



Type	Based on	Based on	Based on	Based on	Based on	Based on	Based on
Widow of pre-leaving opposite sex marriage	All membership [Reg E6 of 1987 Regs]	All membership [Reg 40 of 1998 Regs]	All membership [Benefits regs 24, 33 and 36]	All membership [TP reg 17(4)]	All membership [TP reg 17(4)]	All membership to 31/3/15 plus survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs [TP 17(1) and (2)]	Survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs
Widow of post-leaving opposite sex marriage	Post 5/4/78 contracted-out membership [Reg E6(4) of 1987 Regs]	Post 5/4/78 contracted-out membership [Reg 41(1) of 1998 Regs]	Post 5/4/78 contracted-out membership [Reg 7 of 2008 TP Regs and reg 41(1) of 1998 Regs]	Post 5/4/78 membership plus relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* where previously married to deceased at some time whilst active member after 31/3/72 [TP reg 17(4), (12) and (13)]	Post 5/4/78 membership plus relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* where previously married to deceased at some time whilst active member after 31/3/72 [TP reg 17(4), (12) and (13)]	6/4/78 – 31/3/15 membership, including relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* (other than IHE) where previously married to deceased at some time whilst active member after 31/3/72, plus survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs [TP reg 17(1),	Survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs

						(2), (12) and (13)]	
Widower of pre-leaving opposite sex marriage	Post 5/4/88 membership plus relevant additional membership plus 1/4/72-5/4/88 membership if bought by member and any pre 1/4/72 membership if bought by member [Regs E6(3), (3A) and (6) of 1987 Regs]	Post 5/4/88 membership plus relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* plus 1/4/72-5/4/88 membership if bought by member who was married before 1/4/98 or granted by employer to such a member and any pre 1/4/72 membership if bought by such a member or all pre 6/4/88 membership if single at 31/3/98 and married after then	All membership [Benefits regs 24, 33 and 36 and reg 7 of 2008 TP Regs]	As per 1987 or 1998 Regs column entry, as appropriate [TP reg 17(4)]	All membership [TP reg 17(4)]	All membership to 31/3/15 plus survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs [TP reg 17(1) and (2)]	Survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs

		[Regs 41(2) – (4) of 1998 Regs* and reg 9 of 1998 TP Regs]					
Widower of post-leaving opposite sex marriage	Post 5/4/88 membership plus relevant additional membership where previously married to deceased at some time whilst active member after 31/3/72 [Regs E6(3) and (3A) of 1987 Regs]	Post 5/4/88 membership plus relevant additional membership where previously married to deceased at some time whilst active member after 31/3/72 [Regs 41(2) to 41(4)(a) to (d) of 1998 Regs*]	Post 5/4/88 membership plus relevant additional membership where previously married to deceased at some time whilst active member after 31/3/72 [Reg 7 of 2008 TP Regs and regs 41(2) – (4)(a) to (d) of 1998 Regs*]	Post 5/4/88 membership plus relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* where previously married to deceased at some time whilst active member after 31/3/72 [TP reg 17(4), (10), (11) and (13)]	Post 5/4/88 membership plus relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* where previously married to deceased at some time whilst active member after 31/3/72 [TP reg 17(4), (10), (11) and (13)]	6/4/88 to 31/3/15 membership, including relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* (other than IHE) where previously married to deceased at some time whilst active member after 31/3/72 plus survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs [TP reg 17(1), (2), (10), (11) and (13)]	Survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs

