

**2023 No.**

**PUBLIC SERVICE PENSIONS**

**The Local Government Pension Scheme (Scotland) (Transitional Protection Remedy) Regulations 2023**

*Made* - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* - - \*\*\*

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), (2)(a), and paragraph 3(b) of Schedule 2 and Schedule 3 to, the Public Service Pensions Act 2013(a); and sections 78, 80(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 and 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, and interpretation**

**1.**—(1) These Regulations may be cited as the Local Government Pension Scheme (Scotland) (Transitional Protection Remedy) Regulations 2023 and come into force on 1 October 2023.

(2) In these Regulations—

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

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

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(a) 2013 c. 25; section 3 was amended by section 94 of PSPJOA 2022 (c. 7). Section 3(3)(b) allows these Regulations to have retrospective effect.

(b) 2022 c. 7.

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

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

## 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—

(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(a) are exceeded by their final underpin amount(b) (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(c);

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

(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.

(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 who was in pensionable service in the underpin period.

(2) An “eligible member” is a person who has remediable service(a) in relation to the 2015 Scheme.

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

(a) beginning with 1 April 2015; and

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(a) See regulation 4K.

(b) See regulation 4L.

(c) [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](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)

(d) 2022 c. 7.

- (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 them 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).

(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).

(2) The eligible member's pension account is to be increased by a percentage of the final guarantee amount that is equivalent to the percentage of the retirement pension that the eligible member takes under regulation 29(7) of the 2018 Regulations.

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

(4) Where the amount of pension taken by the eligible member is less than 100%, at the eligible member's next occurring final underpin date, a further calculation of the eligible member's final assumed benefits and final underpin amount in relation to the benefits giving rise to the retirement pension to which paragraph (1) relates is to be completed in accordance with regulations 4K and 4L.

(5) Where, on the next occurring final underpin date, the eligible member's final assumed benefits are exceeded by their final underpin amount, paragraph (2) applies.

(6) Paragraphs (7) to (9) 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.

(7) 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.

(8) 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 (7).

(9) Where the eligible member's final assumed benefits are exceeded by their final underpin amount, paragraph (2) or, as the case may be, regulation 4B(2) (retirement, redundancy, ill health) applies.

#### **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) (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(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) (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 applies; or
  - (ii) where regulation 4H(1)(h) applies to the eligible member, regulation 93 of the 2018 Regulations applies.

#### **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) (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 the retirement 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.

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(a) Instead, the final guarantee amount is to be used in the calculation of the lump sum, for which see regulation 33(2A)(b) of the 2018 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 29(1), (3), (4) or (6) of the 2018 Regulations 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, the day before the date on which the eligible member’s reduced working hours or grade of employment begins (and see regulation 4C for cases where the eligible member takes flexible retirement);
- (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);
- (e) the day before the date on which a pension pursuant to a request made under regulation 36(1) of the 2018 Regulations commences (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(a), 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 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 eligible member receives a repayment of contributions under regulation 18 of the 2018 Regulations relating to the pension account (and see regulation 4F for the effect of receiving that repayment on the final guarantee amount).

(2) Where regulation 4C (flexible retirement) applies, paragraph (1) applies as if for “the earliest of the following events” there were substituted “the next occurring of the following events”.

### **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

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(a) 1993 c. 48.

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 or their Scheme employer elected to cover that period by entering into an arrangement under regulation 16 of the 2018 Regulations (additional pension contributions); but
  - (ii) excluding contributions paid in respect of—
    - (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;
  - (iii) regulation 22(1) of the Administration Regulations; or
  - (iv) regulation 59(1) of the Local Government Pension Scheme (Scotland) Regulations 1998(a);
- (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—
  - (i) a Chapter 1 scheme(b);
  - (ii) a judicial scheme(c);
  - (iii) another local government scheme(d),  
where service in that scheme was remediable service;
- (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, 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

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(a) S.I. 1998/366.

(b) For the meaning of “Chapter 1 scheme” see Chapter 1 of PSPJOA 2022.

(c) For the meaning of “judicial scheme” see Chapter 2 of PSPJOA 2022.

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

(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 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) respectively of those Regulations; 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.

