
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 438

PENSIONS

**The Local Government Pension Scheme
(Increased Pension Entitlement) (Miscellaneous
Amendments) (Scotland) Regulations 2019**

Made - - - - *19th December 2019*
Laid before the Scottish
Parliament - - - - *20th December 2019*
Coming into force - - *1st March 2020*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 7 and 12 and schedule 3 of the Superannuation Act 1972(1) and all other powers enabling them to do so.

In accordance with section 7(5) of that Act, they have consulted such associations of local authorities as appeared to them to be concerned, such local authorities with whom consultation appeared to them to be desirable, and such representatives of other persons likely to be affected by the proposed regulations as appeared to them to be appropriate.

Citation, commencement, effect and extent

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Increased Pension Entitlement) (Miscellaneous Amendments) (Scotland) Regulations 2019.

(2) These Regulations come into force on 1 March 2020 and, subject to paragraph (3), have effect from 8 April 2019(2).

(3) Regulation 2 (in so far as required to give effect to regulation 4), regulation 7 (in so far as required to give effect to regulations 8 and 9), regulation 10 (in so far as required to give effect to regulation 11 and paragraph 1(2) of the schedule), regulations 4, 8, 9 and paragraph 1(2) of the schedule have effect from 12 November 1979 to 8 April 2019.

(4) Regulations 3, 5, 6 and 10 (in so far as required to give effect to regulation 11 other than paragraph 1(2) of the schedule) and paragraph 1(2) of the schedule have effect from 5 April 2009.

(5) These Regulations extend to Scotland only.

(1) 1972 c.11. The functions of the Secretary of State under section 7 and 12 were transferred to the Scottish Ministers in or as regards Scotland by article 2 and schedule 1 of S.I. 1999/1750.
(2) Retrospective effect is permitted by section 12(1) of the Superannuation Act 1972.

Amendment of the Local Government Superannuation (Scotland) Regulations 1987

2. The Local Government Superannuation (Scotland) Regulations 1987(3) are amended in accordance with regulations 3 to 6.

3. In regulation U1, (interpretation)—

(a) in the definition of “the existing Orders”, after “Order 2009” insert—

““the Pensions Increase (Review) Order 2011(4), the Pensions Increase (Review) Order 2012(5), the Pensions Increase (Review) Order 2013(6), the Pensions Increase (Review) Order 2014(7), the Pensions Increase (Review) Order 2015(8), the Pensions Increase (Review) Order 2017(9), the Pensions Increase (Review) Order 2018(10) and the Pensions Increase (Review) Order 2019(11)

(b) after the definition of “guaranteed minimum pension”, insert—

““the reconciliation exercise” means the exercise undertaken by the relevant administering authority to check the scheme data on individual contracting-out records with that held by Her Majesty’s Revenue and Customs,”.

4. In regulation U2 (application of this Part)—

(a) after “5th April 2009” insert “or 7 April 2019”, and

(b) for “that date” substitute “either of those dates”.

5. After regulation U3 insert—

“ Authorisation of payment of GMP-related payments

U4. Where a relevant administering authority has paid GMP-related payments before 8 April 2019, the authority may not recover those payments on or after 8 April 2019.”.

6. In regulation U5 (Increased Pension Entitlement)—

(a) in paragraph (2) for “2009–10” substitute “2019–20”,

(b) in paragraph (7)(a), for “2009–10” substitute “2019–20”, and

(c) in paragraph (7)(b)—

(i) for “2009–10” in both places where it occurs, substitute “2019–20”, and

(ii) for “not entitled to a guaranteed minimum pension” substitute—

“—

(i) not entitled to a guaranteed minimum pension, or

(ii) entitled to the original guaranteed minimum pension awarded prior to the reconciliation exercise”.

(3) S.I. 1987/1850.
 (4) S.I. 2011/827.
 (5) S.I. 2012/782.
 (6) S.I. 2013/604.
 (7) S.I. 2014/668.
 (8) S.I. 2015/671.
 (9) S.I. 2017/417.
 (10) S.I. 2018/333.
 (11) S.I. 2019/546.