Civil partner of pre-leaving civil partnership	N/A – civil partnerships only came into existence from 5/12/05. Thus no-one who ceased active membership prior to 1/4/98 could have entered into a pre-leaving civil partnership.	Post 5/4/88 membership plus relevant additional membership [Reg 41(3A) and (3B) of 1998 Regs]	Post 5/4/88 membership plus relevant additional membership [Reg 7(3) of 2008 TP Regs and reg 41(3A) and (3B) of 1998 Regs]	Post 5/4/88 membership for benefits awarded under the 1998 Regs plus relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs [TP reg 17(4) (10), (11) and (13) and reg 41(3A) and (3B) of the 1998 Regs and reg 4A of the 1998 TP Regs]	Post 5/4/88 membership plus relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* [TP reg 17(4), (10), (11) and (13)]	6/4/88 to 31/3/15 membership plus relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* plus survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs [TP reg 17(1), (2), (4), (10), (11) and (13)]	Survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs
Civil partner of post-leaving civil partnership	Post 5/4/88 membership <b>excluding**</b> relevant additional membership [Regs regs E6(3) and (3A) of 1987 Regs; and reg 4A of 1998 TP Regs]	Post 5/4/88 membership plus relevant additional membership [Reg 41(3A) and (3B) of 1998 Regs]	Post 5/4/88 membership plus relevant additional membership [Reg 7(3) of 2008 TP Regs and reg 41(3A) and (3B) of 1998 Regs]	Post 5/4/88 membership plus, for benefits awarded under the 1998 Regs, relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998	Post 5/4/88 membership plus relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* where previously in a civil partnership with the	6/4/88 to 31/3/15 membership, including relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* (other than IHE) where	Survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs

**Comment [TE1]:** The LGPC understands that the SPPA policy intention is that, in these cases, the survivor's pension should be based on all of the deceased's membership. An amendment to the Transitional Regs is required in order to deliver this policy intention.

				Regs* where previously in a civil partnership with the deceased at some time whilst active member after 31/3/72 [TP reg 17(4), (10), (11) and (13)] [TP reg 17(4), (10), (11) and (13) and reg 41(3A) and (3B) of the 1998 Regs and reg 4A of the 1998 TP Regs]	deceased at some time whilst active member after 31/3/72 [TP reg 17(4), (10), (11) and (13)]	previously in a civil partnership with the deceased at some time whilst active member after 31/3/72 plus survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs [TP reg 17(1), (2), (10), (11) and (13)]	
Survivor of same sex pre-leaving marriage*****	N/A – same sex marriages only came into existence from 31/12/14. Thus no-one who ceased active membership prior to 1/4/98 could have entered into a pre-leaving same sex marriage. <b>Same outcome</b>	N/A – same sex marriages only came into existence from 31/12/14. Thus no-one who ceased active membership prior to 1/4/09 could have entered into a pre-leaving same sex marriage.	Post 5/4/88 membership plus relevant additional membership [Reg 7(3) of 2008 TP Regs] [The LGPC Secretariat understands from SPPA that this is the intended policy position	N/A - same sex marriages only came into existence from 31/12/14. Thus no-one who ceased active membership prior to 1/4/09 could have entered into a pre-leaving same sex marriage. <b>Differs from</b>	Post 5/4/88 membership plus relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* [TP reg 17(4), (10), (11) and (13)] <b>Same outcome as for pre-leaving civil partnership</b>	All membership. Although TP regs 17(1), (2), (4), (10), (11) and (13) would appear to provide that the survivor benefit would be based on 6/4/88 to 31/3/15 membership plus relevant additional membership as	Survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs. <b>Same outcome as for pre-leaving civil partnership</b>

	as for pre-leaving civil partnership]	[Differs from pre-leaving civil partnership but only because civil partnerships could be entered into pre 1/4/09]	(upon which draft regulations will be consulted upon) and produces the same outcome as for pre-leaving civil partnership]	pre-leaving civil partnership but only because civil partnerships could be entered into pre 1/4/09]		defined in reg 41(4)(a) to (d) of the 1998 Regs* plus the survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs, section 4 of the Marriage and Civil Partnership (Scotland) Act 2014 has the effect of providing that the survivor is treated in the same way as the widow or widower of a pre-leaving opposite sex marriage. [Same outcome as SPPA policy intention for pre-leaving civil partnership]	
Survivor of same sex post-leaving marriage*****	Post 5/4/88 membership <b>excluding</b> *****	Post 5/4/88 membership <b>excluding</b> *****	Post 5/4/88 membership plus relevant	Post 5/4/88 membership <b>excluding</b> *****	Post 5/4/88 membership plus relevant	6/4/88 to 31/3/15 membership	Survivor benefit calculated under regs 39,

