the eligible member attains—

(aa) the normal retirement age applicable to them under the 2008 Scheme,
or

(bb) where the person was not a member of the 2008 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 any 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 pension account to which the final underpin date relates (“the pension account”) is to be increased by a percentage of the final guarantee amount that is equal to the percentage

(2) For the meaning of “remediable service”, see section 77 of PSPJOA 2022.

(3) For the meaning of “Chapter 1 scheme” see section 33 of PSPJOA 2022.

(4) For the meaning of “judicial scheme” see section 70 of PSPJOA 2022;

(5) For the meaning of “local government scheme” see section 86(1) of PSPJOA 2022.

of the retirement pension that the eligible member takes under regulation 30(6) of the 2013 Regulations.

(3) On each occasion where the amount of pension taken by the eligible member under regulation 30(6) of the 2013 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 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 paragraph (2) or (4) apply, the 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.

(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) Paragraphs (8) to (10) 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 30(6), but
 - (ii) before the end of the underpin period.

(8) 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.

(9) 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 their 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 (8).

(10) Where the eligible member's final assumed benefits, calculated in accordance with paragraph (9), are exceeded by their final underpin amount—

- (a) where the eligible member's next occurring final underpin date is that in regulation 4H(1)(a) to (e), the pension account is to be increased on the day after that date by an amount equal to the difference;
- (b) where the eligible member's next occurring final underpin date is that in regulation 4H(1)(f), regulation 4D(2) applies;
- (c) where the eligible member's next occurring final underpin date is that in regulation 4H(1)(g) or (h), regulation 4E(2) applies;
- (d) where the eligible member's next occurring final underpin date is that in regulation 4H(1)(i), regulation 4F(2) applies.

(11) In this regulation "relevant pension" is the pension built up in the 2014 Scheme before the member's first final underpin date.

Statutory underpin: lump sum payments

4D.—(1) This regulation applies to an eligible member whose final underpin date is that in 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⁽⁶⁾.

Statutory underpin: transfers

4E.—(1) This regulation applies to an eligible member whose final underpin date is that in 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 calculated in relation to the pension account; and

(b) either—

(i) where regulation 4H(1)(g) applies to the eligible member, regulation 96 of the 2013 Regulations applies (right to payment out of the pension fund), or

(ii) where regulation 4H(1)(h) applies to the eligible member, regulation 98 of the 2013 Regulations applies (bulk transfer (transfer of undertakings etc.)).

Statutory underpin: members taking a repayment of contributions

4F.—(1) This regulation applies in relation to an eligible member whose final underpin date is that in regulation 4H(i) (statutory underpin: final underpin date – receipt of repayment under regulation 18 of the 2013 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 2014 Scheme;

(b) the date on which the eligible member attains—

(i) the normal retirement age applicable to the eligible member under the 2008 Scheme, or

(ii) where the eligible member was not a member of the 2008 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 30(6) of the 2013 Regulations, the day before the date on which the eligible member’s reduced working hours or grade of employment begins.

(6) Instead, the final guarantee amount is to be used in the calculation of the lump sum, for which see regulation 34(2A)(b) of the 2013 Regulations (as inserted by regulation 3(4) of these Regulations).

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 30(1), (3) or (5) of the 2013 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 30(6) of the 2013 Regulations (flexible retirement), the day before the date on which the eligible member’s reduced working hours or grade of employment begins⁽⁷⁾;
- (c) the day before the date on which a pension under regulation 30(7) of the 2013 Regulations commences (pension by virtue of dismissal from employment);
- (d) the day before the date on which a pension under regulation 35(1) of the 2013 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 38(1) or (4) of the 2013 Regulations commences (pension on grounds of ill health for deferred members);
- (f) where the eligible member takes payment of a lump sum under regulation 34(1)(a) or (c) of the 2013 Regulations (trivial commutation) in relation to the pension, the day before the date used to calculate the sum;
- (g) where, in accordance with regulation 96(1) of the 2013 Regulations (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⁽⁸⁾, the date used to calculate the cash equivalent transfer value paid;
- (h) where a transfer payment is made in respect of the eligible member under regulation 98 of the 2013 Regulations (bulk transfers), 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 2013 Regulations relating to the pension account⁽⁹⁾.

(2) Where the eligible member has had a final underpin date by virtue of paragraph (1)(b), paragraph (1) subsequently 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) An 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 2014 Scheme over the underpin period if—

- (a) the eligible member had paid contributions under regulation 9 of the 2013 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;

⁽⁷⁾ See regulation 4C for cases where the eligible member takes flexible retirement.

