

Aggregation (version 1.4)

General principle

This paper sets out the rules which, from 1 April 2015, govern the aggregation of a member's deferred benefit or deferred refund under the LGPS in Scotland with the member's benefits in an active account in the LGPS in Scotland. It should be read in conjunction with the paper on the 85 year rule. Where a regulation number is referred to it relates to the relevant regulation in the Local Government Pension Scheme (Scotland) Regulations 2014 unless either a regulation or section from a named set of regulations or Act is quoted or the regulation number is preceded by TP, in which case the regulation number relates to the relevant regulation in the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014.

Basically:

- i) A member's deferred benefits -
 - can be aggregated with a member's active pension account. This applies to optants out who rejoin the LGPS in the same way as to a leaver who rejoins the LGPS
 - cannot be aggregated with a deferred member's pension account, a deferred refund account, a retirement pension account, a flexible retirement pension account, a survivor member's account, or a pension credit account.

- ii) A member's deferred refund –
 - must be aggregated with a member's active pension account
 - cannot be aggregated with a deferred member's pension account, another deferred refund account, a retirement pension account, a flexible retirement pension account, a survivor member's account, or a pension credit account.

A summarised version of the aggregation rules are set out in the sections in Part 1 of this paper. A more detailed version is contained in the sections in Part 2.

References in this paper to a public service pension scheme means active membership of a scheme covering civil servants, the judiciary, the armed forces, any scheme in England, Wales or Scotland covering local government workers, or teachers, or health service workers, or fire and rescue workers or members of the police forces; or membership of a new public body pension scheme. [Paragraph 3(2) of Schedule 7 to the Public Service Pensions Act 2013].

References in this paper to “variable-time employment” relate to employment under which an employee's contract provides that their pay is calculated by reference to the duties undertaken (rather than by reference to the number of hours worked). In other words, the employee is paid a fixed sum of money for

the work undertaken, regardless of how long it takes the person to undertake the work – for example, returning officers and acting returning officers. The references to “variable-time employment” **do not** relate to zero hours or variable hours contracts under which employees are paid for the hours of work undertaken.

Part 1 – summarised version

The golden rule is that a member's deferred benefits **can** be aggregated with a member's active pension account whereas a member's deferred refund **must** be aggregated with a member's active pension account.

The above rule applies equally to the cessation of a concurrent employment and also to optants-out just as they do for actual leavers.

The complications really start to arise when one looks at the possibility of these events occurring where a person has membership which it to be aggregated which is only post-15 rights, or only pre-15 rights, or a mix of pre-15 and post-15 rights.

We will look at the possibilities in turn, noting that:

- whenever automatic aggregation applies, there is no entitlement to a refund of contributions as an alternative,
- wherever aggregation occurs, if the CARE amount and/or Final Salary benefits to be aggregated is/are held in a different Fund, an Inter Fund Adjustment must be paid,
- where permitted, if a member wishes to retain separate benefits, an election has to be made to the new Fund within 12 months (or such longer period as the new / ongoing employer may allow),
- where the gap between the member's last day of membership to which the deferred benefit or deferred refund relates and the first day of rejoining the Scheme does not exceed 5 years, the amount in the deferred pension account must be recalculated as if the Treasury Revaluation Orders had applied during that period, and not Pension Increase (Review) Orders.

As now, on concurrent membership aggregation, any pre 1 April 2015 membership is subject to the following adjustment (the rates of pay are as defined in the 2009 Scheme):

Membership from the ceased employment multiplied by -

$$\frac{\text{Whole time rate of pay from employment which has ceased}}{\text{Whole time rate of pay in the ongoing employment}}$$

Similarly, where pre 1 April 2015 membership is derived from a variable-time employment and the ongoing employment is not, the membership being aggregated is multiplied by -

$$\frac{\text{Annual rate of pay in the variable-time employment}}{\text{Annual rate of pay in the ongoing employment}}$$

Scenario A – post-14 only

A1: Active member who has a **deferred refund** from an earlier period of membership or from a concurrent employment that has ceased and which is based on post 31 March 2015 membership only.

