
STATUTORY RULES OF NORTHERN IRELAND

2023 No. 149

**The Local Government Pension Scheme (Amendment
No. 2) Regulations (Northern Ireland) 2023**

PART 2

Amendments to the statutory underpin

Amendment of the Transitional Regulations

2.—(1) The Transitional Regulations are amended as follows.

(2) In regulation 1 (citation, commencement, interpretation and retrospection), after paragraph (4), add—

“(5) In regulations 4A to 4T, a reference to actuarial guidance issued by the Department means guidance identified as such which is issued in accordance with regulation 2(3) of the 2014 Regulations.

(6) Where these Regulations refer to the PSP Directions 2023(1), a reference to “scheme manager” in those Directions is to be read as “the Committee”.”.

(3) Omit regulation 4 (statutory underpin).

(4) Before regulation 5 (membership of the Scheme) insert—

“Statutory underpin: general

4A.—(1) Regulations 4B to 4T (provisions relating to the statutory underpin) apply in relation to an eligible member’s remediable service(2) during the underpin period.

(2) An “eligible member” is a person who—

- (a) has remediable service in relation to the Scheme; or
- (b) has transferred remediable service into the Scheme from—
 - (i) a Chapter 1 scheme(3);
 - (ii) a judicial scheme(4); or
 - (iii) another local government scheme(5).

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

- (a) beginning with 1st April 2015; and
- (b) ending with the earlier of—

(1) [The Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions \(Northern Ireland\) 2023 \(finance-ni.gov.uk\)](#).

(2) For the meaning of remediable service, see section 77 of the PSPJO Act 2022

(3) For meaning of “Chapter 1 scheme” see Chapter 1 of [2022 c.7](#).

(4) For meaning of “judicial scheme” see Chapter 2 of [2022 c.7](#).

(5) For meaning of “local government scheme” see section 86(1) of [2022 c.7](#).

- (i) 31st March 2022; and
- (ii) the date on which the eligible member attains—
 - (aa) the normal retirement age applicable to them under the 2009 Scheme;
 - (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) (statutory underpin: final underpin date).

(2) The pension account to which the final underpin date relates is to be increased by any 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) (statutory underpin: final underpin date – flexible retirement).

(2) The pension account to which the final underpin date relates (“the pension account”) is to be increased by a percentage of the final guarantee amount that is equal to the percentage of the retirement pension that the eligible member takes under regulation 31(6) (flexible retirement) of the 2014 Regulations.

(3) On each occasion where the amount of pension taken by the eligible member under regulation 31(6) of the 2014 Regulations is less than 100% of the member’s relevant pension, at the next occurring final underpin date (the subsequent final underpin date”), a further calculation of the eligible member’s final assumed benefits and final underpin amount relating to the flexible retirement is to be completed in accordance with regulations 4K and 4L.

(4) Where, on the subsequent final underpin date, the eligible member’s final assumed benefits are exceeded by their final underpin amount, the pension account is to be increased by a percentage of the original retirement pension that the eligible member took on the subsequent final underpin date.

(5) Where paragraph (2) or (4) applies, the pension account is to be increased on the day after the eligible member’s final underpin date or subsequent final underpin date, as the case may be.

(6) In paragraph (4), “original retirement pension” means the amount of the eligible member’s retirement pension as at the day of the eligible member’s first final underpin date.

(7) Paragraphs (8) to (10) 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 31(6); but
 - (ii) before the end of the underpin period.

(8) 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.

(9) 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 (8).

(10) Where the eligible member's final assumed benefits, calculated in accordance with paragraph (9), are exceeded by their final underpin amount—

- (a) where the eligible member's next occurring final underpin date is that in regulation 4H(1)(a) to (e), the pension account is to be increased on the day after that date by an amount equal to the difference;
- (b) where the eligible member's next occurring final underpin date is that in regulation 4H(1)(f), regulation 4D(2) applies;
- (c) where the eligible member's next occurring final underpin date is that in regulation 4H(1)(g) or (h), regulation 4E(2) applies; and
- (d) where the eligible member's next occurring final underpin date is that in regulation 4H(1)(i), regulation 4F(2) applies.

(11) In this regulation "relevant pension" is the pension built up in the Scheme before the member's first final underpin date.