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

⁽⁹⁾ See regulation 4F for the effect of receiving that repayment on the final guarantee amount.

- (bb) where, on the underpin date, the eligible member left active membership with an entitlement to Tier 1 or Tier 2 benefits under regulation 35(5) or (6) respectively of the 2013 Regulations, any adjustment under regulation 39 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 2013 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 2013 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 2013 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 2013 Regulations,
 - (iii) regulation 25(1) of the Administration Regulations 2008⁽¹⁰⁾, or
 - (iv) regulation 60(1) of the 1997 Regulations ⁽¹¹⁾;
- (c) the eligible member had not been awarded additional annual pension under regulation 31 of the 2013 Regulations;
- (d) the scheme had received no transfer value payment in respect of the eligible member, except for a transfer value payment received from—
 - (i) a Chapter 1 scheme,
 - (ii) a judicial scheme, or
 - (iii) another local government scheme,
 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 to the 2013 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 made to the eligible member’s pension account under regulation 10(5) or (6); and

⁽¹⁰⁾ S.I. 2008/239; revoked by S.I. 2014/525. There are other amendments not relevant to these Regulations.

⁽¹¹⁾ S.I. 1997/1612; amended by S.I. 1998/1238; S.I. 1999/1212; S.I. 2007/1488; revoked by S.I. 2008/238. There are other amendments not relevant to these Regulations

- (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⁽¹²⁾, 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 were pension credited to the eligible member's pension account on the earliest of—
- (a) 31st March in the Scheme year in which the absence ended;
 - (b) 31st March 2022; and
 - (c) the 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 (but see paragraph (4)).
- (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 2014 Scheme under regulation 35 of the 2013 Regulations with an entitlement to Tier 1 or Tier 2 benefits under regulation 35(5) or (6) of those Regulations respectively; or
 - (b) the eligible member died as an active member.
- (5) Where paragraph (3) does not apply by virtue of paragraph (4), 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 2013 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,
 - (ii) a judicial scheme, or
 - (iii) another local government scheme; or
 - (b) the aggregation of remediable service from the 2014 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.

⁽¹²⁾ For the meaning of "Scheme pays election" see Schedule 1 to the 2013 Regulations.

(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 2008 Scheme over the underpin period at the eligible member’s underpin date if—

- (a) the member had accrued membership under the 2008 Scheme, rather than the 2014 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 (contributions and reduced contributions) of the 2013 Regulations,
 - (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 2013 Regulations (additional pension contributions), and
 - (iii) where the member became entitled to Tier 1 or Tier 2 benefits under regulation 35 of the 2013 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⁽¹³⁾, 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 8 to 11 of the Benefits Regulations and those regulations apply in relation to the eligible member as if those Regulations were still in force at the underpin date;
- (d) the eligible member had been credited with 2008 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.

(13) S.I. 2007/1166; amended by S.I. 2008/1083, S.I. 2009/3150, S.I. 2010/2090, S.I. 2011/561 and S.I. 2012/1989.

(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 2014 Scheme with an entitlement to Tier 1 or Tier 2 benefits under regulation 35(5) or (6) of the 2013 Regulations respectively; or
- (b) the eligible member died.

(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 2013 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 2014 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 2014 Scheme as if the last day of scheme membership was the underpin date.

(3) Where regulation 30(4) of the 2013 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 30(5) (pension taken earlier than normal pension age) or (6) (pension by virtue of flexible retirement) of the 2013 Regulations applies to the eligible member and their benefits under the 2014 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 any additional pension under regulation 16 of the 2013 Regulations;
- (b) the member is taking payment of their pension before the normal pension age applicable to them under the 2014 Scheme; and
- (c) regulation 30(7)(a) of the 2013 Regulations (pension by virtue of dismissal from employment) applies to reduce the amount of pension payable,

the additional pension referred to in sub-paragraph (a) is also to be reduced in accordance with regulation 30(7)(a) of the 2013 Regulations.

(7) This regulation is subject to regulation 4N (statutory underpin: effect of uplift of Tier 3 benefits to Tier 2 benefits).

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 the provisional underpin amount would be increased if it were a pension to which the Pensions (Increase) Act 1971(**14**) 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 under regulations 8 to 11 of 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 Secretary of State.

