

2021 No.

PUBLIC SERVICE PENSIONS

**The Local Government Pension Scheme (Scotland)
(Amendment) Regulations 2021**

Made - - - - - ***
Laid before the Scottish Parliament ***
Coming into force - - - - - ***

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1 and 12 of the Public Service Pensions Act 2013(a) and all other powers enabling them to do so.

In accordance with section 21 of that Act, the Scottish Ministers consulted the representatives of such persons as appeared to the Scottish Ministers likely to be affected by these Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Scotland) (Amendment) Regulations 2021 and come into force on [].

(2) These Regulations have effect from 1 June 2018 other than for the purposes of—

- (a) regulations 4, 5(a) to (c), 6(a)(i), 6(c)(i) and 13 which have effect from 1 April 2015,
- (b) regulations 5(d), 8, 10, 11 and 12 which have effect from the date these Regulations come into force,
- (c) regulations 15 and 16 which have effect from 8 April 2019

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

2. The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014(b) are amended in accordance with regulations 3 to 6.

3. In regulation 3 (membership before 1st April 2015)(c)—

(a) for paragraph (13) substitute—

“(13) A person who is a deferred member of one of the Earlier Schemes whose benefits under those Schemes have not come into payment, is not in local government service in employment from which the benefits arose, and who has attained the age of 55 or over, may elect to receive immediate payment of the benefits, reduced by the amount shown as appropriate in actuarial guidance issued by the Scottish Ministers.”,

(a) 2013 c. 25.
(b) S.S.I. 2014/233.
(c) Regulation 3 was relevantly amended by S.S.I. 2015/87 and S.S.I. 2019/161.

(b) after paragraph (13) insert—

“(13A) An election under paragraph (13) must be made by notice in writing to the appropriate administering authority.

(13B) Where a member makes an election under paragraph (13)—

- (a) the benefits become payable immediately,
- (b) for the purposes of calculating benefits payable in accordance with the 1987 Scheme, the retirement pension is not to be reduced under paragraph (13) to less than the rate set out in regulation E3(15) of the 1987 Regulations,
- (c) for the purposes of calculating benefits payable in accordance with the 1998 Scheme, the retirement pension is not to be reduced under paragraph (13) to less than the aggregate of the amounts set out in regulation 35(5)(a) and (b) of the 1998 Regulations,
- (d) for the purposes of regulation 17, the reduction under paragraph (13) is treated as if it was made under regulation E3(14) of the 1987 regulations, regulation 30 of the 1998 Regulations or regulation 30 of the Benefit Regulations, as the case may be, and
- (e) for the purposes of regulation 21(5) of the Benefit Regulations, the reduction under paragraph (13) is treated as if it had been made under regulation 30 of the Benefit Regulations.

(14) Regulation 150(7) (“appropriate rights”/ “pension credit benefits” under the scheme) of the 1998 Regulations has effect with the substitution of the references to age 60 with references to age 55.

(15) Regulation 95(7) (“appropriate rights” / “pension credit benefits” under the scheme) of the Administration Regulations has effect with the substitution of the references to age 60 with references to age 55.”

4. In regulation 4 (statutory underpin)—

- (a) In paragraph (5), after “entitled to under the 2015 Scheme” insert “including any applicable actuarial adjustment”,
- (b) In paragraph (6), after “entitled to under the 2009 Scheme” insert “including any applicable actuarial adjustment”,

5. In regulation 17 (survivor benefits)(a)—

(a) after paragraph (9) insert—

“(9A) For the purposes of calculating survivor pensions under the Earlier Schemes —

- (a) subject to paragraphs (13) and (13A), any calculation of the survivor pension payable to a person who is the surviving civil partner of a member or who is the survivor of a married same sex couple is to be on the basis that the survivor is a female survivor of a male married member, irrespective of the sex of the member;
- (b) subject to paragraphs (13) and (13A), any calculation of the survivor pension payable to a male survivor of a female married member is to be on the basis that the survivor is a female survivor of a male married member;
- (c) any calculation of the survivor pension payable under the 2009 Scheme to a person who is the surviving cohabiting partner where the cohabiting partnership was entered into before the member’s active membership ceased is to be on the basis that the survivor is a female survivor of a male married member; and
- (d) where a survivor pension is to be calculated by reference to only the member’s service or membership in contracted out employment, the survivor pension is instead calculated by reference to the membership accrued by the member after 5 April 1978.”

(a) Regulation 17 was relevantly amended by S.S.I. 2015/87 and S.S.I. 2015/448.

(b) omit paragraphs (10) to (12),

(c) for paragraph (13), substitute—

“(13) If the following service or membership is not included in the calculation of a survivor pension under the Earlier Schemes but would be included if paragraph (9A)(a) and (b) did not apply, the relevant service or membership is included in the calculation of the survivor pension—

(a) any period of service listed in regulation E6(3A) of the 1987 Regulations; and

(b) relevant additional membership listed in regulation 41(4) of the 1998 Regulations.