Amendment of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008

7. The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008(12) are amended in accordance with regulations 8 and 9.

8. In regulation 2, (interpretation)—

(a) before the definition of “the 1998 regulations” insert—

““the 1971 Act” means the Pensions (Increase) Act 1971(13)

(b) after the definition of “appropriate fund” insert—

““basic rate” has the meaning given by the 1971 Act”,

(c) after the definition of “employing authority” insert—

““the existing Orders” means the Pensions Increase (Review) Order 1979(14), the Pensions Increase (Review) Order 1980(15), the Pensions Increase (Review) Order 1981(16), the Pensions Increase (Review) Order 1982(17), the Pensions Increase (Review) Order 1983(18), the Pensions Increase (Review) Order 1984(19), the Pensions Increase (Review) Order 1985(20), the Pensions Increase (Review) Order 1986(21), the Pensions Increase (Review) Order 1987(22), the Pensions Increase (Review) Order 1988(23), the Pensions Increase (Review) Order 1989(24), the Pensions Increase (Review) Order 1990(25), the Pensions Increase (Review) Order 1991(26), the Pensions Increase (Review) Order 1992(27), the Pensions Increase (Review) Order 1993(28), the Pensions Increase (Review) Order 1994(29), the Pensions Increase (Review) Order 1995(30), the Pensions Increase (Review) Order 1996(31), the Pensions Increase (Review) Order 1997(32), the Pensions Increase (Review) Order 1998(33), the Pensions Increase (Review) Order 1999(34), the Pensions Increase (Review) Order 2000(35), the Pensions Increase (Review) Order 2001(36), the Pensions Increase (Review) Order 2002(37), the Pensions Increase (Review) Order 2003(38), the Pensions Increase (Review) Order 2004(39), the Pensions Increase (Review)

(12) S.S.I. 2008/230.

(13) 1971 c.56.

(14) S.I. 1979/1047.

(15) S.I. 1980/1302.

(16) S.I. 1981/1217.

(17) S.I. 1982/1178.

(18) S.I. 1983/1264.

(19) S.I. 1984/1307.

(20) S.I. 1985/1575.

(21) S.I. 1986/1116.

(22) S.I. 1987/130.

(23) S.I. 1988/217.

(24) S.I. 1989/477.

(25) S.I. 1990/483.

(26) S.I. 1991/684.

(27) S.I. 1992/198.

(28) S.I. 1993/779.

(29) S.I. 1994/776.

(30) S.I. 1995/708.

(31) S.I. 1996/800.

(32) S.I. 1997/634.

(33) S.I. 1998/503.

(34) S.I. 1999/522.

(35) S.I. 2000/672.

(36) S.I. 2001/664.

(37) S.I. 2002/699.

(38) S.I. 2003/681.

(39) S.I. 2004/758.

Order 2005(40), the Pensions Increase (Review) Order 2006(41), the Pensions Increase (Review) Order 2007(42), the Pensions Increase (Review) Order 2008(43), the Pensions Increase (Review) Order 2009(44), the Pensions Increase (Review) Order 2011(45), the Pensions Increase (Review) Order 2012(46), the Pensions Increase (Review) Order 2013(47), the Pensions Increase (Review) Order 2014(48), the Pensions Increase (Review) Order 2015(49), the Pensions Increase (Review) Order 2017(50), the Pensions Increase (Review) Order 2018(51) and the Pensions Increase (Review) Order 2019(52)

(d) after the definition of “financial year” insert—

““guaranteed minimum pension” has the same meaning as in section 181(1) of the Pension Schemes Act 1993,”

(e) after the definition of “pensioner member” insert—

““the reconciliation exercise” means the exercise undertaken by the relevant administering authority to check the scheme data on individual contracting-out records with that held by Her Majesty’s Revenue and Customs,

“relevant administering authority” means the body maintaining the appropriate fund”

(f) after the definition of “scheme employer” insert—

““tax year” means a period of 12 months beginning on 6 April and ending on the following 5 April”.

9. After regulation 44 insert—

“Increased Pension Entitlement

45. Regulations 46 to 49 apply to a person who—

- (a) was entitled to a pension under the scheme on 7 April 2018,
- (b) was entitled to a guaranteed minimum pension on that date, and
- (c) has in any tax year since entitlement to the guaranteed minimum pension commenced received a GMP-related payment.

GMP-related payment

46.—(1) Where, in any tax year, the relevant administering authority has—

- (a) increased the annual rate of an official pension in accordance with the existing Order relevant to that tax year, but
- (b) the amount by reference to which that increase is calculated is not reduced by the GMP-related reduction,

(40) S.I. 2005/858.
(41) S.I. 2006/741.
(42) S.I. 2007/801.
(43) S.I. 2008/711.
(44) S.I. 2009/692.
(45) S.I. 2011/827.
(46) S.I. 2012/782.
(47) S.I. 2013/604.
(48) S.I. 2014/668.
(49) S.I. 2015/671.
(50) S.I. 2017/417.
(51) S.I. 2018/333.
(52) S.I. 2019/546.

the GMP-related payment for that tax year is the amount equal to the GMP-related reduction in that tax year.

(2) The GMP-related reduction for any tax year is the reduction in the amount by reference to which any increase in the rate of an official pension is calculated by the amount calculated in accordance with—

- (a) the existing Order for that tax year,
- (b) section 59(5) and (5ZA) of the Social Security Pensions Act 1975(a), as modified by section 59A of that Act, as these sections have effect in relation to that tax year, and
- (c) any direction made under section 59A of that Act which has effect in relation to that tax year.