(4) Where—

- (a) regulation 30(5) (pension taken earlier than normal pension age) or (6) (pension by virtue of flexible retirement) of the 2013 Regulations applies to an eligible member); and
- (b) the eligible member has not attained the age of 65,

apply an adjustment calculated in accordance with actuarial guidance issued by the Secretary of State.

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

(6) This regulation is subject to regulation 4N (statutory underpin: effect of uplift of Tier 3 benefits to Tier 2 benefits).

Statutory underpin: effect of cessation of Tier 3 benefits

4M.—(1) This regulation applies in relation to an eligible member—

- (a) who takes payment of Tier 3 benefits under regulation 35(7) of the 2013 Regulations; but

- (b) whose Tier 3 benefits subsequently cease by virtue of—
 - (i) the eligible member having been entitled to Tier 3 benefits for three years,
 - (ii) regulation 37(3) of the 2013 Regulations (starting employment), or
 - (iii) regulation 37(7)(c) of those Regulations (cessation of benefit following review).
- (2) Where this regulation applies—
 - (a) the eligible member ceases to be entitled to any future payments of any final guarantee amount to which the person became entitled by virtue of being entitled to Tier 3 benefits from the date those benefits cease; and
 - (b) regulations 4A to 4V apply in relation to the eligible member as if they had never previously had a final underpin date in relation to the pension account.

Statutory underpin: effect of uplift of Tier 3 benefits to Tier 2 benefits

- 4N.—**(1) This regulation applies in relation to an eligible member—
- (a) who takes payment of Tier 3 benefits under regulation 35(7) of the 2013 Regulations; and
 - (b) whose Tier 3 benefits subsequently cease—
 - (i) by virtue of being awarded Tier 2 benefits under regulation 37(7)(b) or (10) of the 2013 Regulations, or
 - (ii) for a different reason but who is awarded Tier 2 benefits following a request for review made by the eligible member under regulation 37(10) within 3 years of those benefits ceasing.
- (2) Where this regulation applies—
- (a) any final guarantee amount relating to the eligible member’s Tier 3 pension ceases to be payable;
 - (b) the eligible member’s provisional assumed benefits and provisional underpin amount are recalculated (in accordance with regulations 4I and 4J respectively) from the date on which the eligible member became entitled to Tier 3 benefits as if the member was entitled to Tier 2 benefits from that date; and
 - (c) the amounts recalculated under sub-paragraph (a) are to be used to recalculate the eligible member’s final assumed benefits and final underpin amounts (in accordance with regulations 4K and 4L respectively).
- (3) The recalculated final assumed benefits and final underpin amount are to be used to determine the eligible member’s final guarantee amount (“the recalculated final guarantee amount”).
- (4) The recalculated final guarantee amount is to have applied to it such revaluation adjustment or index rate adjustment as would have applied had it been in payment from the date the Tier 3 benefits commenced.
- (5) The recalculated final guarantee amount is to be added to the eligible member’s pension account.
- (6) Notwithstanding regulation 4B(3), the amount to be added under paragraph (5) is to be added from the date the eligible member is awarded Tier 2 benefits.

Statutory underpin: survivor’s guarantee amount calculation

- 4O.—**(1) This regulation applies where—

- (a) an eligible member dies; and
 - (b) as a result, a survivor member's pension becomes payable under regulation 41, 42, 44, 45, 47 or 48 of the 2013 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) of the 2013 Regulations as at the date of the eligible member's death;
 - (b) where, in the opinion of an IRMP, the member was, at the date of their death, in part time service wholly or partly as a result of the condition that caused or contributed to their death, the increase referred to in sub-paragraph (a) is to take no account of any reduction in pensionable pay due to such reduction in service as is attributable to that condition; 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 2014 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) 31st March 2022, and
 - (ii) the date on which the eligible member would have attained—
 - (aa) the normal retirement age applicable to them under the 2008 Scheme; or
 - (bb) where the person was not a member of the 2008 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 member's total membership under regulation 20(2) of the Benefits Regulations up to and including 31st March 2022 if the 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 under regulations 8 to 11 of the Benefits Regulations ends, and
 - (ii) ending with the date of the eligible member's death.

(7) Where, in the opinion of the scheme manager, the eligible member was in part-time service at the date of their death wholly or partly as the result of the condition that caused or contributed to the member's death, for the purposes of calculating the adjusted underpin amount, no account is to be taken of any reduction in membership due to such reduction in service as is attributable to that condition.