	relevant additional membership [Regs regs E6(3) and (3A) of 1987 Regs; and reg 4A of 1998 TP Regs] [The LGPC Secretariat understands from SPPA that this is the intended policy position (upon which draft regulations will be consulted upon) and produces the same outcome as for post-leaving civil partnership *****]	relevant additional membership [The LGPC Secretariat understands from SPPA that this is the intended policy position (upon which draft regulations will be consulted upon) and produces the same outcome as for post-leaving civil partnership except that relevant additional membership is not counted *****]	additional membership [Reg 7(3) of 2008 TP Regs] [The LGPC Secretariat understands from SPPA that this is the intended policy position (upon which draft regulations will be consulted upon) and produces the same outcome as for post-leaving civil partnership]	relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* [TP reg 17(4), (10), (11) and (13)] [Same outcome as for post-leaving civil partnership except that relevant additional membership is not counted *****]	additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* where previously in a same sex marriage with the deceased at some time whilst active member after 31/3/72 [TP reg 17(4), (10), (11) and (13)] [Same outcome as for post-leaving civil partnership]	including relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* (other than IHE) where previously in a same sex marriage with the deceased at some time whilst active member after 31/3/72 plus survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs [TP reg 17(1) and (2), (10), (11) and (13)] [Same outcome as for post-leaving civil partnership]	42 or 45 of 2014 Regs [Same outcome as for post-leaving civil partnership]
Cohabiting partner*** – where cohabitation commenced pre-leaving	N/A - benefits for cohabiting partners were only introduced	N/A - benefits for cohabiting partners were only	Post 5/4/88 membership (plus any pre 6/4/88	N/A - benefits for cohabiting partners were only introduced	Post 5/4/88 membership plus relevant additional	6/4/88 to 31/3/15 membership plus relevant	Survivor benefit calculated under regs 39, 42 or 45 of



	from 1/4/09 and so do not apply to pre 1/4/09 leavers.	introduced from 1/4/09 and so do not apply to pre 1/4/09 leavers.	membership bought by ASBCs – surviving cohabiting partner must have been nominated by deceased member [Benefits reg 14A(5) and reg 3(4) of 2008 TP Regs]	from 1/4/09 and so do not apply to pre 1/4/09 leavers. [TP reg 17(4)]	membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* if had been cohabiting with the deceased at some time whilst active member after 31/3/09 (plus any pre 6/4/88 membership bought by ASBCs)– no requirement for surviving cohabiting partner to have been nominated by deceased member [TP reg 17(4), (9)(b), (10), (11) and (13)]	additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* (other than IHE) if had been cohabiting with the deceased at some time whilst active member after 31/3/09 (plus any pre 6/4/88 membership bought by ASBCs) plus survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs – no requirement for surviving cohabiting partner to have been nominated by deceased member [TP reg 17(1), (2), (9)(b), (10), (11) and (13)]	2014 Regs
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**Comment [TE2]:** The LGPC understands that the SPPA policy intention is that, in these cases, the survivor's pension should be based on all of the deceased's membership. An amendment to the Transitional Regs is required in order to deliver this policy intention.