Statutory underpin: lump sum payment

4D.—(1) This regulation applies to an eligible member whose final underpin date is that in regulation 4H(1)(f) (statutory underpin: final underpin date – 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(6).

Statutory underpin: transfers

4E.—(1) This regulation applies to an eligible member whose final underpin date is that in regulation 4H(1)(g) or (h) (statutory underpin: final underpin date – transfer to a different scheme).

(2) Where this regulation applies—

- (a) no final guarantee amount is to be calculated in relation to the pension account; and
- (b) either—
 - (i) where regulation 4H(1)(g) applies to the eligible member, regulation 108 (right to payment out of the pension fund) of the 2014 Regulations applies; or
 - (ii) where regulation 4H(1)(h) applies to the eligible member, regulation 110 (bulk transfer (transfer of undertakings etc.)) of the 2014 Regulations applies.

Statutory underpin: members taking a repayment of contributions

4F.—(1) This regulation applies in relation to an eligible member whose final underpin date is that in regulation 4H(1)(i) (statutory underpin: final underpin date – receipt of repayment under regulation 20 (rights to return of contributions) of the 2014 Regulations).

(6) Instead, the final guarantee amount is to be used in the calculation of the lump sum, for which see regulation 35(2A)(b) of the 2014 Regulations (as inserted by regulation 3(4) of these 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 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 was 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 their pension under regulation 31(6) (flexible retirement) of the 2014 Regulations, the day before the date on which the eligible member's reduced working hours or grade of employment begins.

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 31(1), (3) or (5) of the 2014 Regulations (retirement pension) commences;
- (b) where the eligible member elects to receive an immediate payment of all or part of the retirement pension under regulation 31(6) (flexible retirement) of the 2014 Regulations, the day before the date on which the eligible member's reduced working hours or grade of employment begins⁽⁷⁾;
- (c) the day before the date on which a pension under regulation 31(7) of the 2014 Regulations commences (pension by virtue of redundancy or business efficiency);
- (d) the day before the date on which a pension under regulation 36(1) (ill-health pension: active members) of the 2014 Regulations commences;
- (e) the day before the date on which a pension pursuant to a request made under regulation 37(1) (ill-health pension: deferred members) of the 2014 Regulations commences;
- (f) where the eligible member takes a payment of a lump sum under regulation 35(1)(a) or (c) (commutation and small pensions) of the 2014 Regulations in relation to the pension, the day before the date used to calculate the sum;
- (g) where, in accordance with regulation 108(1) (rights to payments out of the pension fund) of the 2014 Regulations, the eligible member applies for a transfer under Chapters 1 or 2 or Part 4ZA of the Pension Schemes (Northern Ireland) Act 1993⁽⁸⁾, 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 110 (bulk transfers) of the 2014 Regulations, the date of transfer; and

(7) See regulation 4C for cases where the eligible member takes flexible retirement.

(8) 1993 c. 49; Part 4ZA was inserted by paragraphs 49 to 78 of Schedule 4 to the Pension Schemes Act 2015 (2015 c. 8).

- (i) the date on which the Committee makes payment to the eligible member under regulation 20 (rights to return of contributions) of the 2014 Regulations relating to a pension account⁽⁹⁾.

(2) Where the eligible member has had a final underpin date by virtue of paragraph (1)(a), paragraph (1) subsequently applies as if for “the earliest of the following dates” there were substituted “the next occurring of the following dates”.

Statutory underpin: calculation of provisional assumed benefits

4I.—(1) An 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 Scheme over the underpin period if—

- (a) the eligible member had paid contributions under regulation 11 of the 2014 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 ill-health retirement under regulation 36 of the 2014 Regulations, any adjustment under regulation 39 of those Regulations 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 18 (additional pension contributions) of the 2014 Regulations; and
 - (dd) in respect of any period of absence from work with permission with no pensionable pay in respect of which the eligible member elected to cover that period by entering into an arrangement under regulation 18 of the 2014 Regulations; but
 - (ii) excluding—
 - (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 employing authority had, in respect of the underpin period, paid no additional contributions under—
 - (i) regulation 18 of the 2014 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 19 (additional voluntary contributions) of the 2014 Regulations;
 - (iii) regulation 21(1) (additional voluntary contributions and shared cost additional voluntary contributions) of the Administration Regulations⁽¹⁰⁾; or
 - (iv) regulation 62(1) (elections to pay AVCs) of the 2002 Regulations⁽¹¹⁾;
- (c) the eligible member had not been awarded additional annual pension under regulation 32 (award of additional pension) of the 2014 Regulations;

⁽⁹⁾ See regulation 4F for the effect of receiving that repayment on the final guarantee amount.

