

# Annex B – Draft regulations

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SCOTTISH STATUTORY INSTRUMENTS

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**2020 No.**

## **PUBLIC SECTOR PENSIONS, SCOTLAND**

### **The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2020**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1, 2 and 3 and schedule 2, paragraph 3(b) of the Public Services Pensions Act 2013(a) and all other powers enabling them to do so.

In accordance with section 21(1) of that Act, the Scottish Ministers consulted such persons or the representatives of such persons as appeared to the Scottish Ministers likely to be affected by these Regulations. The retrospective provisions contained in these Regulations do not appear to the Scottish Ministers to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme established by the Local Government Pension Scheme (Scotland) Regulations 2014(b) or the schemes preserved by the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014(c), nor in any other way in relation to members of those schemes. Accordingly, the procedures set out in section 23 of the Public Service Pensions Act 2013 are not applicable in respect of these Regulations.

The Scottish Ministers make the following Regulations:

#### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2020.

(2) These Regulations come into force on [XXXXXX] but regulations 2, 3, 4, 5 and 6 have effect from 1st April 2015.

(3) These Regulations extend to Scotland.

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

2. The Local Government Pension Scheme (Scotland) Regulations 2018(d) are amended in accordance with regulation 3 and 4.

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(a) 2013 c.25.  
(b) S.S.I. 2014/164.  
(c) S.S.I. 2014/233.  
(d) S.S.I. 2018/141.

**3. In regulation 84 (annual benefit statement) after paragraph (4) insert—**

“(5) Where regulation 4 of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 applies the statement must include the following additional information for active members who had not reached their 2008 Scheme normal retirement age at the end of the scheme year to which it relates—

- (a) the provisional guarantee amount;
- (b) the provisional assumed benefits; and
- (c) the provisional underpin amount

which would apply if the member’s underpin date was the closing date of the Scheme year to which the statement relates.

(6) Where regulation 4 of the 2014 Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 applies the statement must include the following additional information for deferred and deferred pensioner members—

- (a) the provisional guarantee amount;
- (b) the provisional assumed benefits; and
- (c) the provisional underpin amount

calculated as at their underpin date and adjusted by the appropriate index rate adjustment to the end of the Scheme year to which the statement relates.”

(7) Where regulation 5 of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 applies the statement in respect of a relevant scheme membership must include the following additional information for active members who had reached their 2009 Scheme normal retirement age at the end of the relevant Scheme year—

- (a) the provisional guarantee amount;
- (b) the provisional assumed benefits; and
- (c) the provisional underpin amount

calculated as at their underpin date revalued to the end of the Scheme year to which the statement relates.

(8) The provisional guarantee amount is calculated in accordance with regulation 4(4) of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014.

(9) The provisional assumed benefits are calculated in accordance with regulation 4(5) of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014.

(10) The provisional underpin amount is calculated in accordance with regulation 4(6) of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014.

**4. In Schedule 1 (interpretation) after the definition of “registered pension scheme” insert—**

“ “relevant scheme membership” has the meaning given by regulation 4(1A) of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014;”

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

**5.** The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 are amended in accordance with regulation 6.

**6. In regulation 4 (statutory underpin)—**

- (a) in paragraph (1)(a) omit the words from “and who on 1st April 2012” to the end;

- (b) for paragraphs (1)(b) substitute—
- (c) “(b) is or has been an active member of the 2015 Scheme; and” in paragraph (1)(c) substitute “; and” with “.”;
- (d) omit paragraph (1)(d);
- (e) at the end insert—

“(1A) For the purpose of this regulation a member’s relevant scheme membership is a single Scheme membership which meets the requirements of paragraph (1)(a), (1)(b) and (1)(c).

(1B) Where a member has had periods of concurrent employment, or a break in service that is not a disqualifying break in service, a member only has a relevant scheme membership if the member’s scheme membership including the period referred to in paragraph (1)(a) has been aggregated with their 2014 Scheme pension account, following a decision taken under—

- (a) regulations 16 or 17 of the Administration Regulations, where the member has subsequently joined the 2018 Scheme by virtue of regulation 5(1),
- (b) regulations 10(5) or (6) of these Regulations, or
- (c) regulations 22(5), 22(6), 22(7) or (8) of the 2018 Regulations.

(1C) Paragraph (1D) applies where;

- (a) an active or deferred member would otherwise have relevant Scheme membership;
- (b) but prior to [XXXXXXXXXX] previous Scheme membership including the period referred to in paragraph (1)(a) had not been aggregated with the member’s 2018 Scheme pension account under paragraphs (1B)(a), (1B)(b) or (1B)(c).

(1D) Where this paragraph applies, an active or deferred member has a twelve month period commencing from [XXXXXXXXXX] to elect to aggregate the previous Scheme membership that would give the member relevant Scheme membership.”