Concurrent employment:

Automatically aggregated with the ongoing active pension account or, if there is more than one, with whichever one the member chooses.

Previous employment:

Automatically aggregated with the ongoing active pension account.
(Note that the gap between employments cannot be more than 5 years as a deferred refund cannot be held for longer).

A2: Active member who has a **deferred benefit** from an earlier period of membership or from a concurrent employment which has ceased and which is based on post 31 March 2015 membership only.

Concurrent employment:

Automatically aggregated with the ongoing active pension account or, if there is more than one, with whichever one the member chooses **unless** the member elects to retain separate benefits*.

Previous employment:

Automatically aggregated with the new active pension account **unless** the member elects to retain separate benefits*.

* The right to elect to retain separate benefits does not apply if the reason the employment ceased was because the member was TUPE transferred to another employer participating in the LGPS (or the transfer was treated as if it were a relevant transfer within the meaning of regulations 2(1) and (3) of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.

Scenario B – mix of pre-15 and post-15 (without 5 year break)

B1: Active member who has a **deferred refund** from an earlier period of membership, or from the cessation of a concurrent employment, which is based on pre 1 April 2015 **and** post 31 March 2015 membership **and** the member was an active member on both 31 March 2015 and 1 April 2015 **and**, since becoming entitled to the deferred refund, the member **has not** had a continuous break in active membership of a public service pension scheme of more than 5 years.

Concurrent employment:

Automatically aggregated with the ongoing active pension account or, if there is more than one, with whichever one the member chooses, **and** the pre 1 April 2015 membership from the concurrent employment that has ceased will entitle the member to a final salary benefit (the membership will be attached to the same ongoing active pension account).

Previous employment:

Automatically aggregated with the new active pension account and the pre 1 April 2015 membership from the deferred refund will entitle the member to a final salary benefit (the membership will be attached to the new active pension account).

B2: Active member who has a **deferred benefit** from an earlier period of membership or from the cessation of a concurrent employment which is based on pre 1 April 2015 **and** post 31 March 2015 membership **and** the member was an active member on both 31 March 2015 and 1 April 2015 **and**, since becoming entitled to the deferred benefit, the member **has not** had a continuous break in active membership of a public service pension scheme of more than 5 years.

Concurrent employment:

Automatically aggregated with the ongoing active pension account or, if there is more than one, with whichever one the member chooses, **and** the pre 1 April 2015 membership from the concurrent employment that has ceased will entitle the member to a final salary benefit (the membership will be attached to the same ongoing active pension account) **unless** the member elects to retain separate benefits*.

Previous employment:

Automatically aggregated with the new active pension account **and** the pre 1 April 2015 membership from the deferred benefit will entitle the member to a final salary benefit (the membership will be attached to

the new active pension account) **unless** the member elects to retain separate benefits*.

If not aggregated, the deferred benefit for the pre 1 April 2015 membership would **not** retain an **ongoing** final salary link [see s20 and paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 and the letter from DCLG at Annex 1].

* The right to elect to retain separate benefits does not apply if the reason the employment ceased was because the member was TUPE transferred to another employer participating in the LGPS (or the transfer was treated as if it were a relevant transfer within the meaning of regulations 2(1) and (3) of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.

Scenario C – mix of pre-15 and post-15 (with 5 year break)

C1: Active member who has a **deferred refund** from an earlier period of membership which is based on pre 1 April 2015 **and** post 31 March 2015 membership **and** the member was an active member on both 31 March 2015 and 1 April 2015 **and**, since becoming entitled to the deferred refund, the member **has** had a continuous break in active membership of a public service pension scheme of more than 5 years.

The member is only entitled to a refund of contributions, which should already have been paid.

C2: Active member who has a **deferred benefit** from an earlier period of membership which is based on pre 1 April 2015 **and** post 31 March 2015 membership **and** the member was an active member on both 31 March 2015 and 1 April 2015 **and**, since becoming entitled to the deferred benefit, the member **has** had a continuous break in active membership of a public service pension scheme of more than 5 years.