(13A) If the service or membership listed in regulation E6(3A) of the 1987 Regulations or regulation 41(4) of the 1998 Regulations is not otherwise included in the calculation of the survivor pension under the Earlier Schemes, it is included for survivor pensions to—

(a) the male survivor of a female married member,

(b) the survivor of a married same sex couple,

(c) the surviving civil partner of a member,

(d) the female survivor of a male married member where the marriage took place after the member’s active membership ceased but the survivor was married to the member at any time whilst the member was in active membership of the Scheme after 31 March 1972,

(e) the cohabiting partner of a member where the partner was cohabiting with the member at any time whilst the member was in active membership of the Scheme after 31 March 2009.

(13B) In regulation E6(3A) of the 1987 Regulations and 41(4) of the 1998 Regulations—

(a) other than for the purposes of survivor pensions payable to cohabiting partners, references to 5 April 1988 shall be read as references to 5 April 1978,

(b) any additional membership referred to in regulation 41(4) of the 1998 Regulations shall include additional membership referred to in the equivalent provisions in the 2009 Scheme.

(13C) For the purpose of calculating survivor pensions under the Earlier Schemes, any membership attributable to a transfer value accepted by the Scheme—

(a) after 5 April 1988 counts as membership accrued by the member after 5 April 1988; or

(b) after 5 April 1978 counts as membership accrued by the member after 5 April 1978.

(d) after paragraph (15) insert—

“(16) Any calculation of a survivor pension payable under the Earlier Schemes, other than to a female survivor of a male married member or a cohabiting partner, in respect of a member who died on or after 5 December 2005 and before 1 April 2015 must be recalculated under the Earlier Regulations as if paragraphs (9A), (13), (13A) and (13B) had had effect on the date the member died.”

6. In schedule 2 (transitional provision – the 85 year rule)(a)—

(a) in paragraph 1(1)—

(i) for head (a) substitute “(a) regulation 30(1) (elections for early payment) of the 1998 Regulations or regulation 30(1) (choice of early payment of pension) of the Benefits Regulations;”,

(ii) in head (c) omit “or”, and

(iii) after head (d) insert “or (e) regulation 3(13) of these regulations if the member is aged 60 or over at the date of making the request”,

(a) Schedule 2 was relevantly amended by S.S.I. 2019/161.

- (b) for paragraph 1(2) substitute—
 - “(2) Sub-paragraph (4) applies where—
 - (a) paragraph 1(c) would otherwise apply, but the member's Scheme employer does not agree that paragraph 1(3) should apply; or
 - (b) paragraph 1(e) would otherwise apply, but the member is aged under 60 at the date of making the request.”,
- (c) in paragraph 1(3)(a)—
 - (i) after “with” insert “regulation 30(4) of the 1998 Regulations,”,
 - (ii) after “2018 Regulations” insert “or regulation 3(13) of these regulations”.

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

7. The Local Government Pension Scheme (Scotland) Regulations 2018(a) are amended in accordance with regulations 8 to 14.

8. In regulation 16(7) (additional pension contributions), omit “; and (b) the gender of the member”.

9. In regulation 40(9)(a)(v) (survivor benefits: children of active members), for “39/240” substitute “49/240”.

10. In regulation 60(1)(a) (actuarial valuations of pension funds), after “pension funds” insert “both on an ongoing and a cessation basis”.

11. In regulation 61 (special circumstances where revised actuarial valuations and certificates must be obtained)—

(1) after paragraph (2) insert—

“(2A) An actuarial valuation as at the exit date obtained in accordance with paragraph (2) will remain fixed for a period of 90 days.”.

(2) after paragraph (4) insert—

“(4A) An administering authority may enter into a written agreement with an exiting Scheme employer for that employer to defer their obligation to make an exit payment and continue to make contributions at the secondary rate (“a deferred debt agreement”).

(4B) An administering authority may enter into a deferred debt agreement with an exiting Scheme employer where—

- (a) the last active member in respect of that Scheme employer has left the Scheme;
- (b) the funding strategy mentioned in regulation 56 (funding strategy statement) has set out the administering authority’s policy on deferred debt agreements; and
- (c) the administering authority has—
 - (i) consulted the exiting Scheme employer; and
 - (ii) had regard to the views of an actuary appointed by the administering authority.

(4C) Where a deferred debt agreement has been entered into under paragraph (4A)—

- (a) the exiting employer becomes a deferred employer on the date specified in the agreement;
- (b) the deferred employer must—
 - (i) meet all requirements on Scheme employers except the requirement to pay the primary rate of contributions as determined under regulation 60(8)(a) (actuarial valuations of pension funds); and

- (ii) pay the secondary rate of contributions as determined under regulation 60(8)(b) as revised from time to time following an actuarial valuation until the termination of the deferred debt agreement.

(4D) A deferred debt agreement must include express provision for it to remain in force for a specified period, which may be varied by agreement of the administering authority and the deferred employer.