### **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) is—
  - (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 2018 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 that period was covered by additional pension contributions under regulation 16 of the 2018 Regulations; 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) of the Benefits Regulations (in respect of a Tier 1 pension) or regulation 20(3) (in respect of a Tier 2 pension), up to the end of the underpin period, had that regulation applied 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 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
- (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 equal to the period of absence for which the additional pension contributions have been paid.

(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 with an entitlement to Tier 1 or Tier 2 benefits under regulation 34(4) or (5) respectively of the 2018 Regulations; 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 of the 2018 Regulations (additional contributions) entered into by the eligible member is to be included in the calculation of the provisional underpin amount.

#### **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 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 (receipt of payment after normal pension age) applies to the eligible member, apply the enhancement as set out in that provision.

(4) Where regulation 29(6) (member who has attained age of 55 or older but not normal pension age) or (7) (member who has attained age of 55 or older who reduced working hours or grade) 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.

(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 (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(7)(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 it 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 the Benefits Regulations ends; and

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(a) 1971 c. 56.



(b) ending with the eligible member's final underpin date.

(3) Where regulation 29(5) (receipt of payment after normal pension age) of the 2018 Regulations applies to the eligible member, apply the enhancement as set out in that provision.

(4) Where regulation 29(6) (member who has attained age of 55 or older but not normal pension age) or (7) (member who has attained age of 55 or older who reduced working hours or grade) of the 2018 Regulations applies, the eligible member is under the normal retirement age applicable to them under the 2009 Scheme, or, where the person was not a member of the 2009 Scheme, the age of 65, and the eligible member's benefits under the 2015 Scheme are being reduced as set out in that provision, apply an equivalent reduction.

(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
- (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 that which would be applicable to the eligible member under regulation 37(1)(a) (calculation of ill-health pension amounts) of the 2018 Regulations if the eligible member was entitled to Tier 1 benefits; and
- (b) 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 day before the date on which the eligible member attains—
    - (aa) the normal retirement age applicable to them under the 2009 Scheme; or
    - (bb) where the person 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, the eligible member's provisional underpin amount is to be increased 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 31 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 or, as the case may be, career average pay under the Benefits Regulations ends; and

(ii) ending with the eligible member’s date of 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, or, in the case of the third and fifth entries, according to the formula specified in that column—

<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)	60/160
Child’s pension: one eligible child	40(4), 43(4), 46(4)	60/320
Child’s pension: more than one eligible child	40(5), 43(5), 46(5)	<u>60/160</u> E
Child’s pension: one eligible child and no survivor pension paid to deceased member’s partner	40(9), 43(9), 46(9)	60/240
Child’s pension: more than one eligible child and no survivor pension paid to deceased member’s partner	40(10), 43(10), 46(10)	<u>60/120</u> E

(8) In the formula in the third and fifth entries in the table, “E” is the number of eligible children (within the meaning given in Schedule 1 to the 2018 Regulations).

(9) The amount of a pension payable under regulation 45(3), 46(3) or 46(8) of the 2018 Regulations is not to take account of any final guarantee amount that was added to the eligible member’s pension prior to their death.

**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 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**

**40.**—(1) This regulation applies to an eligible member who—

- (a) has an aggregated pension account; and
- (b) does not have a continuous break in active membership of a public service pension scheme of more than 5 years.

(2) 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.

(3) 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.

(4) Where the pension accounts were held concurrently before being aggregated, paragraphs (2) and (3) do not apply if the eligible member had attained the normal retirement age applicable to them under the 2009 Scheme before they ceased to be an active member in relation to all inactive accounts.

(5) Where the pension accounts were held consecutively before being aggregated, paragraphs (2) and (3) do not apply if the eligible member has attained the normal retirement age applicable to them under the 2009 Scheme on the first day of their membership of the active pension account.

(6) Where paragraph (4) or (5) 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 4M, or deferred assumed benefits and deferred underpin amount under regulation 4N, as the case may be, for the active pension account.

(7) In this regulation—

- (a) pension accounts are held concurrently if the eligible member has active membership of the 2015 Scheme in the active pension account at the same time as active membership of the 2015 Scheme in the inactive pension account;
- (b) pension accounts are held consecutively if they are not held concurrently.