Automatically aggregated with the new active pension account **and** the transfer value in respect of pre 1 April 2015 membership from the deferred benefit will purchase an amount of earned pension in the member's active pension account **unless** the member elects to retain separate benefits.

Scenario D – pre-15 only

D1: Member left prior to 1 April 2015 with a **deferred refund** and rejoins the Scheme on or after 1 April 2015.

The transfer value in respect of the pre 1 April 2015 membership is to be used to purchase an amount of earned pension in the member's active pension account.¹

D2: Member left prior to 1 April 2015 with a **deferred benefit** and rejoins the Scheme on or after 1 April 2015 **and**, since becoming entitled to the deferred benefit, the member **has not** had a continuous break in active membership of a public service pension scheme of more than 5 years.

The member can make an election to the administering authority in which the member holds the active pension account within 12 months of rejoining the Scheme to be treated as if he / she had been an active member on 31 March 2015 and 1 April 2015.

Where the member does so:

The pre 1 April 2015 membership from the deferred benefit will entitle the member to a final salary benefit (the membership will be attached to the new active pension account).

Where the member does not:

The member may, within 12 months of rejoining (or such longer period as the employer may allow), elect for the transfer value in respect of the pre 1 April 2015 membership to be used to purchase an amount of earned pension in the member's new active pension account², **else** the pre 1 April 2015 membership will remain as a deferred benefit which would **not** retain an **ongoing** final salary link [see s20 and paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 and the letter from DCLG at Annex 1].

¹ It is not clear why, where a member left prior to 1 April 2015 with a deferred refund and rejoins the Scheme on or after 1 April 2015 and has not had a continuous break in active membership of a public service pension scheme of more than 5 years, regulation 10(5) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 requires that the transfer value in respect of the pre 1 April 2015 membership should purchase an amount of earned pension in the member's active pension account (rather than final salary membership in accordance with section 20 of, and paragraph 1 of Schedule 7 to, the Public Service Pensions Act 2013). Clarification has been sought from SPPA.

² It is not clear why, if the member **does not** elect to be treated as if he / she had been an active member on 31 March 2015 and 1 April 2015 and elects to aggregate, regulation 10(6) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 requires that the transfer value in respect of the pre 1 April 2015 membership should purchase an amount of earned pension in the member's active pension account (rather than final salary membership in accordance with section 20 of, and paragraph 1 of Schedule 7 to, the Public Service Pensions Act 2013). Clarification has been sought from SPPA.

D3: Member left prior to 1 April 2015 with a deferred benefit **and** rejoins the Scheme on or after 1 April 2015 **and**, since becoming entitled to the deferred benefit, the member **has had** a continuous break in active membership of a public service pension scheme of more than 5 years.

The member may, within 12 months of rejoining (or such longer period as the employer may allow), elect for the transfer value in respect of the pre 1 April 2015 membership to be used to purchase an amount of earned pension in the member's new active pension account, **else** the pre 1 April 2015 membership will remain as a deferred benefit.

Scenario E – re-joiners

E: Any member to whom scenarios A to D applied upon first re-joining the Scheme after 31 March 2015 and who left again post 1 April 2015 and subsequently re-joins again.

If, when scenarios C2, D1, D2 or D3 was first applied, the pre 1 April 2015 membership was aggregated and purchased an amount of earned pension in the active account then, upon re-joining the Scheme again at some later date, scenario A will apply to the member in respect of that membership as that membership is to be treated for the purposes of this aggregation paper as if it had all been post 31 March 2015 membership.

In any other case, scenarios A, B1, B2, C1, C2, D2 or D3 will apply, as appropriate.

Note: the above assumes that under D2 the member will still have the option to elect within 12 months of re-joining to be treated as if he/she had been a member on 31 March 2015 and 1 April 2015. Unfortunately, regulation 5(5) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 merely refers to a member being able to make such an election within 12 months of becoming a member of the 2015 Scheme (it does not clarify whether or not this means 12 months of **first** becoming a member of the 2015 Scheme). The above assumes it is not limited in that way.