<p>Cohabiting partner*** – where cohabitation commenced post-leaving</p>	<p>N/A - benefits for cohabiting partners were only introduced from 1/4/09 and so do not apply to pre 1/4/09 leavers.</p>	<p>N/A - benefits for cohabiting partners were only introduced from 1/4/09 and so do not apply to pre 1/4/09 leavers.</p>	<p>Post 5/4/88 membership (plus any pre 6/4/88 membership bought by ASBCs) – surviving cohabiting partner must have been nominated by deceased member [Benefits reg 14A(5) and reg 3(4) of 2008 TP Regs]</p>	<p>N/A - benefits for cohabiting partners were only introduced from 1/4/09 and so do not apply to pre 1/4/09 leavers. [TP reg 17(4)]</p>	<p>Post 5/4/88 membership plus relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* if had been cohabiting with the deceased at some time whilst active member after 31/3/09 (plus any pre 6/4/88 membership bought by ASBCs)– no requirement for surviving cohabiting partner to have been nominated by deceased member [TP reg 17(4), (9)(b), (10), (11) and (13)]</p>	<p>6/4/88 to 31/3/15 membership plus relevant additional membership as defined in reg 41(4)(a) to (d) of the 1998 Regs* (other than IHE) if had been cohabiting with the deceased at some time whilst active member after 31/3/09 (plus any pre 6/4/88 membership bought by ASBCs) plus survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs – no requirement for surviving cohabiting partner to have been nominated by deceased</p>	<p>Survivor benefit calculated under regs 39, 42 or 45 of 2014 Regs</p>
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						member [TP reg 17(1), (2), (9)(b), (10), (11) and (13)]	
Eligible child	All membership – definition of child and eligible child in Schedule 1 of 1987 Regs	All membership – definition of eligible child in reg 43 of 1998 Regs	All membership – definition of eligible child in reg 26 of the Benefits Regs	All membership – definition of eligible child in 2014 Regs [TP reg 17(4) and (9)(a)]	All membership – definition of eligible child in 2014 Regs [TP reg 17(4) and (9)(a)]	All membership to 31/3/15 plus survivor benefit calculated under regs 40, 43 or 46 of 2014 Regs – definition of eligible child in 2013 Regs [TP reg 17(1), (2) and (9)(a)]	Survivor benefit calculated under regs 40, 43 or 46 of 2014 Regs – definition of child in 2013 Regs
	<p>* The references in the table to regulations 41(4)(a) to (d) of the 1998 Regs reflect the wording of regulation 17(13)(a) of the TP Regs. The lack of a cross-reference in that regulation to regulation 41(4)(e) of the 1998 Regs was deliberate to make it clear that transferred in membership counts in respect of a male scheme member as post 5<sup>th</sup> April 1978 membership (where the transfer was received after that date) and counts in respect of a female scheme member as post 5<sup>th</sup> April 1988 membership (where the transfer was received after that date) in accordance with regulations 122(5) and (6) of the 1998 Regs.</p> <p>** Relevant additional membership is excluded because civil partnerships did not come into being until 5<sup>th</sup> December 2005. Thus, no-one whose benefits are payable under the 1987 Regulations can have been in a civil partnership at any point whilst an active member under those Regulations.</p> <p>*** For deaths before 1<sup>st</sup> April 2015 of members who ceased active membership after 31<sup>st</sup> March 2009 there is a requirement for the survivor to have been nominated by the deceased member for a surviving cohabiting partner's pension. However, for deaths on or after 1<sup>st</sup> April 2015 of members who ceased active membership after 31<sup>st</sup> March 2009 there is no requirement for the survivor to have been nominated by the deceased member for a surviving cohabiting partner's pension.</p>						

		<p>***** Relevant additional membership is excluded because same sex marriages did not come into being until 16<sup>th</sup> December 2014 with the first same-sex marriages not occurring until 31<sup>st</sup> December 2014. Thus, no-one whose benefits are payable under the 1987 or 1998 Regulations can have been in a same sex marriage at any point whilst an active member under those Regulations.</p> <p>***** If</p> <ul style="list-style-type: none"> <li>a) the survivor of a same sex marriage is a woman, and</li> <li>b) the deceased was formerly a man but was a woman by virtue of a full gender recognition certificate issued under the Gender Recognition Act 2004, and</li> <li>c) the survivor was married to the deceased and that marriage had subsisted before the full gender recognition certificate had been issued</li> </ul> <p>the survivor is to be treated as the widow of a pre-leaving marriage</p>
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**Key:**

1987 Regs = Local Government Superannuation (Scotland) Regulations 1987

1998 Regs = Local Government Pension Scheme (Scotland) Regulations 1998

1998 TP Regs = Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998

Benefits Regs = Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008

2008 TP Regs = Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008

2014 Regs = Local Government Pension Scheme (Scotland) Regulations 2014

TP reg = Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014

## **Disclaimer**

This document has been prepared based on the LGPC Secretariat's understanding of the information presently available including the relevant Statutory Instruments governing the Local Government Pension Scheme, associated overriding legislation and relevant draft legislation. It represents the views of the Secretariat and should not be treated as a complete and authoritative statement of the law. Readers may wish, or will need, to take their own legal advice on the interpretation of any particular piece of legislation. No responsibility whatsoever will be assumed by the Local Government Association for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained herein.

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10<sup>th</sup> April 2015

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