(8) 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 retirement benefits is, for the purpose of section 29 of the Welfare Reform and Pensions Act 1999(a), calculated in accordance with regulation 4 of the Pension Sharing (Valuation) Regulations 2000(b).

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

### **Payment of indirect compensation**

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

### **Applications for compensation**

**4R.**—(1) Compensation owed by the 2015 Scheme to a person by virtue of section 82(1) of PSPJOA 2022 (compensatable loss incurred by members or personal representatives) or additional benefits payable by virtue of regulation 4Q may be paid only on the making of an application to the administering authority by the appropriate person in such form and manner as determined by the administering authority, subject to paragraph (2).

(2) Where the relevant amounts owed by the scheme to a person by virtue of section 82(1) or 83(1) (indirect compensation) of PSPJOA 2022 are in respect of a Part 4 tax loss mentioned in direction 33(6)(a) or 36(3)(a) 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 owed 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

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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 compensatable, see section 82(3) of PSPJOA 2022.

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 member or, if the member is deceased, the member’s personal representatives.

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

**4S.** Compensation owed by the 2015 Scheme to a person by virtue of section 82(1) of PSPJOA 2022 (compensatable losses incurred by members) or additional benefits payable by virtue of regulation 4Q may be paid by the administering authority from the pension fund concerned.

### **Interest on indirect compensation**

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

(2) Interest is to be paid in respect of the additional benefit in accordance with regulation 11 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”;

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

(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 of more than five years in active membership of a public service pension scheme, a payment in respect of remediable service to which paragraph (1A) applies is to be treated as a pension to which regulation 4A to 4F applies.”.

(6) Omit regulation 24(4)(a) (underpin age for a person in relation to whom regulation 16A to 16D of the Benefit 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 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)(a) or (c) 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 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;  
or

(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.”;

(b) at the end insert—

“(4) In this regulation “eligible member” has the same meaning as in regulation 1(6) of the Transitional Provisions and Savings Regulations 2014.”.

(4) In regulation 39(4)(a) (survivor benefits: partners of active members) omit head (vi).

(5) In regulation 40 (survivor benefits: children of active members)—

(a) in sub-paragraph (4)(a) omit head (vi);

(b) in sub-paragraph (5)(a) omit head (vi);

(c) in sub-paragraph (9)(a) omit head (vi);

(d) in sub-paragraph (10)(a) omit head (vi).

(6) In regulation 41 (death grants: deferred members and pension credit members)—

(a) in paragraph (3), after “annually” insert “, including any deferred guarantee amount included under regulation 4N of the Transitional Provisions and Savings Regulations 2014”; and

(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) omit sub-paragraph (f).
- (8) In regulation 43 (survivor benefits: children of deferred members) omit—
- (a) sub-paragraph (4)(f);
  - (b) sub-paragraph (5)(f);
  - (c) sub-paragraph (9)(f);
  - (d) sub-paragraph (10)(f).
- (9) In regulation 45(4) (survivor benefits: partners of pensioner members) omit sub-paragraph (g).
- (10) In regulation 46 (survivor benefits: children of pensioner members)—
- (a) omit sub-paragraph (4)(g);
  - (b) omit sub-paragraph (5)(g);
  - (c) omit sub-paragraph (9)(g);
  - (d) omit sub-paragraph (10)(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 of the Transitional Provisions and Savings Regulations 2014.”.
- (11) In regulation 60 (actuarial valuations of pension funds), after paragraph (5) insert—
- “(5A) Compensation owed 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 owed 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 11 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 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.”.

(16) In schedule 1 (interpretation)—

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

““final guarantee amount” has the meaning given in regulation 4B(3) 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, 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, 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, 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 4B(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.

#### **Retrospective application: 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 in accordance with regulation 77 of the 2018 Regulations.

(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 in accordance with regulation 77 of the 2018 Regulations.

(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, as if no benefit crystallisation event had happened in relation to the pension account to which the final guarantee amount relates.

#### **Retrospective application: members who died before 1 October 2023; death grants**

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

- (a) who is deceased; and
- (b) in respect of whom a death grant was paid under regulation 41 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 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.