Part 2 – detailed version

A1: Active member who has a deferred refund from an earlier period of membership or from a concurrent employment that has ceased and which is based on post 31 March 2015 membership only.

In a case:

- i) where a member ceases active membership in a **concurrent employment** and **does not have** qualifying service for a period of at least **2 years** (as defined in regulation 3(6)), the amount in the member's active pension account in relation to the concurrent employment that has ceased (see the revaluation paper) **must** automatically be aggregated with the ongoing active pension account or, if there is more than one, with whichever of the ongoing active accounts the member chooses [regulation 22(6)].

The member is not entitled to a refund of contributions [regulation 19(1)(d)].

If the amount to be aggregated is held in a different Fund, an Inter Fund Adjustment must be paid from the former Fund to the new Fund [regulation 100].

- ii) where a member ceases active membership in **an employment**, **does not have** qualifying service for a period of at least **2 years** (as defined in regulation 3(6)), and rejoins the Scheme within one month and a day or a refund has not been issued before the date of rejoining the Scheme, the amount in the member's deferred refund account (see the revaluation paper) **must** automatically be aggregated with the member's new active pension account [regulation 22(5)].

As the gap between the member's last day of membership to which the deferred refund relates and the first day of rejoining the Scheme will be less than 5 years*, the amount in the deferred refund account must be recalculated as if the Treasury Revaluation Orders had applied during that gap, and not Pension Increase (Review) Orders (see the revaluation paper) [regulation 22(7)].

The member is not entitled to a refund of contributions [regulation 19(1)(a)].

If the amount to be aggregated is held in a different Fund, an Inter Fund Adjustment must be paid from the former Fund to the new Fund [regulation 100].

*If the gap had been 5 or more years the member should already have been paid a refund [regulation 18(5)].

A2: Active member who has a deferred benefit from an earlier period of membership or from a concurrent employment which has ceased and which is based on post 31 March 2015 membership only.

In a case:

- i) where a member ceases active membership in a **concurrent employment** and **has** qualifying service for a period of at least **2 years** (as defined in regulation 3(6)), the amount in the member's active pension account in relation to the concurrent employment that has ceased (see the revaluation paper) **must** automatically be aggregated with the ongoing active pension account or, if there is more than one, with whichever of the ongoing active accounts the member chooses **unless**, within 12 months of the date the concurrent employment ceased (or such longer period as the employer in relation to the ongoing employment allows) the member makes an election to the appropriate administering authority (i.e. to the Fund within which the member holds the ongoing active pension account) to retain the deferred benefit as a separate benefit* [regulation 22(6A)].

If the amounts are aggregated and the account for the concurrent employment that has ceased is in a different Fund, an Inter Fund Adjustment must be paid from the former Fund to the new Fund [regulation 100].

If the amounts are not aggregated, separate accounts will be held for the member.

* The right to elect to retain separate benefits does not apply if the reason the employment ceased was because the member was TUPE transferred to another employer participating in the LGPS (or the transfer was treated as if it were a relevant transfer within the meaning of regulations 2(1) and (3) of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations [regulation 22(8)].

- ii) where a member ceases active membership in **an employment**, **has** qualifying service for a period of at least **2 years** (as defined in regulation 3(6)), has a deferred pension account and subsequently rejoins the Scheme, the amount in the member's deferred pension account (see the revaluation paper) **must** automatically be aggregated with the new active pension account **unless**, within 12 months of the date the member rejoined the Scheme (or such longer period as the employer in relation to the new employment allows) the member makes an election to the appropriate administering authority (i.e. to the Fund within which the member holds the active pension account) to retain the deferred benefit as a separate benefit* [regulation 22(6B)].

Where the gap between the member's last day of membership to which the deferred benefit relates and the first day of rejoining the Scheme does not exceed 5 years, the amount in the deferred pension account must be recalculated as if the Treasury Revaluation Orders had applied

during that period, and not Pension Increase (Review) Orders (see the revaluation paper) [regulation 22(7)].