⁽¹⁰⁾ S.R. 2009 No. 33 was revoked by S.R. 2014 No. 189; there are other amendments not relevant to these Regulations.

⁽¹¹⁾ S.R. 2002 No. 352; relevant amendments are S.R. 2007 No. 448; revoked by S.R. 2009 No. 34; there are other amendments not relevant to these Regulations.

- (d) the scheme had received no transfer value payment in respect of the eligible member, except a transfer value payment received from—
- (i) a Chapter 1 scheme(12);
 - (ii) a judicial scheme(13); or
 - (iii) another local government scheme(14),
- where the service in that scheme was remediable service and there was no continuous break of more than five years in active membership of a public service pension scheme since the remediable service was accrued;
- (e) the revaluation adjustment(15) 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 made to the eligible member’s pension account under regulation 12(5) or (6) (temporary reductions in contributions); 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(16), that adjustment had not occurred.

(2) Where paragraph (1)(a)(i)(cc) or (dd) applies, the additional pension purchased is to be included in the provisional assumed benefits as if it were pension credited to the eligible member’s pension account on the earliest of —

- (a) 31st March in the Scheme year in which the absence ended;
- (b) 31st March 2022; and
- (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 Scheme under regulation 36 (ill-health) of the 2014 Regulations with an entitlement to ill-health retirement; or
- (b) the eligible member died as an active member.

(5) Where paragraph (3) does not apply by virtue of paragraph (4), the eligible member is treated as having paid the additional pension contributions referred to in paragraph (1)(a)(i)(cc) or (dd) in full.

(6) Where paragraph (1)(a)(i)(cc) or (dd) applies in relation to a period during which the eligible member was paying reduced contributions under regulation 12 of the 2014 Regulations, the additional pension included in the provisional assumed benefits for that period is that which would have been payable had the eligible member not been paying reduced contributions.

(7) Where the eligible member has qualifying service for less than a period of two years, the member is treated as having qualifying service for a period of two years for the purpose of calculating their provisional assumed benefits.

(12) For meaning of “Chapter 1 scheme” see Chapter 1 of 2022 c.7.

(13) For meaning of “judicial scheme” see Chapter 2 of 2022 c.7.

(14) For meaning of “local government scheme” see section 86(1) of 2022 c.7.

(15) For meaning of “revaluation adjustment” see Schedule 1 (interpretation) of the 2014 Regulations.

(16) For meaning of “Scheme pays election” see Schedule 1 (interpretation) of the 2014 Regulations.

(8) Paragraph (9) applies where, after the eligible member's underpin date, the eligible member completes—

- (a) a transfer in of remediable service from—
 - (i) a Chapter 1 scheme;
 - (ii) a judicial scheme; or
 - (iii) another local government scheme; or
- (b) the aggregation of remediable service from the Scheme.

(9) Where this paragraph applies—

- (a) the eligible member's provisional assumed benefits are to be calculated as at the eligible member's underpin date taking into account their transferred in or aggregated remediable service; and
- (b) any calculation of provisional assumed benefits done in respect of the pension account into which the remediable service has been transferred or aggregated is set aside.

(10) Paragraph (9) does not apply if there has been a continuous break in active membership of a public service pension scheme of more than five years since the remediable service was accrued.

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 Scheme;
- (b) the period of membership taken into account for the purposes of sub-paragraph (a) was—
 - (i) the period during which the member has paid, or is treated as having paid, contributions under regulation 11 or 12 (contributions and reduced contributions) of the 2014 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 the eligible member elected to cover that period by entering into an arrangement under regulation 18 (additional pension contributions) of the 2014 Regulations; and
 - (iii) where the member became entitled to ill-health retirement under regulation 36 of the 2014 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(17) (Tier 1 ill-health pension), regulation 20(3) (Tier 2 ill-health pension), or regulation 20(6) (wholly or temporarily in part-time employment) of those Regulations up to the end of the underpin period, as if the member had been entitled to an increase in benefits under the provision in question at the underpin date;
- (c) the eligible member's final pay used to calculate the provisional underpin amount is calculated in accordance with regulations 8 to 11 of the Benefits Regulations and

those regulations apply in relation to the eligible member as if those Regulations were still in operation 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

there was no continuous break of more than five years in active membership of a public service pension scheme since the remediable service was accrued; 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 the proportion of the period of absence that is equal to the proportion of the full amount of contributions to be paid under the arrangement that have been paid by the eligible member.

