



Government  
Actuary's  
Department

# The Local Government Pension Scheme (Scotland)

Guidance for applying McCloud remedy to  
retrospective cases (before 1 October 2023)

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Sections 6, 7 and 8 are currently blank. We intend to issue an updated version of this note, including those sections, in due course.

## 1. Introduction

- 1.1 We have been requested by the Scottish Public Pensions Agency (SPPA) to provide guidance on how actuarial guidance should be applied to remedy the benefits calculated in the past for members eligible for the statutory underpin.
- 1.2 The Local Government Pension Scheme (Remediable Service) (Scotland) Regulations 2023 (SI 2023/240) came into force on 1 October 2023. Part 3 of those regulations sets out the retrospective McCloud remedy to be applied to eligible members who had a relevant benefit event before 1 October 2023.
- 1.3 The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 (the 2014 Scheme Transitional Regulations) sets out the calculation of the statutory underpin.
- 1.4 This guidance sets out how to apply the McCloud remedy for the following cases:
- Retirement recalculations: final underpin date before 1 October 2023
  - Transfer top-up payments: original calculation date before 1 October 2023
  - Trivial commutation top-up payments: original calculation date before 1 October 2023
  - Scheme pays pension offset: final underpin date before 1 October 2023
  - Cash equivalents for divorce: PSO effective date between 1 April 2015 and 30 September 2023
  - Pension credits: PSO effective date between 1 April 2015 and 30 September 2023
  - Pension debits: Valuation day between 1 April 2015 and 30 September 2023
- 1.5 Please note that this guidance is in respect of the calculation (or recalculation) required at the relevant date for remedy only. Where a member or their personal representatives are owed payment, interest should be applied in line with relevant legislation and tax considerations should be made as required.
- 1.6 This guidance has been carried out in accordance with the applicable Technical Actuarial Standards: TAS 100 issued by the Financial Reporting Council (FRC). The FRC sets technical standards for actuarial work in the UK.

### **Implementation and review**

- 1.7 Scottish Ministers are required to consult with the Scheme Actuary before issuing actuarial guidance under the Local Government Pension Scheme (Scotland) Regulations 2018 (Regulation 2(3) of the 2018 Regulations).
- 1.8 As part of this consultation, SPPA has asked GAD, as Scheme Actuary, to recommend the appropriate application of actuarial guidance in respect of applying the McCloud remedy to the retrospective cases listed above. This document forms GAD's recommendation.
- 1.9 This guidance has effect only when it is issued by the Scottish Ministers in accordance with Regulation 2(3) of the 2018 Regulations, and is subject to the implementation instructions provided at that time.

## LGPS (Scotland): Retrospective cases

- 1.10 This guidance has been written for pension administrators and assumes knowledge of general pension terminology, and familiarity with pension calculations for the Local Government Pension Scheme (Scotland). Any questions concerning the application of this guidance should in the first instance be referred to SPPA for onward transmission to GAD.
- 1.11 Nothing in this guidance should be read as overriding the regulations which govern the Scheme.

### **Third party reliance**

- 1.12 This guidance has been prepared for use by SPPA and the scheme administrators for the purposes of applying the McCloud remedy to historic cases. This guidance may be published on the SPPA and the scheme administrator's website but must not otherwise be reproduced, distributed or communicated in whole or in part to any other person without GAD's prior written permission.
- 1.13 Other than SPPA and the scheme administrators, no person or third party is entitled to place any reliance on the contents of this guidance, except to any extent explicitly stated herein. GAD has no liability to any person or third party for any action taken or for any failure to act, either in whole or in part, on the basis of this guidance, whether or not GAD has agreed to the disclosure of its advice to the third party.

## 2. Retirement recalculations

- 2.1 This section applies to retirement recalculations where the final underpin date was before 1 October 2023.
- 2.2 For members who retired before 1 October 2023, Regulation 5 of the 2023 Regulations applies. That regulation sets out that it should be determined whether those members are or were entitled to a final guarantee amount. If they are or were entitled, then an amount may need to be paid to the member or, if the member has died, to their personal representatives. The administrator is required to consider whether it is necessary to calculate (or recalculate) the final guarantee amount in respect of members in line with Regulations 4A to 4T of the 2014 Scheme Transitional Regulations.