If the amounts are aggregated and the deferred pension account for the employment that had ceased is in a different Fund, an Inter Fund Adjustment must be paid from the former Fund to the new Fund [regulation 100].

If the amounts are not aggregated, separate accounts will be held for the member.

* The right to elect to retain separate benefits does not apply if the reason the employment ceased was because the member was TUPE transferred to another employer participating in the LGPS (or the transfer was treated as if it were a relevant transfer within the meaning of regulations 2(1) and (3) of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations [regulation 22(8)].

B1: Active member who has a deferred refund from an earlier period of membership, or from the cessation of a concurrent employment, which is based on pre 1 April 2015 **and** post 31 March 2015 membership **and** the member was an active member on both 31 March 2015 and 1 April 2015 **and**, since becoming entitled to the deferred refund, the member **has not** had a continuous break in active membership of a public service pension scheme of more than 5 years.

In a case:

- i) where a member ceases active membership in a **concurrent employment** and **does not have** qualifying service for a period of at least **2 years** (as defined in regulation 3(6) and TP regulation 7)
 - the amount in the member's (post 31 March 2015) active pension account in relation to the concurrent employment that has ceased (see the revaluation paper) **must** automatically be aggregated with the ongoing active pension account or, if there is more than one, with whichever of the ongoing active accounts the member chooses [regulation 22(6)] and if the amount being aggregated (from the account for the concurrent employment that has ceased) is held in a different Fund, an Inter Fund Adjustment **must** be paid from the former Fund to the new Fund [regulation 100]
- AND**
- the pre 1 April 2015 membership from the concurrent employment that has ceased (reduced, if it was part-time, in accordance with regulation 8(3) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008) will entitle the member to a final salary benefit [TP regulation 10(2)(a)] and, if this is held in a different Fund to the ongoing employment, it **must** be transferred to the new Fund and an Inter Fund Adjustment be paid from the

former Fund to the new Fund [TP regulation 10(2)(b)]. The pre 1 April 2015 membership will be attached to the ongoing active pension account or, if there is more than one, with whichever of the ongoing active accounts the member chooses. Such a choice has to be made to the appropriate administering authority (i.e. of the Fund within which the member holds the ongoing active pension account) within 12 months of the last day of membership in the concurrent employment which had ceased. In the absence of such an election the appropriate administering authority must make a determination on the member's behalf [TP regulation 10(9)].

Note, however, that if the member was, in the **ongoing** employment with which the pre 1 April 2015 membership is being aggregated, an active member on both 31 March 2015 and 1 April 2015, the membership from the concurrent employment that has ceased (reduced, if it was part-time, in accordance with regulation 8(3) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008) **must** be aggregated with the pre 1 April 2015 membership in that ongoing employment and shall purchase an amount of pre 1 April 2015 membership using the formula:

membership from the ceased concurrent employment multiplied by

whole time rate of pay from employment which has ceased
whole time rate of pay in the ongoing employment

where the rate of pay in each case is the rate of pensionable pay (as defined in the 2009 Scheme) on the date of the last day of membership in the concurrent employment which has ceased [TP regulation 10(8)].

If there is more than one ongoing employment that meets the above criteria, the member may make an election to the appropriate administering authority (i.e. the Fund in which the ongoing employment is pensionable) within 12 months of the last day of membership in the concurrent employment which had ceased, specifying which of the ongoing employments the pre 1 April 2015 membership is to be aggregated with. In the absence of such an election the appropriate administering authority must make the determination on the member's behalf [TP regulation 10(9)].

Note also that if the pre 1 April 2015 membership is derived from a variable-time employment and the ongoing employment is not a variable-time employment, the membership is to be adjusted by the following formula:

Period of membership from the variable-time employment multiplied by

annual rate of pay in the variable-time employment
annual rate of pay in the ongoing employment

= adjusted period of membership [TP regulation 10(10)].