(4E) A deferred debt agreement terminates on the first date on which one of the following events occurs—

- (a) the deferred employer enrolls new active members;
- (b) the period specified, or as varied, under paragraph (4D) elapses;
- (c) the take-over, amalgamation, insolvency, winding up or liquidation of the deferred employer;
- (d) the administering authority serves a notice on the deferred employer that the administering authority is reasonably satisfied that the deferred employer's ability to meet the contributions payable under the deferred debt arrangement has weakened materially or is likely to weaken materially in the next 12 months; or
- (e) an actuary appointed by the administering authority assesses that the deferred employer has paid sufficient secondary contributions to cover the exit payment that would have been due under paragraph (1) if the employer had become an exiting employer on the calculation date.

(4F) Paragraph (4E)(c) does not apply where the administering authority serves a notice on the deferred employer that the administering authority is satisfied that the event would not be likely to significantly weaken the deferred employer's ability to meet the contributions payable under the deferred debt agreement in the next 12 months.

(4G) On the termination of a deferred debt agreement under paragraph (4E) a deferred employer becomes an exiting employer in relation to the relevant fund for the purposes of this regulation.”.

(3) before the definition of “exit credit” in paragraph (10) insert—

“deferred employer” means a Scheme employer which enters into a deferred debt agreement with an administering authority.”.

12. After regulation 61 (special circumstances where revised actuarial valuations and certificates must be obtained), insert—

“Revision of rates and adjustments certificate: Scheme employer contributions

61A.—(1) An administering authority may obtain a revision of the rates and adjustments certificate under regulation 60 (actuarial valuations of pension funds) showing any resulting changes to the contributions of a Scheme employer or employers where—

- (a) the funding strategy mentioned in regulation 56 (funding strategy statement) sets out the administering authority's policy on amending contributions between valuations; and
- (b) one of the following conditions applies—
 - (i) it appears likely to the administering authority that the amount of the liabilities arising or likely to arise has changed significantly since the last valuation;
 - (ii) it appears likely to the administering authority that there has been a significant change in the ability of the Scheme employer or employers to meet the obligations of employers in the Scheme; or
 - (iii) a Scheme employer or employers have requested a review of Scheme employer contributions and have undertaken to meet the costs of that review.

(2) In revising the certificate, an administering authority must—

- (a) consult the Scheme employer or employers; and

- (b) have regard to the views of an actuary appointed by the administering authority.

Revision of actuarial certificates: exit payments

61B.—(1) Where the funding strategy mentioned in regulation 56 (funding strategy statement) sets out the administering authority’s policy on spreading exit payments, that administering authority may obtain a revision of the rates and adjustments certificate under regulation 60 (actuarial valuations of pension funds) to show the proportion of the exit payment to be paid by the exiting Scheme employer in each year after the exit date over such period as the administering authority considers reasonable.

(2) In revising the certificate, an administering authority must—

- (a) consult the exiting Scheme employer; and
- (b) have regard to the views of an actuary appointed by the administering authority.”.

13. In regulation 101(1) (employer cost cap), for “15.5%” substitute “15.2%”.

14. In schedule 4, in paragraph 6, omit “under paragraph 3”.

Amendment of the Local Government Pension Scheme (Increased Pension Entitlement) (Miscellaneous Amendments) (Scotland) Regulations 2019

15. The Local Government Pension Scheme (Increased Pension Entitlement) (Miscellaneous Amendments) (Scotland) Regulations 2019(a) are amended in accordance with regulation 16.

16. In regulation 1(4) (citation, commencement, effect and extent), omit “and paragraph 1(2) of the schedule”.

A member of the Scottish Government

St Andrew’s House,
Edinburgh
Date

(a) S.S.I. 2019/438.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations amend the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 (“the 2014 regulations”), the Local Government Pension Scheme (Scotland) Regulations 2018 (“the 2018 regulations”) and the Local Government Pension Scheme (Increased Pension Entitlement) (Miscellaneous Amendments) (Scotland) Regulations 2019 (“the 2019 regulations”).

Regulation 3 makes various amendments to the 2014 regulations in relation to provision for early retirement.

Regulation 4 amends the 2014 regulations so that assessment of a member’s underpin amount is carried out after any actuarial reduction to retirement benefits has been applied.

Regulation 5 amends the 2014 Regulations in relation to the calculation of survivor pensions payable under the earlier regulations. Principally, for deaths on or after 5 December 2005, the amendments place surviving civil partners, survivors of married same-sex couples and male survivors of female married members in a similar position to female survivors of male married members. Regulation 5 also amends the 2014 Regulations to clarify the intention for pensions payable to surviving cohabiting partners where the death occurred on or after 1 April 2015 and the cohabiting partnership was entered into before the member’s active membership ceased.

Regulation 6 amends the rule of 85 rules in the 2014 regulations to incorporate elections made under regulation 3(13) and elections made under the regulations for the Earlier Schemes.

Regulations 7 to 14 amend the 2018 regulations, principally to provide additional resources to Fund Authorities when dealing with employers exits from the Local Government Pension Scheme.

Regulations 15 and 16 amend the 2019 regulations to correct a minor drafting error.