(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 Scheme with an entitlement to ill-health retirement under regulation 36 of the 2014 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 18(1) or 18(3) of the 2014 Regulations (additional pension contributions) entered into by the eligible member is to be included in the calculation of the provisional underpin amount.

(5) Where the eligible member has qualifying service for less than a period of two years, the member is treated as having qualifying service for a period of two years for the purpose of calculating their provisional underpin amount.

(6) Paragraph (7) applies where, after the eligible member's underpin date, the eligible member completes—

- (a) a transfer in of remediable service from—
 - (i) a Chapter 1 scheme;
 - (ii) a judicial scheme; or
 - (iii) another local government scheme; or
- (b) the aggregation of remediable service from the Scheme.

(7) Where this paragraph applies—

- (a) the eligible member's provisional assumed benefits are to be calculated as at the eligible member's underpin date taking into account their transferred in or aggregated remediable service; and
- (b) any calculation of provisional assumed benefits done in respect of the pension account into which the remediable service has been transferred or aggregated is set aside.

(8) Paragraph (7) does not apply if there has been a continuous break in active membership of a public service pension scheme of more than five years since the remediable service was accrued.

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 to provisional assumed benefits that would have applied to a deferred benefit in the Scheme as if the last day of scheme membership was the underpin date.

(3) Where regulation 31(4) of the 2014 Regulations (pension taken later than normal pension age) applies to the eligible member, apply the enhancement as set out in that provision to provisional assumed benefits.

(4) Where regulation 31(5) (pension taken earlier than normal pension age) or (6) (pension by virtue of flexible retirement) of the 2014 Regulations applies to the eligible member and their benefits under the Scheme are being reduced as set out in that provision, apply an equivalent reduction to provisional assumed benefits.

(5) Where paragraph (4) applies, also reflect in the reduction such transitional provisions under Schedule 3 as apply (if any) (85 year rule).

(6) Where—

- (a) the eligible member’s provisional assumed benefits include any additional pension under regulation 18 of the 2014 Regulations;
- (b) the member is taking payment of their pension before the normal pension age applicable to them under the Scheme; and
- (c) regulation 31(7)(a) of the 2014 Regulations (pension by virtue of redundancy or business efficiency) applies to reduce the amount of pension payable,

the additional pension referred to in sub-paragraph (a) is also to be reduced in accordance with regulation 31(7)(a) of the 2014 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 the provisional underpin amount would be increased if it were a pension to which the Pensions (Increase) Act 1971(18) 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 under regulations 8 to 11 of the Benefits Regulations ends; and
- (b) ending with the eligible member’s final underpin date.

(3) Where an eligible member first receives payment of their retirement pension after the day on which they attain the age of 65, apply an enhancement calculated in accordance with actuarial guidance issued by the Department.

(4) Where—

- (a) regulation 31(5) (pension taken earlier than normal pension age) or (6) (pension by virtue of flexible retirement) of the 2014 Regulations applies to an eligible member); and

(b) the eligible member has not attained the age of 65, apply an adjustment calculated in accordance with actuarial guidance issued by the Department.

(5) Where paragraph (4) applies, the reduction is also to reflect such transitional provisions under Schedule 3 (85 year rule) 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 41 (partners of active members), 43 (children of active members), 46 (partners of deferred members), 48 (children of deferred members), 52 (partners of pensioner members) or 53 (children of pensioner members) of the 2014 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 1/49th of their annual assumed pensionable pay, calculated in accordance with regulation 23(4) of the 2014 Regulations as at the date of the eligible member's death;
- (b) where, in the opinion of an IRMP, the member was at the date of their death in part time service wholly or partly as a result of the condition that caused or contributed to their death, the increase referred to in sub-paragraph (a) is to take no account of any reduction in pensionable pay due to such reduction in service as is attributable to that condition; and
- (c) 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 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) 31st March 2022; and
 - (ii) the date on which the eligible member would have attained—
 - (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, increase the eligible member's provisional underpin amount 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 and including 31st 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 under regulations 8 to 11 of the Benefits Regulations ends; and
 - (ii) ending with the date of the eligible member’s death.