#### **Retrospective application: members who died before 1 October 2023; survivor benefits**

7.—(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 survivor member's pension that has already been paid in relation to the person, 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.

### **Retrospective application: members who took a transfer out of the fund before 1 October 2023**

**8.**—(1) This regulation applies to a person in category A, B or C who had a transfer out under regulation 91(2) of the 2018 Regulations before 1st October 2023 ("the original transfer").

(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 original transfer was a Club Transfer, the transfer value is to be recalculated in accordance with the Club Memorandum relating to that transfer.

(4) Where the original transfer 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 both cases, where the recalculated transfer value exceeds the value of the original transfer, the difference is to be paid to the scheme that received the original transfer.

(6) In this regulation, "Club Memorandum" and "Club Transfer" have the meanings given in Schedule 1 to the 2018 Regulations.

### **Retrospective application: commutation payments taken before 1 October 2023**

**9.**—(1) This regulation applies to a person in category A, B or C who took payment of a lump sum under regulation 33(1)(a) or (c) 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) Where the person is entitled to a final guarantee amount, the original payment is to be recalculated based on the pension that the person was entitled to at the time the original payment was made but including the final guarantee amount, in accordance with actuarial guidance issued by the Scottish Ministers that applied at that time.

(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.

### **Retrospective application: divorce or dissolution of civil partnership before 1 October 2023**

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

- (a) who was divorced, or dissolved a civil partnership, between 1 April 2014 and 1 October 2023; and
- (b) whose retirement 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 retirement 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 (final underpin dates) occurred in relation to the person before the date on which their divorce was made final, or their civil partnership was dissolved, 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 (underpin dates) occurred in relation to the person before the date on which their divorce was made final, or their civil partnership was dissolved, the recalculation must take into account the provisional underpin amount and provisional assumed benefits calculated under regulations 4I and 4J respectively of the 2014 Regulations.

(5) If the recalculated cash equivalent value exceeds the original calculation, 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 pension credit and the pension in payment is to be added to the pension credit member’s pension credit member account, from the date that they first took payment of the pension.

**Interest on payments under the statutory underpin**

**11.**—(1) This regulation applies in relation to a person to whom regulation 5(3), (4), (5), (6) or (7), 6(5), 7(4)(a) or (b), 8(5), 9(4) or 10(6)(b) applies.

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

- (a) the amount to be added to the person’s pension account under regulation 5(3) or (4) (retired members);
- (b) the amount to be paid in accordance with regulation 77 of the 2018 Regulations under regulation 5(5) or (6) (deceased members);
- (c) where regulation 5(7) applies (person elected to commute amount of 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) (death grants);
- (e) the amount to be added to the survivor member’s pension account under regulation 7(4)(a) or (b) (survivor member’s pension account);
- (f) the amount to be paid to the scheme under regulation 8(5) (transfers out);
- (g) the amount to be paid to the member under regulation 9(4) (commutation payments);
- (h) the amount to be added under regulation 10(6)(b) (difference between recalculated pension credit and pension in payment).

(3) The interest is to be paid—

- (a) where paragraph (2)(a), (b), (c), (f) or (g) applies, to the person;
- (b) where paragraph (2)(d) applies, to the recipient of the death grant;

- (c) where paragraph (2)(e) applies, to the person who has the survivor member’s pension account;
  - (d) where paragraph (2)(h) applies, to the pension credit member.
- (4) Interest under this regulation is payable from the relevant date until the day on which the amount to which the interest relates and the accrued interest are repaid in full.
- (5) The “relevant date” is—
- (a) where regulation 5(3), (4), (5) or (6) applies, the day that falls half-way though 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), 8(5) or 9(4) applies, the day that falls half-way though 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 7(4)(a) or (b) applies, the day that that falls half-way though 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 10(6)(b) applies, the day that falls half-way though 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.
- (6) In paragraph (5)(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.
- (7) The rate of interest payable under this regulation is to be calculated in accordance with direction 38 of the PSP Directions 2022.
- (8) For the purposes of paragraph (5), 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.
- (9) 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.

Signatory text

St Andrew’s House  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

**EXPLANATORY NOTE**

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