(8) 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 2013 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 | 41(4), 44(4), 47(4) | 49/160 |
| Child's pension: one eligible child and survivor pension paid to deceased member's partner | 42(4), 45(4), 48(4) | 49/320 |
| Child's pension: more than one eligible child and survivor pension paid to deceased member's partner | 42(5), 45(5), 48(5) | 49/160 |
| Child's pension: one eligible child and no survivor pension paid to deceased member's partner | 42(9), 45(9), 48(9) | 49/240 |
| Child's pension: more than one eligible child and no survivor pension paid to deceased member's partner | 42(10), 45(10), 48(10) | 49/120 |

(9) In this regulation, "IRMP" has the meaning given in Schedule 1 to the 2013 Regulations.

Statutory underpin: death grants

4P.—(1) This regulation applies where—

- (a) an eligible member who is a deferred member or deferred pensioner member of the 2014 Scheme dies; and
- (b) as a result, a death grant becomes payable under regulation 43 of the 2013 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 43(3) of the 2013 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 2014 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 final pay period used for the purposes of calculating the eligible member's final pay under regulations 8 to 11 of the Benefits Regulations ends; and
- (b) ending with date of the eligible member's death.

Statutory underpin: multiple pension accounts

4Q.—(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 member's active membership in respect 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 2008 Scheme; or
- (b) where the eligible member was not a member of the 2008 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 2008 Scheme; or
- (b) where the eligible member was not a member of the 2008 Scheme, the age of 65.

(7) Where paragraph (5) or (6) applies—

- (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 4O, or deferred assumed benefits and deferred underpin amount under regulation 4P, 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 in relation to 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 4V.

(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 2014 Scheme in relation to the pension account that becomes the active pension account at the same time as holding active membership of the 2014 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 2013 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

4R.—(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⁽¹⁵⁾ (creation of pension debits and credits), calculated in accordance with regulation 4 of the Pension Sharing (Valuation) Regulations 2000⁽¹⁶⁾ (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 Secretary of State.

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

Payment of indirect compensation

4S.—(1) An administering authority may, in respect of a compensatable⁽¹⁷⁾ loss that is a Part 4 tax loss⁽¹⁸⁾ 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 2014 Scheme.

(2) This regulation is subject to the requirements of regulation 4T (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

⁽¹⁵⁾ 1999 c. 30.

⁽¹⁶⁾ S.I. 2000/1052; regulation 4 was substituted by S.I. 2016/289.

⁽¹⁷⁾ For the meaning of “compensatable” see section 82(3) of PSPJOA 2022.

⁽¹⁸⁾ For the meaning of “Part 4 tax loss” see section 82(7) of PSPJOA 2022.

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 actuarial advice 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.

Applications for compensation

4T.—(1) An administering authority may pay compensation to a person in respect of the 2014 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 4S only after the appropriate person has made an application to the administering authority in such form and manner as determined by the administering authority, subject to paragraph (2).

(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—

- (a) a calculation obtained by the appropriate person from HMRC (by virtue of HMRC's compensation function by virtue of 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⁽¹⁹⁾.
- (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

4U. An administering authority may pay compensation to a person in respect of the 2014 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 4S from the pension fund concerned.

Interest on indirect compensation

4V.—(1) This regulation applies where an administering authority pays additional benefit to an eligible member under regulation 4S (indirect compensation).

(2) Interest is to be paid in respect of the additional benefit in accordance with regulation 14 of the Local Government Pension Scheme (Amendment) (No. 3) Regulations 2023.”.

- (5) In regulation 9—
 - (a) in paragraph (1), after “service”, in the second place it appears, insert “that is not remediable service”;
 - (b) after paragraph (1), insert—
 - “(1ZA) Where a transfer payment is received into the 2014 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 2014 Scheme.
 - (1ZB) 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 (1ZA) applies is to be treated as a pension to which regulations 4A to 4V apply.”;
 - (c) omit paragraph (1A).
- (6) Omit regulation 24(4)(a) (underpin age for a person in relation to whom regulation 15 of the 2008 Scheme Transitional Regulations has effect).

Amendment of the Local Government Pension Scheme Regulations 2013

- 3.**—(1) The 2013 Regulations are amended as follows.