(7) Where, in the opinion of the Committee, the eligible member was in part-time service at the date of their death wholly or partly as the result of the condition that caused or contributed to the member’s death, for the purposes of calculating the adjusted underpin amount no account is to be taken of any reduction in membership due to such reduction in service as is attributable to that condition.

(8) 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—

<i>1. Type of survivor pension</i>	<i>2. Provision of the 2014 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	41(4), 47(4), 52(4)	49/160
Child’s pension: one eligible child and survivor pension paid to deceased member’s partner	44(3), 45(3), 49(3), 50(3), 54(3), 55(3)	49/320
Child’s pension: more than one eligible child and survivor pension paid to deceased member’s partner	44(4), 45(4), 49(4), 50(4), 54(4), 55(4)	49/160
Child’s pension: one eligible child and no survivor pension paid to deceased member’s partner	45(3), 50(3), 55(3)	49/240
Child’s pension: more than one eligible child and no survivor pension paid to deceased member’s partner	45(4), 50(4), 55(4)	49/120

(9) In this regulation, “IRMP” has the meaning given in Schedule 1 (interpretation) to the 2014 Regulations.

Statutory underpin: death grants

4N.—(1) This regulation applies where—

- (a) an eligible member who is a deferred member of the Scheme dies; and
- (b) as a result, a death grant becomes payable under regulation 46 (death grants: deferred members and pension credit members) of the 2014 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 46(3) of the 2014 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 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 final pay period used for the purposes of calculating the eligible member's final pay under regulations 8 to 11 of 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 has an aggregated pension account.

(2) Paragraphs (3) to (7) apply where the eligible member does not have a continuous break in active membership of a public service pension scheme of more than 5 years that began after the member's active membership in respect of the inactive pension account that has been aggregated with the eligible member's active pension account ceases.

(3) 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.

(4) 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.

(5) Where the pension accounts were held concurrently before being aggregated, paragraphs (3) and (4) do not apply if the eligible member had attained before they ceased to be an active member in relation to each inactive pension account that has been aggregated with the active pension account—

- (a) the normal retirement age applicable to them under the 2009 Scheme; or
- (b) where the eligible member was not a member of the 2009 Scheme, the age of 65.

(6) Where the pension accounts were held consecutively before being aggregated, paragraphs (3) and (4) do not apply if the eligible member has attained on the first day of their membership of the active pension account—

- (a) the normal retirement age applicable to them under the 2009 Scheme; or
- (b) where the eligible member was not a member of the 2009 Scheme, the age of 65

(7) Where paragraph (5) or (6) 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.

(8) Paragraphs (9) and (10) apply where the eligible member has had a continuous break in active membership of a public service pension scheme of more than 5 years that began after the member's active membership in relation to the inactive pension account that has been aggregated with the eligible member's active pension account ceased.

(9) 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.

(10) Any remediable service built up in the inactive pension account is ignored for the purposes of regulations 4A to 4T.

(11) In this regulation—

- (a) pension accounts are held concurrently if, immediately before the accounts are aggregated, the eligible member held active membership of the Scheme in relation to the pension account that becomes the active pension account at the same time as holding active membership of the Scheme in the pension account that becomes the inactive pension account; and
- (b) pension accounts are held consecutively before being aggregated if they are not held concurrently.

(12) 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 24(5), (6), (7) or (8) of the 2014 Regulations; and

“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 relevant benefits is, for the purpose of Article 26 of the Welfare Reform and Pensions (Northern Ireland) Order 1999⁽¹⁹⁾ (creation of pension debits and credits), calculated in accordance with regulation 4 of the Pension Sharing (Valuation) Regulations (Northern Ireland) 2000⁽²⁰⁾ (manner of calculation and verification of cash equivalents: occupational pension schemes).

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

(3) “Relevant benefits” has the same meaning as in Article 26 of the Welfare Reform and Pensions (Northern Ireland) Order 1999.