The member is not entitled to a refund of contributions [regulation 19(1)(d)].

ii) where a member ceases active membership in **an employment, does not have** qualifying service for a period of at least **2 years** (as defined in regulation 3(6)) and rejoins the Scheme within one month and a day or a refund has not been issued before the date of rejoining the Scheme

- the amount in the member's (post 31 March 2015) deferred refund account (see the revaluation paper) **must** automatically be aggregated with the new active pension account [regulation 22(5)] and if the amount in the deferred refund account which is to be aggregated with the active pension account is held in a different Fund, an Inter Fund Adjustment must be paid from the former Fund to the new Fund [regulation 100].

As the gap between the member's last day of membership to which the deferred refund relates and the first day of rejoining the Scheme will not exceed 5 years*, the amount in the deferred refund account must be recalculated as if the Treasury Revaluation Orders had applied during that gap, and not Pension Increase (Review) Orders (see the revaluation paper) [regulation 22(7)].

*If the gap had been 5 or more years the member should already have been paid a refund [regulation 18(5)]

AND

- the pre 1 April 2015 membership from the deferred refund (reduced, if it was part-time, in accordance with regulation 8(3) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008) will entitle the member to a final salary benefit [TP regulation 10(2)(a)] and, if this is held in a different Fund to the new employment, it **must** be transferred to the new Fund and an Inter Fund Adjustment is to be paid from the former Fund to the new Fund [TP regulation 10(2)(b)]. The pre 1 April 2015 membership will be attached to the new active pension account.

Note that if the pre 1 April 2015 membership is derived from a variable-time employment and the new employment is not a variable-time employment, the membership is to be adjusted by the following formula:

Period of membership from the variable-time employment multiplied by

$$\frac{\text{annual rate of pay in the variable-time employment}}{\text{annual rate of pay in the new employment}}$$

= adjusted period of membership [TP regulation 10(10)].

The member is not entitled to a refund of contributions [regulation 19(1)(a)].

B2: Active member who has a deferred benefit from an earlier period of membership or from the cessation of a concurrent employment which is based on pre 1 April 2015 **and** post 31 March 2015 membership **and** the member was an active member on both 31 March 2015 and 1 April 2015 **and**, since becoming entitled to the deferred benefit, the member **has not** had a continuous break in active membership of a public service pension scheme of more than 5 years.

In a case:

i) where a member ceases active membership in a **concurrent employment** and **has** qualifying service for a period of at least **2 years** (as defined in regulation 3(6))

- the amount in the member's (post 31 March 2015) active pension account in relation to the concurrent employment that has ceased (see the revaluation paper) **must** automatically be aggregated with the ongoing active pension account or, if there is more than one, with whichever of the ongoing active accounts the member chooses **unless**, within 12 months of the date the concurrent employment ceased (or such longer period as the employer in relation to the ongoing employment allows) the member makes an election to the appropriate administering authority (i.e. to the Fund within which the member holds the ongoing active pension account) to retain the deferred benefit as a separate benefit* [regulation 22(6A)]. If the member does aggregate and the account for the concurrent employment that has ceased is in a different Fund, an Inter Fund Adjustment must be paid from the former Fund to the new Fund [regulation 100]

AND

- the pre 1 April 2015 membership will entitle the member to a final salary benefit.

[*Note that the right to elect to retain separate benefits does not apply if the reason the employment ceased was because the member was TUPE transferred to another employer participating in the LGPS (or the transfer was treated as if it were a relevant transfer within the meaning of regulations 2(1) and (3) of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations [regulation 22(8)])]

If the member aggregates their post 31 March 2015 active account in relation to the concurrent employment that has ceased, the pre 1 April 2015 membership from the concurrent employment that has

ceased (reduced, if it was part-time, in accordance with regulation 8(3) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008) will entitle the member to a final salary benefit [TP regulation 10(2)(a)] and, if this is held in a different Fund to the ongoing employment, it **must** be transferred to the new Fund and an Inter Fund Adjustment be paid from the former Fund to the new Fund [TP regulation 10(2)(b)]. The pre 1 April 2015 membership will be attached to the ongoing active pension account or, if there is more than one, with whichever of the ongoing active accounts the member chooses. Such a choice has to be made to the appropriate administering authority (i.e. of the Fund within which the member holds the ongoing active pension account) within 12 months of the last day of membership in the concurrent employment which had ceased. In the absence of such an election the appropriate administering authority must make a determination on the member's behalf [TP regulation 10(9)].