- (f) in paragraph (2) for “The underpin date” substitute “Subject to paragraphs (2A) and (2B) a member’s underpin date in a relevant Scheme membership”;
- (g) for paragraph (2)(b) substitute—

“(b) the date the member ceased to be an active member of the 2018 Scheme in an employment with a deferred or immediate entitlement to a pension; or”;

- (h) after paragraph 2(b) insert—

“(c) the date a member elects with their Scheme employer’s consent to receive immediate payment under regulation 29(6) of the 2018 Regulations.”

- (i) after paragraph 2 insert—

“(2A) A member’s date of death shall be their underpin date in a relevant Scheme membership where that date is earlier than the date provided for by paragraphs (2)(a) or (2)(b).

(2B) A member to whom paragraph (2)(b) has applied may have further underpin dates under paragraphs (2) or (2A) where they have either—

- (a) become an active member of the 2018 Scheme again before reaching their 2009 Scheme normal retirement age without a disqualifying break in service and aggregated their previous relevant scheme membership with their active member’s pension account under regulation 22(8) of the 2018 Regulations, or

- (b) continued in active membership of the 2018 Scheme in an employment which had been concurrent with the employment through which they had an underpin date under paragraph (2)(b) and aggregated their previous relevant scheme membership with their active member's pension account under regulation 22(7) of the 2018 Regulations.”
- (j) for paragraph (3) substitute—
- “(3) For the purpose of this regulation a disqualifying break in service is a continuous break after 31st March 2012 of more than 5 years in active membership of a public service pension scheme.”
- (k) for paragraph (4) substitute—
- “(4) A member's provisional guarantee amount in a relevant scheme membership is the amount by which a member's provisional underpin amount exceeds the provisional assumed benefits on their underpin date.”
- (l) after paragraph (4) insert—
- “(4A) Where paragraph (2B) applies, the value of the member's provisional assumed benefits, provisional underpin amount and provisional guarantee amount as calculated at their latest underpin date must be used for the purpose of this regulation.”
- (m) for paragraph (5) substitute—
- “(5) The provisional assumed benefits are calculated by assessing the benefits the member would have been entitled to under the 2018 Scheme in a relevant Scheme membership if—”;
- (n) in paragraph (5)(a) substitute “the underpin date” with “31st March 2022 or the member's underpin date, whichever date is the earlier”;
- in paragraph (5)(b) substitute “the underpin date” with “31st March 2022 or the member's underpin date, whichever date is the earlier”;
- (o) after paragraph (5) insert—
- “(5A) Where the member's pension has come into payment under regulation 34 of the 2018 Regulations, the provisional assumed benefits calculated in accordance with paragraph (5) must include any adjustment under regulation 37 of the 2018 Regulations for the period up to the earlier of the member's 2009 Scheme normal retirement age and 31st March 2022.
- (5B) Where a member's underpin date has arisen under paragraph (2A), the provisional assumed benefits calculated in accordance with paragraph (5) must include the amount calculated under regulation 39 (4)(b) of the 2018 Regulations for the period up to the earlier of the member's 2009 Scheme normal retirement age and 31st March 2022.”
- (p) for paragraph (6) substitute—
- “(6) The provisional underpin amount is calculated by assessing the benefits the member would have had an immediate entitlement to payment of under the 2009 Scheme in a relevant Scheme membership if—”
- (q) in paragraph (6)(a) substitute “the underpin date” with “31st March 2022 or the member's underpin date, whichever date is the earlier”;
- (r) in paragraph (6)(b)(iii)—
- (i) substitute “the member's assumed benefits” with “the member's provisional assumed benefits”;
- (ii) at the end add “but limited to the earlier of the member's 2009 Scheme normal retirement age and 31st March 2022”

(s) after paragraph (6) insert—

“(6A) Where a member’s underpin date has arisen under paragraph (2A), the provisional underpin amount calculated in accordance with paragraph (6) must include an amount equivalent to the enhancement that would apply under regulation 24(2) of the Benefits Regulations, for the period up to the earlier of the member’s 2009 Scheme normal retirement age and 31st March 2022.

(7) Subject to paragraph (8) a member’s underpin crystallisation date in a relevant Scheme membership is the earliest of the following dates—

- (a) the date from which the member elects to receive payment of a retirement pension under regulations 29(1), 29(5) or 29(6) of the 2018 Regulations;
- (b) the date from which the member becomes entitled to receive payment of a retirement pension under regulation 29(7) of the 2018 Regulations;
- (c) the date from which the member becomes entitled to an ill-health retirement pension under regulation 34(1) or regulation 36(1) of the 2018 Regulations;
- (d) the date the member receives payment under regulation 33 of the 2018 Regulations;
- (e) the date the member transfers their benefits out of the 2018 Regulations following:
  - (i) an application made under regulation 91 of the 2018 Regulations; or
  - (ii) by virtue of regulation 93 of the 2018 Regulations.
- (f) the date a member dies.

(8) Where paragraphs 7(a), (b) or (c) apply to a member, the member’s pension account must be increased by the final guarantee amount at the underpin crystallisation date.

(9) The final guarantee amount is the amount by which the final underpin amount exceeds the final assumed benefits on the underpin crystallisation date.