Payment of indirect compensation

4Q.—(1) The Committee may, in respect of a compensatable⁽²¹⁾ loss that is a Part 4 tax loss⁽²²⁾ incurred by an eligible member—

⁽¹⁹⁾ 1999 No. 3147 (N.I. 11).

⁽²⁰⁾ S.R. 2000 No. 144; regulation 4 was substituted by S.R. 2016 No. 172.

⁽²¹⁾ For the meaning of compensatable, see section 82(3) of the PSPJOA 2022.

- (a) not pay an amount under section 82 of the PSPJOA 2022 by way of compensation in respect of the loss; and
 - (b) instead pay the eligible member additional benefits under the 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 Committee must comply with the requirements contained in direction 33(1) (power to pay compensation) of the PSP Directions 2023 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 the PSPJOA 2022 (and the reference in direction 33(1)(f)(iii) to direction 34 is to be read accordingly).
- (4) The Committee must obtain actuarial advice 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 Committee 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 (indirect compensation) of the PSP Directions 2023 applies to this regulation for the purpose of determining whether a Part 4 tax loss is compensatable.

Applications for compensation

4R.—(1) The Committee may pay compensation to a person in respect of the Scheme under section 82(1) of the PSPJOA 2022 (power to pay compensation to members or personal representatives in respect of compensatable losses) or additional benefits payable by virtue of regulation 4Q only after the appropriate person has made an application to the Committee in such form and manner as determined by the Committee, subject to paragraph (2).

(2) Where compensation payable under section 82(1) or 83(1) (indirect compensation) of the PSPJOA 2022 is in respect of a Part 4 tax loss mentioned in direction 34(4)(a), 34(4)(b), 36(3)(a) or 36(3)(b) of the PSP Directions 2023, 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 the PSPJOA 2022), of any compensation or indirect compensation paid 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 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 Committee must determine the relevant amounts (if any) owed by the scheme to a person by virtue of section 82(1) or 83(1) of the PSPJOA 2022 following receipt of the application mentioned in paragraph (1).

(4) The Committee must provide the appropriate person with an explanation of how the relevant amounts (if any) have been determined under paragraph (3).

(22) For the meaning of Part 4 tax loss see section 82(7) of the PSPJOA 2022.

(5) The appropriate person may appeal against a determination by the Committee under paragraph (3) by notice in writing to the Committee, 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 Committee 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 Article 50 of the Pensions (Northern Ireland) Order 1995⁽²³⁾.

(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; and

“the appropriate person” means the eligible member or, if they are deceased, their personal representatives.

Payment of compensation or indirect compensation out of pension fund

4S. The Committee may pay compensation to a person in respect of the Scheme under section 82(1) of the PSPJOA 2022 (power to pay compensation to members or personal representatives in respect of compensatable losses) or additional benefits payable by virtue of regulation 4Q from the pension fund concerned.

Interest on indirect compensation

4T.—(1) This regulation applies where the Committee 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 14 (interest on payments under the statutory underpin) of the Local Government Pension Scheme (Amendment No. 2) Regulations (Northern Ireland) 2023⁽²⁴⁾.

(5) In regulation 9 (transfers)—

- (a) in paragraph (1), after “service”, in the second place it appears, insert “that is not remediable service”;
- (b) after paragraph (1), insert—

“(1ZA) Where a transfer payment is received into the 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 Scheme.

⁽²³⁾ 1995 No. 3213 (N.I. 22); Article 50 was substituted by Article 250 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) as amended by section 14 of the Pensions Act (Northern Ireland) 2008 (2008 c. 1 (N.I.)).

⁽²⁴⁾ S.R. 2023 No. 149.

(1ZB) For the purposes of these Regulations, so long as there has been no continuous break in active membership of a public service pension scheme of more than five years since the remediable service was accrued, transferred remediable service to which paragraph (1ZA) applies is to be treated as a pension to which regulations 4A to 4T apply.”; and