Authorisation of GMP-related payments

47.—(1) The relevant administering authority may pay GMP-related payments to—

- (a) a person to whom sections 45 to 49 apply, and
- (b) a deceased entitled member.

(2) Where a relevant administering authority has paid GMP-related payments before 8 April 2019, the authority may not recover those payments on or after 8 April 2019.

(3) In this regulation, a deceased entitled member is a person who—

- (a) at the date of his death was entitled to a pension under the scheme,
- (b) at that date was entitled to a guaranteed minimum pension, and
- (c) has in any tax year since entitlement to the guaranteed minimum pension commenced received a GMP-related payment.

Increased Pension Entitlement

48.—(1) Subject to paragraphs (3), (4) and (5), a person to whom regulations 46 to 49 apply is entitled to an Increased Pension Entitlement calculated in accordance with paragraph (2).

(2) The Increased Pension Entitlement is an amount equal to the basic rate of a pension which, if that pension had been increased by the amount of any increase under section 1 of the 1971 Act and the existing Orders, would result in an annual amount being paid to the person in relation to the tax year 2019-20 which equals the Protected Sum.

(3) Where the person's pension is terminated under the scheme, the person is not entitled to receive any payment of an amount of the Increased Pension Entitlement in respect of any period after the date on which the pension is terminated.

(4) Where a person's pension is not payable to the person, the person is not entitled to receive any payment of an amount of the Increased Pension Entitlement during any period when the pension is not payable to the person.

(5) Where the person's pension, or any proportion of the pension, is forfeited, either permanently or temporarily, the same proportion of the person's Increased Pension Entitlement is forfeited for the same period of time.

(6) For the purposes of paragraph (2) of this regulation, "pension" has the meaning given by section 8 of the 1971 Act and begins at the time stated in section 8(2) of that Act.

(7) In this regulation—

- (a) “Protected Sum” is the amount equal to the annual amount of the GMP-related payment for the tax year 2019-20, and
- (b) the annual amount of the GMP-related payment for the tax year 2019-20 is the amount equal to the GMP-related payment that the relevant administering authority would have paid to the person in the tax year 2019-20 if that authority had, in relation to that complete tax year, applied the existing Orders as if the person was not entitled to a guaranteed minimum pension or was entitled to the original guaranteed minimum pension awarded prior to the reconciliation exercise.

Increased Pension Entitlement – further provision

49.—(1) An Increased Pension Entitlement is payable by the relevant administering authority and shall be paid out of the appropriate fund.

(2) An Increased Pension Entitlement is payable for life and shall be discharged by payments at such reasonable intervals as the administering authority may, in their discretion, determine except that payment on account of an Increased Pension Entitlement may be delayed, in whole or in part, pending the determination of any question as to the liability of the administering authority in respect thereof, including any question as to the continuance of that liability.

(3) Neither the Increased Pension Entitlement nor any portion of that entitlement may be commuted for a lump sum.”.

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

10. The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014(**53**) are amended in accordance with regulation 11.

11. In regulation 1 (citation, extent, commencement and interpretation) insert at the end—

“(7) The 1998 Regulations as saved by regulation 3(1), which saves for certain purposes the regulations listed in schedule 1 are to be read as if the amendments set out in the schedule are made.

(8) Sections 45 to 49 of the Benefits Regulations cease to have effect on 8 April 2019.”.

St Andrew’s House,
Edinburgh
19th December 2019

KATE FORBES
A member of the Scottish Government

SCHEDULE

Regulation 1(3) and (4)

AMENDMENT TO THE 1998 REGULATIONS

1. In regulation 161(interpretation)—
 - (a) in the definition of “the existing Orders”—
 - (i) for “and” after “Order 2009” substitute “, ”, and
 - (ii) after “Order 2009” insert “the Pensions Increase (Review) Order 2011(**54**), the Pensions Increase (Review) Order 2012(**55**), the Pensions Increase (Review) Order 2013(**56**), the Pensions Increase (Review) Order 2014(**57**), the Pensions Increase (Review) Order 2015(**58**), the Pensions Increase (Review) Order 2017(**59**), the Pensions Increase (Review) Order 2018(**60**) and the Pensions Increase (Review) Order 2019(**61**)”, and
 - (b) after the definition of “guaranteed minimum pension”, insert—

““the reconciliation exercise” means the exercise undertaken by the relevant administering authority to check the scheme data on individual contracting-out records with that held by Her Majesty’s Revenue and Customs,”.
- (2) In regulation 162 (application of this Part)—
 - (a) after “5th April 2009” insert “or 7th April 2019”, and
 - (b) for “that date” substitute “either of those dates”.
- (3) After regulation 163 (GMP-related payment) insert—