**To determine the final guarantee amount**, the administrator should calculate the final assumed benefits and final underpin amount as at the final underpin date, applying early and late retirement factors as required in Regulations 4K and 4L of the 2014 Scheme Transitional Regulations and using the factors effective at the final underpin date, and using the statutory underpin approach set out in the following relevant guidance notes:

- Where early retirement reduction factors apply, *The Local Government Pension Scheme (Scotland) Early payment of pension Guidance note*, dated 14 May 2024 [paragraphs 2.10 to 2.13].
- Where late retirement increase factors apply, *Local Government Pension Scheme (Scotland) Late Retirement Guidance note*, dated 14 May 2024 [paragraphs 2.13 to 2.15].

- 2.3 Where the benefits taken by the member were not subject to early retirement reduction factors (for example, benefits taken on ill health retirement, redundancy or where the reduction was waived by the employer), then no early retirement reduction factors should apply in determining the final assumed benefits and final underpin amount. However, where the member's provisional assumed benefits includes any additional pension under Regulation 16 of the 2018 Regulations, the additional pension is subject to early retirement reduction factors as set out in Regulation 4K(6) of the 2014 Scheme Transitional Regulations.
- 2.4 The calculated final guarantee amount should be applied as required under the relevant Regulation 5(3) to 5(6) of the 2023 Regulations and allowing for Regulation 5(7) as required.
- 2.5 For the avoidance of doubt, although the above guidance notes apply in relation to the application of early and late retirement factors in the statutory underpin calculations, it is the early and late retirement factors which would have applied at the final underpin date which should be used.
- 2.6 The tables below summarise the guidance notes and factors that were implemented between 1 April 2015 and 30 September 2023. This provides a summary only; administrators should ensure the early and late retirement factors in effect at the final underpin date are used:

## Early retirement

Relevant documents	Date of document	Guidance operative / factors effective from
<b>The Local Government Pension Scheme (Scotland) Early Payment of Pension – Guidance note</b>	26 February 2015	1 April 2015
<b>The Local Government Pension Scheme (Scotland) Consolidated Factor spreadsheet</b>	12 March 2019	12 March 2019
<b>Local Government Pension Scheme (Scotland) Early payment of pension – Guidance note</b>	17 April 2020	28 April 2020
<b>Local Government Pension Scheme (Scotland) Consolidated Factor Spreadsheet</b>	30 June 2023	3 July 2023

## Late retirement

Relevant documents	Date of document	Guidance operative / factors effective from
<b>The Local Government Pension Scheme (Scotland) Late Retirement – Guidance note</b>	26 February 2015	1 April 2015
<b>The Local Government Pension Scheme (Scotland) Late Retirement – Guidance note</b>	23 January 2017	24 June 2017
<b>Local Government Pension Scheme (Scotland) Consolidated Factor Spreadsheet</b>	10 September 2019	1 October 2019
<b>Local Government Pension Scheme (Scotland) Late Retirement – Guidance note</b>	10 September 2019	1 October 2019
<b>Local Government Pension Scheme (Scotland) Consolidated Factor Spreadsheet</b>	30 June 2023	1 September 2023

Note: for late retirement calculations after 1 October 2019, as well as the guidance note relevant for the retirement date, as set out in that guidance note, earlier versions of the guidance note may also need to be referred to.

### 3. Transfer top-up payments

- 3.1 This section applies to transfer top-up payments where the original calculation date was before 1 October 2023. This excludes bulk transfer payments, and Club transfer payments.
- 3.2 Regulation 10(4) of the 2023 Regulations sets out that the value of a transfer out taken under Regulation 91 of the 2018 Regulations by a member eligible for the statutory underpin before, or calculated as at a date before, 1 October 2023 should 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.

**When recalculating the transfer amount**, the actuarial guidance which should be referred to is the transfer out (CETV) guidance and factors in effect at the original calculation date, with allowance for the statutory underpin in line with the calculations set out in paragraphs 4.5 to 4.15 of *The Local Government Pension Scheme (Scotland) Individual Incoming & Outgoing Transfers Guidance* note, dated 29 February 2024.