- (c) omit paragraph (1A).
- (6) In Schedule 1 (interpretation)—
- (a) after the definition of “earned pension” insert—
- ““eligible member” has the meaning given in regulation 4A(2) (statutory underpin: general);”;
- (b) after the definition of “existing council” insert—
- ““final assumed benefits” means the benefits calculated in accordance with regulation 4K (statutory underpin: calculation of final assumed benefits);
- “final guarantee amount” is the amount by which the eligible member’s final assumed benefits(25) are exceeded by their final underpin amount(26) (if at all) in respect of a pension account;
- “final underpin amount” means the amount calculated in accordance with regulation 4L (statutory underpin: calculation of final underpin amount);
- “final underpin date” has the meaning given in regulation 4H(1) (statutory underpin: final underpin date);”;
- (c) after the definition of “pensioner member” insert—
- ““provisional assumed benefits” means the benefits calculated in accordance with regulation 4I (statutory underpin: calculation of provisional assumed benefits);
- “provisional underpin amount” means the amount calculated in accordance with regulation 4J (statutory underpin: calculation of provisional underpin amount);
- “the PSP Directions 2023” means the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions (Northern Ireland) 2023(27);
- “the PSPJOA 2022” means the Public Service Pensions and Judicial Offices Act 2022;”;
- (d) after the definition of “the Transitional Regulations 2009” insert—
- ““underpin date” has the meaning given in regulation 4G (statutory underpin: underpin date);
- “underpin period” has the meaning given in regulation 4A(3) (statutory underpin: general);”.

Commencement Information

II Reg. 2 in operation at 1.10.2023, see [reg. 1\(1\)](#)

Amendments to the 2014 Regulations

3.—(1) The 2014 Regulations are amended as follows.

(25) See regulation 4K.

(26) See regulation 4L.

(27) [The Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions \(Northern Ireland\) 2023 \(finance-ni.gov.uk\)](#)

- (2) In regulation 31 (retirement benefits), after paragraph (13) insert—
- “(14) The references to an enhancement in paragraph (4), a reduction in paragraph (5) and an adjustment in paragraph (6) do not apply to any final guarantee amount that has been added to the pension account under regulation 4B (statutory underpin: retirement, redundancy, ill-health) or 4C (statutory underpin: flexible retirement) of the Transitional Regulations.”.
- (3) In regulation 35 (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) 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 (statutory underpin: retirement, redundancy, ill-health) or 4C (statutory underpin: flexible retirement) of the Transitional Regulations; 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;
- (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; or
- (c) where the eligible member is deceased—
- (i) any survivor guarantee amount payable to the survivor member in respect of the eligible member; and
- (ii) any revaluation adjustment or index rate adjustment that has been applied to a survivor member’s pension account as a consequence of the survivor guarantee amount.”; and
- (b) at the end, insert—
- “(4) In this regulation—
- “eligible member” has the meaning given in regulation 4A(2) (statutory underpin: general) of the Transitional Regulations; and
- “survivor guarantee amount” has the meaning given in regulation 4M(3) of the Transitional Regulations.”.
- (4) In regulation 41(4)(a) (survivor benefits: partners of active members), after “draw”, insert “excluding any final guarantee amount under regulation 4B (statutory underpin: retirement, redundancy, ill-health) or 4C (statutory underpin: flexible retirement) of the Transitional Regulations”.
- (5) In regulation 44(3)(a), 44(4)(a), 45(3)(a) and 45(4)(a) (survivor benefits: children of active members), in each case, after “draw”, insert “excluding any final guarantee amount under regulation 4B (statutory underpin: retirement, redundancy, ill-health) or 4C (statutory underpin: flexible retirement) of the Transitional Regulations”.
- (6) In regulation 46 (death grants: deferred members and pension credit members)—
- (a) in paragraph (3)—
- (i) after “annually” insert “, excluding any final guarantee amount under regulation 4B (statutory underpin: retirement, redundancy, ill-health) or 4C (statutory underpin: flexible retirement) of the Transitional Regulations”;
- (ii) at the end of sub-paragraph (a), omit “and”;

(iii) at the end of sub-paragraph (b), insert “and”; and

(iv) after sub-paragraph (b), before “multiplied by 5”, insert—

“(c) it included any deferred guarantee amount calculated under regulation 4N (statutory underpin: death grants) of the Transitional Regulations;” and

(b) after paragraph (3A) insert—

“(3B) In paragraph (3) “deferred guarantee amount” has the meaning given in regulation 4N(3) of the Transitional Regulations.”.