“ Authorisation of payment of GMP-related payments

- 164.**—(1) The relevant administering authority may pay GMP-related payments to—
- (a) a person to whom this Part applies, and
 - (b) a deceased entitled member.
- (2) Where a relevant administering authority has paid GMP-related payments before 8 April 2019, the authority may not recover those payments on or after 8 April 2019.
- (3) In this regulation, a deceased entitled member is a person who—
- (a) at the date of their death was entitled to a pension under the scheme,
 - (b) at that date was entitled to a guaranteed minimum pension, and
 - (c) has in any tax year since entitlement to the guaranteed minimum pension commenced received a GMP-related payment.”.
- (4) In regulation 165 (Increased Pension Entitlement)—
- (a) in paragraph (2) for “2009–10” substitute “2019–20”,
 - (b) in paragraph (6)(a), for “2009–10” substitute “2019–20”, and
 - (c) in paragraph (6)(b)—
 - (i) for “2009–10” twice occurring, substitute “2019–20”, and

(54) S.I. 2011/827.
(55) S.I. 2012/782.
(56) S.I. 2013/604.
(57) S.I. 2014/668.
(58) S.I. 2015/671.
(59) S.I. 2017/417.
(60) S.I. 2018/333.
(61) S.I. 2019/546.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (ii) for “not entitled to a guaranteed minimum pension” substitute—
 - “(i) not entitled to a guaranteed minimum pension, or
 - (ii) entitled to the original guaranteed minimum pension awarded prior to the reconciliation exercise”.
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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government Superannuation (Scotland) Regulations 1987 (“the 1987 Regulations”), the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (“the 2008 Regulations”) and the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 to authorise the payments made by administering authorities between 12 November 1979 and 8 April 2019 of annual increases to certain persons who are entitled to a guaranteed minimum pension. They also introduce a new entitlement to an Increased Pension Entitlement (“IPE”).

Section 5 of the Pensions (Increase) Act 1971 (“the 1971 Act”) requires pensions authorities to increase annually pensions to which that Act applies. The 1971 Act is modified by sections 59 and 59A of the Social Security Pensions Act 1975 (“the 1975 Act”). Pensions authorities pay annual increases on pensions in accordance with the annual Pensions (Increase) Review Orders (“the annual PIROs”) which are made under section 59 of the 1975 Act. The combined effect of section 59(5) of the 1975 Act, Directions by the Treasury made under section 59A of the 1975 Act and relevant provisions of the annual PIROs is that the amount of increase payable by a pensions authority under the annual PIROs is reduced by the amount equal to the rate of the GMP which is paid by the Department of Work and Pensions (“DWP”).

Contracting-out of the state second pension ended from 5 April 2016, with the introduction of the single tier state pension. Schemes were required to undertake a reconciliation exercise to check the contracting-out data held against that held by HMRC.

This reconciliation exercise has been undertaken and any inconsistencies corrected.

These Regulations provide that going forward GMP-related overpayments are converted into an Increased Pension Entitlement (“IPE”) and therefore become part of the members’ entitlement under the scheme.

These Regulations amend the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 with the effect that references to the Local Government Pension Scheme (Scotland) Regulations 1998 (“the 1998 Regulations”) as saved are to be read as if the following amendments were made.

Regulation 163 of the 1998 Regulations, regulation U3 of the 1987 Regulations and regulation 46 of the 2008 Regulations define a GMP-related payment as a payment made by the administering authority applying the annual PIROs as if no reduction fell to be made in relation to the person’s GMP.

Regulation 164 of the 1998 Regulations, regulation U4 of the 1987 Regulations and regulation 47 of the 2008 Regulations authorise the past payment of GMP-related payments. This provision has effect from 12 November 1979 until 8 April 2019. Paragraph (2) of each of these regulations provides

that where an administering authority has made such payments to an affected pensioner, it may not recover them.

Regulation 165 of the 1998 Regulations, regulation U5 of the 1987 Regulations and regulation 48 of the 2008 Regulations set out the entitlement to IPE. Although entitlement to IPE begins on 8 April 2019, the effect of the 1971 Act is that annual increases must apply to IPE from the beginning date of the pension (usually the day after the person's date of retirement). IPE is therefore defined as the amount a pension would have to be at the beginning date of a pension in order for that amount, after annual increases have been applied under the annual PIROs, to equal the GMP-related payment for the tax year 2019-20. The effect is that for the tax year 2019–20 the IPE that the affected pensioner will receive is equal to the GMP-related payment he or she would have received were the administering authority to apply the 2019 PIRO as if no reduction fell to be made in relation to the person's GMP. Thereafter, IPE will continue to be increased in line with the annual PIROs although future PIROs will no longer be applied as if no reduction fell to be made.