(10) Where a member who elects to receive payment of a retirement pension under regulation 30(6) of the 2018 Regulations has a final guarantee amount at their underpin crystallisation date, a proportion of that final guarantee amount equal to the proportion of the member’s 2018 Scheme benefits that the member has elected to take under regulation 29(6) must be transferred to the member’s flexible retirement pension account.

(11) A final guarantee amount payable to a member pursuant to paragraph (7)(a) and the remainder of the member’s final underpin amount are payable to the member without further actuarial adjustment relating to the age at which the benefits are taken.

(12) When paragraph (7)(a) applies to a member the final assumed benefits for the member are the value of provisional assumed benefits calculated in accordance with paragraph (5) with the following adjustment—

- (a) any revaluation adjustment or index rate adjustment that would have applied to the member’s pension under the 2018 Regulations between the member’s underpin date and their underpin crystallisation date; and
- (b) any actuarial adjustment which would have applied under the 2018 Regulations, relating to the age at which the pension was taken.

(13) When paragraph (7)(a) applies to a member the final underpin amount is the value of the provisional underpin amount calculated in accordance with paragraph (6) but—

- (a) updated to the underpin crystallisation date to include increases which would have applied under the Benefits Regulations by virtue of the Pensions (Increase) Act 1971<sup>(a)</sup> between a member's underpin date and their underpin crystallisation date; and
  - (b) including any actuarial adjustment which would have applied under the Benefits Regulations relating to the age at which the pension was taken.
- (14) When paragraph (7)(b) or (c) applies to a member the final assumed benefits for the member are the value of provisional assumed benefits calculated in accordance with paragraph (5) with the following adjustment—
- (a) any revaluation adjustment or index rate adjustment that would have applied to the member's pension under the 2018 Regulations between the member's underpin date and their underpin crystallisation date; and
  - (b) any actuarial increase which would have applied under the 2018 Regulations, relating to the age at which the pension was taken.
- (15) When paragraph (7)(b) or (c) applies to a member the final underpin amount is the value of the provisional underpin amount calculated in accordance with paragraph (6) but—
- (a) updated to the underpin crystallisation date to include increases which would have applied under the Benefits Regulations by virtue of the Pension (Increase) Act 1971 between a member's underpin date and their underpin crystallisation date; or
  - (b) including any actuarial increase which would have applied under the Benefits Regulations relating to the age at which the pension was taken.
- (16) When paragraphs (7) (d), (e) (i) or (e)(ii) apply to a member the value of the payment due at a member's underpin crystallisation date must be calculated in accordance with actuarial guidance issued by the Scottish Ministers.
- (17) A request for a cash equivalent value of a member's pension rights under Regulation 4 of the Pension Sharing (Valuation) Regulation 2000<sup>(b)</sup> is not to be treated as a member's underpin date or underpin crystallisation date.
- (18) A request made pursuant to paragraph (17) is to be calculated in accordance with actuarial guidance issued by the Secretary of State.
- (19) Following the death of a person to whom this regulation applies, any provisional guarantee amount applicable at the member's underpin date must be updated to include any revaluation adjustment or index rate adjustment that would have applied to the member's pension under the 2018 Regulations between the member's underpin date and their date of death, and shall be known as the member's adjusted provisional guarantee amount.
- (20) Where, pursuant to paragraph (19), a provisional guarantee amount applied at a deceased member's underpin date, the rate listed in column two of the below table must be applied to the adjusted provisional guarantee amount, to determine the addition to the relevant survivor benefit.

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(a) 1971 c. 56.  
(b) S.I. 2000/1052.

<i>2018 Regulation</i>	<i>Rate</i>
39(4)	49/160
40(4)	49/320
40(5)	49/160
40(9)	49/240
40(10)	49/120
42(4)	49/160
43(4)	49/320
43(5)	49/160
43(9)	49/240
43(10)	49/120
45(4)	49/160
46(4)	49/320
46(5)	49/160
46(9)	49/240
46(10)	49/120

(21) Where, pursuant to paragraph (19), a provisional guarantee amount applied at a deceased member's underpin date, the adjusted provisional guarantee amount must be used in determining the annual amount of pension the member would have been entitled to under regulations 41(3) and 44(3) of the 2018 Regulations.”

St Andrew's House,  
Edinburgh

2020

Authorised to sign by the Scottish Ministers

## **EXPLANATORY NOTE**

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

These Regulations amend the Local Government Pension Scheme (Scotland) Regulations 2018 (“the 2018 Regulations”) and the Local Government Pension Scheme (Transitional Provisions and Savings) Regulations (Scotland) 2014 (“the Transitional Regulations”). The 2018 Regulations have effect from 1<sup>st</sup> April 2015 and the Transitional Regulations came into effect on that date. Certain provisions listed in regulation 1 take effect from that date. Section 3(3)(b) of the Public Service Pensions Act 2013 provides that scheme regulations may make retrospective provision.

An impact assessment has not been produced for this instrument as no impact is anticipated on the private or voluntary sectors.