(7) In regulation 47(4), (survivor benefits: partners of deferred members), after “draw”, insert “excluding any final guarantee amount under regulation 4B (statutory underpin; retirement, redundancy, ill-health) or 4C (statutory underpin: flexible retirement) of the Transitional Regulations”.

(8) In regulation 49(3), 49(4), 50(3) and 50(4), in each case (survivor benefits: children of deferred members), after “draw”, insert “excluding any final guarantee amount under regulation 4B (statutory underpin; retirement, redundancy, ill-health) or 4C (statutory underpin: flexible retirement) of the Transitional Regulations”.

(9) In regulation 52 (survivor benefits: partners of pensioner members), after paragraph (7), insert—

“(8) The pension that the member would have been entitled to, for the purpose of calculating the amount of pension payable under paragraph (3), is not to include any final guarantee amount under regulation 4B (statutory underpin; retirement, redundancy, ill-health) or 4C (statutory underpin: flexible retirement) of the Transitional Regulations.”.

(10) In regulation 53 (survivor benefits: children of pensioner members), after paragraph (5A), insert—

“(5B) The pension that the member would have been entitled to, for the purpose of calculating the amount of pension payable under regulation 54(2) or 55(2), is not to include any final guarantee amount under regulation 4B (statutory underpin: retirement, redundancy, ill-health) or 4C (statutory underpin: flexible retirement) of the Transitional Regulations.”.

(11) In regulation 68 (actuarial valuations and certificates), after paragraph (6), insert—

“(6A) Compensation paid by the scheme to a person by virtue of section 82(1) of the PSPJOA 2022 or additional benefits payable by virtue of regulation 4Q (payment of indirect compensation) of the Transitional Regulations are liabilities for the purpose of the actuarial valuation under paragraph (1)(a).”.

(12) In regulation 70 (special circumstances where revised actuarial valuations and certificates must be obtained), after paragraph (2), insert—

“(2ZA) Compensation paid by the scheme to a person by virtue of section 82(1) of the PSPJOA 2022 or additional benefits payable by virtue of regulation 4Q (payment of indirect compensation) of the Transitional Regulations are liabilities for the purpose of the actuarial valuation under paragraph (2)(a).”.

(13) In regulation 91 (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 (interest on indirect compensation) of the Transitional Regulations;
or

- (b) regulation 14 (interest on payments under the statutory underpin) of the Local Government Pension Scheme (Amendment No. 2) Regulations (Northern Ireland) 2023.”.
- (14) In regulation 108 (rights to payment out of pension fund)—
- (a) after paragraph (1A), insert—
- “(1B) 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 Department, taking into account the member’s provisional assumed benefits and provisional underpin amount, which are calculated in accordance with regulations 4I (statutory underpin: calculation of provisional assumed benefits) and 4J (statutory underpin: calculation of provisional underpin amount) of the Transitional Regulations.”.
- (b) after paragraph (3), insert—
- “(4) “eligible member” has the same meaning as in regulation 4A(2) (statutory underpin: general) of the Transitional Regulations.”.
- (15) In regulation 110 (bulk transfer (transfers of undertakings, etc), at the end insert—
- “(8) This regulation is subject to regulation 10(6) (transfer payments out of the fund before 1st October 2023) of the Local Government Pension Scheme (Amendment No. 2) Regulations (Northern Ireland) 2023.”.
- (16) In regulation 111 (calculation of amount of transfer value payment), after paragraph (2), insert—
- “(2A) The actuary must take into account the member’s provisional assumed benefits and provisional underpin amount, which are calculated in relation to the member in accordance with regulations 4I (statutory underpin: calculation of provisional assumed benefits) and 4J (statutory underpin: calculation of provisional underpin amount) of the Transitional Regulations.”.
- (17) In Schedule 1 (interpretation)—
- (a) after the definition of “existing council”, insert—
- ““final guarantee amount” has the meaning given in Schedule 1 (interpretation) of the Transitional Regulations;”; and
- (b) after the definition of “permanently incapable”, insert—
- ““the PSPJOA 2022” means the Public Service Pensions and Judicial Offices Act 2022;”.

Commencement Information

I2 Reg. 3 in operation at 1.10.2023, see [reg. 1\(1\)](#)

Changes to legislation:

There are currently no known outstanding effects for the The Local Government Pension Scheme (Amendment No. 2) Regulations (Northern Ireland) 2023, PART 2.