(19) 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) In regulation 28 (deferred pensioner member accounts), after paragraph (2), insert—
- “(2A) The amount of accrued pension referred to in paragraph (2) is not to include—
- (a) any final guarantee amount calculated in relation to the member’s discontinued Tier 3 benefits; or
 - (b) any revaluation adjustment or index rate adjustment that has been applied to the retirement pension account as a consequence of a final guarantee amount calculated in relation to discontinued Tier 3 benefits.”.

(3) In regulation 30 (retirement benefits), after paragraph (12A), insert—

“(12B) The references to an enhancement in paragraph (4), a reduction in paragraph (5) and an adjustment in paragraph (6) do not apply to any final guarantee amount that has been added to the pension account under regulation 4B or 4C of the 2014 Regulations.”.

(4) In regulation 34 (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 2014 Regulations; 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 meaning given in regulation 4A(2) of the 2014 Regulations;
 - “survivor guarantee amount” has the meaning given in regulation 4O(3) of the 2014 Regulations.”.

(5) In regulation 41(4)(a) (survivor benefits: partners of active members), after “draw”, insert “, excluding any final guarantee amount under regulation 4B or 4C of the 2014 Regulations.”.

(6) In regulation 42(4)(a), (5)(a), (9)(a) and (10)(a) (survivor benefits: children of active members), in each case, after “draw”, insert “, excluding any final guarantee amount under regulation 4B or 4C of the 2014 Regulations.”.

(7) In regulation 43 (death grants: deferred members, pension credit members and deferred pensioner members)—

 - (a) in paragraph (3)—
 - (i) after “annually” insert “, excluding any final guarantee amount under regulation 4B or 4C of the 2014 Regulations.”;

- (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), before “multiplied by 5”, insert—
 - “(c) it included any deferred guarantee amount calculated under regulation 4P of the 2014 Regulations.”;
- (b) after paragraph (3A), insert—
 - “(3B) In paragraph (3) “deferred guarantee amount” has the meaning given in regulation 4P(3) of the 2014 Regulations.”.
- (8) In regulation 44(4) (survivor benefits: partners of deferred members and deferred pensioner members), in the words before sub-paragraph (a), after “draw”, insert “excluding any final guarantee amount under regulation 4B or 4C of the 2014 Regulations”.
- (9) In regulation 45(4), (5), (9) and (10) (survivor benefits: children of deferred members), in the words before sub-paragraph (a), in each case, after “draw”, insert “excluding any final guarantee amount under regulation 4B or 4C of the 2014 Regulations”.
- (10) In regulation 47 (survivor benefits: partners of pensioner members), after paragraph (7), insert—
 - “(8) 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 under regulation 4B or 4C of the 2014 Regulations.”.
- (11) In regulation 48 (survivor benefits: children of pensioner members), after paragraph (10A), insert—
 - “(10B) 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 under regulation 4B or 4C of the 2014 Regulations.”.
- (12) In regulation 62 (actuarial valuations of pension funds), after paragraph (6), insert—
 - “(6A) 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 4S of the 2014 Regulations are liabilities for the purpose of the actuarial valuation under paragraph (1)(a).”.
- (13) In regulation 64 (special circumstances where revised actuarial valuations and certificates must be obtained), after paragraph (2), insert—
 - “(2ZAA) 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 4S of the 2014 Regulations are liabilities for the purpose of the actuarial valuation under paragraph (2)(a).”.
- (14) In regulation 81 (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 4V of the 2014 Regulations; or
 - (b) regulation 14 of the Local Government Pension Scheme (Amendment) (No. 3) Regulations 2023.”;
- (15) In regulation 96 (rights to payment out of pension fund)—
 - (a) after paragraph (1A), insert—
 - “(1B) 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 Secretary of State, taking into account the member’s

provisional assumed benefits and provisional underpin amount, calculated in accordance with regulations 4I and 4J of the 2014 Regulations.”.

(b) after paragraph (3), insert—

“(4) “Eligible member” has the same meaning as in regulation 4A(2) of the 2014 Regulations.”.

(16) In regulation 98 (bulk transfers etc.), at the end, insert—

“(8) This regulation is subject to regulation 10(6) of the Local Government Pension Scheme (Amendment) (No. 3) Regulations 2023 (transfer payments out of the fund before 1st October 2023).”.

(17) In regulation 99 (calculation of amount of transfer payment), after paragraph (2), insert—

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

(18) In Schedule 1 (interpretation)—

(a) at the beginning, insert—

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

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

““final guarantee amount” has the meaning given in regulation 1(6) of the 2014 Regulations;”;

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

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