

SCOTTISH STATUTORY INSTRUMENTS

**2018 No. 141**

**The Local Government Pension  
Scheme (Scotland) Regulations 2018**

**PART 1**

**Membership, contributions and benefits**

*Survivor benefits*

**Survivor benefits: partners of active members**

**39.**—(1) If an active member dies leaving a surviving spouse, civil partner or cohabiting partner, that person is entitled to a pension which shall come into payment on the day following the member's death.

(2) The appropriate administering authority shall close the active member's pension account and shall open a survivor member's pension account from the day following the member's death.

(3) The opening balance of the survivor member's pension account is the amount of pension payable to the survivor calculated in accordance with paragraph (4).

(4) The amount of a pension payable under paragraph (3) is calculated by adding together the amounts in sub-paragraphs (a) and (b)—

(a) the pension that the member would have been entitled to draw [<sup>F1</sup>, excluding any final guarantee amount under regulation 4B or 4C of the Transitional Provisions and Savings Regulations 2014,] if—

- (i) the member had been entitled to draw a pension on the date of the member's death;
- (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment either relating to the age at which it was drawn or following a Scheme pays election;

(iii) the pension excluded [<sup>F2</sup>any] additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension);

(iv) the member's earned pension had accrued at a rate of 1/160th of pensionable pay; [<sup>F3</sup>and]

(v) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had been multiplied by 49/160; <sup>F4</sup>...

<sup>F5</sup>(vi) .....

[<sup>F6</sup>(aa) For the purposes of sub-paragraph (a), if the member died in the period beginning with 1 April and ending with 5 April in any Scheme year, the pension is deemed to include the revaluation adjustment that would have been due at the next revaluation date,]

[<sup>F6</sup>(b) a sum equivalent to 1/160th of the member's annual assumed pensionable pay calculated in accordance with regulation 21(4) or, as appropriate, regulation 21(9), as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

(5) Additional pension purchased under regulation 16 is not excluded for the purposes of paragraph (4)(a)(iii) where the member has elected to purchase that additional pension to cover the amount of pension which would otherwise have accrued but for—

- (a) an absence from work with no pensionable pay in consequence of a trade dispute; or
- (b) an absence from work with permission with no pensionable pay, otherwise than because of—
  - (i) illness or injury;
  - (ii) child related leave; or
  - (iii) reserve forces special leave.

(6) The balance in the survivor member's pension account at the end of the Scheme year in which the survivor member's account was opened is adjusted [<sup>F7</sup>on the revaluation date in] the following Scheme year by the revaluation adjustment applicable to the Scheme year in which the survivor member's account was opened, [<sup>F8</sup>and takes effect from the start of the Scheme year following the Scheme year in which the survivor member's account was opened,] in accordance with guidance issued by the Scottish Ministers.

(7) The <sup>F9</sup>... balance calculated under paragraph [<sup>F10</sup>(3)] is the opening balance of the survivor member's pension account for the following Scheme year and, [<sup>F11</sup>having applied the revaluation adjustment to the balance in accordance with paragraph (6),] thereafter, the balance in the account is adjusted each year by the index rate adjustment from the date that an increase would apply if that balance were a pension in payment to which the Pensions (Increase) Act 1971 <sup>M1</sup> applied.

[<sup>F12</sup>(7A) Where an index rate adjustment is due to be made on a revaluation date, any such adjustment must be made immediately after the revaluation adjustment is made.]

(8) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).]

#### Textual Amendments

- F1** Words in reg. 39(4)(a) inserted (1.10.2023) by The Local Government Pension Scheme (Remediable Service) (Scotland) Regulations 2023 (S.S.I. 2023/240), regs. 1(2), **3(4)(a)**
- F2** Word in reg. 39(4)(a)(iii) inserted (with effect from 1.6.2018) by The Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2019 (S.S.I. 2019/161), regs. 1(2), **2(19)**
- F3** Word in reg. 39(4)(a) inserted (1.10.2023) by The Local Government Pension Scheme (Remediable Service) (Scotland) Regulations 2023 (S.S.I. 2023/240), regs. 1(2), **3(4)(b)**
- F4** Word in reg. 39(4)(a)(v) omitted (1.10.2023) by virtue of The Local Government Pension Scheme (Remediable Service) (Scotland) Regulations 2023 (S.S.I. 2023/240), regs. 1(2), **3(4)(c)**
- F5** Reg. 39(4)(a)(vi) omitted (1.10.2023) by virtue of The Local Government Pension Scheme (Remediable Service) (Scotland) Regulations 2023 (S.S.I. 2023/240), regs. 1(2), **3(4)(d)**
- F6** Reg. 39(4)(aa) inserted (28.3.2024 with effect from 31.3.2023) by The Local Government Pension Scheme (Scotland) (Amendment) Regulations 2024 (S.S.I. 2024/37), regs. 1(2), **4(1)(a)**
- F7** Words in reg. 39(6) substituted (28.3.2024 with effect from 31.3.2023) by The Local Government Pension Scheme (Scotland) (Amendment) Regulations 2024 (S.S.I. 2024/37), regs. 1(2), **4(1)(b)(i)**
- F8** Words in reg. 39(6) inserted (28.3.2024 with effect from 31.3.2023) by The Local Government Pension Scheme (Scotland) (Amendment) Regulations 2024 (S.S.I. 2024/37), regs. 1(2), **4(1)(b)(ii)**

- F9** Word in reg. 39(7) omitted (28.3.2024 with effect from 31.3.2023) by virtue of The Local Government Pension Scheme (Scotland) (Amendment) Regulations 2024 (S.S.I. 2024/37), regs. 1(2), **4(1)(c)(i)**
- F10** Word in reg. 39(7) substituted (28.3.2024 with effect from 31.3.2023) by The Local Government Pension Scheme (Scotland) (Amendment) Regulations 2024 (S.S.I. 2024/37), regs. 1(2), **4(1)(c)(ii)**
- F11** Words in reg. 39(7) inserted (28.3.2024 with effect from 31.3.2023) by The Local Government Pension Scheme (Scotland) (Amendment) Regulations 2024 (S.S.I. 2024/37), regs. 1(2), **4(1)(c)(iii)**
- F12** Reg. 39(7A) inserted (28.3.2024 with effect from 31.3.2023) by The Local Government Pension Scheme (Scotland) (Amendment) Regulations 2024 (S.S.I. 2024/37), regs. 1(2), **4(1)(c)(iv)**
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**Marginal Citations**

- M1** 1971 c.56.

**Changes to legislation:**

There are currently no known outstanding effects for the The Local Government Pension Scheme (Scotland) Regulations 2018, Section 39.