- 3.3 Where the recalculated transfer value exceeds the original transfer value, the administering authority must take reasonable steps to pay the difference (including allowance for interest as may be required) to the original receiving scheme.
- 3.4 Where the member is a Category A or Category B member, as defined in Regulation 4 of the 2023 Regulations, the administrator may carry out the above calculation in respect of the statutory underpin only; i.e. without recalculation of the member's original transfer value. Where the transfer amount in respect of the statutory underpin is greater than zero, this can be treated as the 'difference' in paragraph 3.3 above.
- 3.5 Where the member is a Category C member, if part of the original transfer value was in respect of the original statutory underpin calculation, then a recalculation of the statutory underpin only can be carried out (as per paragraph 3.4 above), and the transfer amount from this recalculation can be compared to the amount originally included in the transfer payment in respect of the underpin.
- 3.6 For the avoidance of doubt, although the approach in the above guidance note applies in relation to the statutory underpin calculations required to determine any transfer top up payments, it is the transfer factors in effect at the final underpin date which should be applied.
- 3.7 The table below summarises the guidance notes and factors that were implemented between 1 April 2015 and 30 September 2023. This provides a summary only; administrators should ensure the transfer factors in effect at the final underpin date are used:

LGPS (Scotland): Retrospective cases

Relevant documents	Date of document	Guidance operative / factors effective from
<b>The Local Government Pension Scheme (Scotland) Individual Incoming &amp; Outgoing Transfers – Guidance note</b>	2 April 2015	1 April 2015
<b>The Local Government Pension Scheme (Scotland) Individual Incoming &amp; Outgoing Transfers – Guidance note</b>	20 May 2015	20 May 2015
<b>The Local Government Pension Scheme (Scotland) – Actuarial Factors</b>	19 April 2016	16 April 2016
<b>The Local Government Pension Scheme (Scotland) – Consolidated Factor Spreadsheet</b>	13 November 2018	29 October 2018
<b>Local Government Pension Scheme (Scotland) Individual Incoming &amp; Outgoing Transfers – Guidance note</b>	14 August 2020	1 November 2020
<b>The Local Government Pension Scheme (Scotland) – Consolidated Factor Spreadsheet</b>	1 June 2023	1 June 2023



## 4. Trivial commutation top-up payments

- 4.1 This section applies to trivial commutation top-up payments where the original calculation date was before 1 October 2023.
- 4.2 The calculations set out in this section include those which apply to small pot payments and trivial commutation lump sum death benefits for members eligible for the statutory underpin with a calculation date before 1 October 2023.
- 4.3 Regulation 11(2) of the 2023 Regulation sets out that Regulations 4A to 4T of the 2014 Scheme Transitional Regulations should be applied to determine a final guarantee amount.

**For a commutation of member pension:** to determine the final guarantee amount, the administrator should calculate the final assumed benefits and final underpin amount as at the final underpin date, applying the early and late retirement factors effective at the final underpin date and using the statutory underpin approach set out in the following relevant guidance notes:

- Where early retirement reduction factors apply, *The Local Government Pension Scheme (Scotland) Early payment of pension Guidance note*, dated 14 May 2024 [paragraphs 2.10 to 2.13].
- Where late retirement increase factors apply, *Local Government Pension Scheme (Scotland) Late Retirement Guidance note*, dated 14 May 2024 [paragraphs 2.13 to 2.15].

**For a commutation of survivor's pension:** the survivor guarantee amount should be recalculated in line with Regulation 4M of the 2014 Scheme Transitional Regulations.

- 4.4 The original payment should then be recalculated in accordance with actuarial guidance issued by Scottish Ministers.

**To recalculate the original payment,** the administrator should apply the approach set out in the Trivial Commutation guidance note that was effective at the date of the original calculation, with allowance for the final guarantee amount in the Member pension amount and/or the survivor's guarantee amount in the Dependant's pension amount as relevant. The final guarantee amount and survivor's guarantee amount are the recalculated values set out in paragraph 4.3.

- 4.5 Where the recalculated payment exceeds the original payment, the difference (with allowance for interest as required) should be paid to the member or the member's representatives as relevant.

## **5. Scheme pays pension offsets**

- 5.1 This section applies to scheme pays pension offsets where the member's final underpin date was before 1 October 2023.
- 5.2 Members who retired before 1 October 2023 with an increase to their pension under Regulation 4(4) of the 2014 Scheme Transitional Regulations may have been subject to annual allowance in their retirement year.
- 5.3 Where members in 5.2 elected to use the scheme pays mechanism to meet the tax charge and where the pension offset applied is then recalculated excluding any increase to their pension under Regulation 4(4) of the 2014 Scheme Transitional Regulations, this re-calculation should be based on the scheme pays factors in force on the date the member elected for scheme pays.

## **6. Cash equivalents for divorce**

6.1 << *To be added in due course* >>

## **7. Pension credits**

7.1 << *To be added in due course* >>

## **8. Pension debits**

8.1 << *To be added in due course* >>