Note, however, that if the member was, in the **ongoing** employment with which the pre 1 April 2015 membership is being aggregated, an active member on both 31 March 2015 and 1 April 2015, the membership from the concurrent employment that has ceased (reduced, if it was part-time, in accordance with regulation 8(3) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008) **must** be aggregated with the pre 1 April 2015 membership in that ongoing employment and shall purchase an amount of pre 1 April 2015 membership using the formula:

$$\frac{\text{whole time rate of pay from employment which has ceased}}{\text{whole time rate of pay in the ongoing employment}}$$

where the rate of pay in each case is the rate of pensionable pay (as defined in the 2009 Scheme) on the date of the last day of membership in the concurrent employment which had ceased [TP regulation 10(8)].

Note also that if the pre 1 April 2015 membership is derived from a variable-time employment and the ongoing employment is not a variable-time employment, the membership is to be adjusted by the following formula:

Period of membership from the variable-time employment multiplied by

$$\frac{\text{annual rate of pay in the variable-time employment}}{\text{annual rate of pay in the ongoing employment}}$$

= adjusted period of membership [TP regulation 10(10)].

If the member elects not to aggregate their post 31 March 2015 active account in relation to the concurrent employment that has ceased with their ongoing active account, the pension account for

the concurrent employment that has ceased will be held as a separate deferred pension account and the pre 1 April 2015 membership will remain as a deferred benefit. The deferred benefit for the pre 1 April 2015 membership would **not** retain an **ongoing** final salary link [see s20 and paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 and the letter from DCLG at Annex 1].

The reason a person might wish to retain separate benefits is, for example, that the new full-time equivalent pensionable pay is less than that upon which the deferred benefit is based.

- ii) where a member ceases active membership in **an employment**, **has** qualifying service for a period of at least **2 years** (as defined in regulation 3(6)) and subsequently rejoins the Scheme
 - the amount in the member's (post 31 March 2015) deferred pension account (see the revaluation paper) **must** automatically be aggregated with the new active pension account **unless**, within 12 months of the date the member rejoined the Scheme (or such longer period as the employer in relation to the new employment allows) the member makes an election to the appropriate administering authority (i.e. to the Fund within which the member holds the active pension account) to retain the deferred benefit as a separate benefit* [regulation 22(6B)]. If the member does aggregate and the deferred pension account is in a different Fund, an Inter Fund Adjustment must be paid from the former Fund to the new Fund [regulation 100].

[*Note that the right to elect to retain separate benefits does not apply if the reason the employment ceased was because the member was TUPE transferred to another employer participating in the LGPS (or the transfer was treated as if it were a relevant transfer within the meaning of regulations 2(1) and (3) of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations [regulation 22(8)])]

Where there is a gap between the member's last day of membership to which the deferred benefit relates and the first day of rejoining the Scheme (which will be a gap of not more than 5 years), the amount in the deferred pension account must be recalculated as if the Treasury Revaluation Orders had applied during that gap, and not Pension Increase (Review) Orders (see the revaluation paper) [regulation 22(7)]

AND

- the pre 1 April 2015 membership will entitle the member to a final salary benefit.

If the member aggregates their post 31 March 2015 deferred pension account, the pre 1 April 2015 membership (reduced, if it was part-time, in accordance with regulation 8(3) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008) will retain a final salary link [TP regulation 10(2)(a)] and, if the

membership relating to the deferred pension account is held in a different Fund to the new employment, an Inter Fund Adjustment is to be paid from the former Fund to the new Fund [TP regulation 10(2)(b)]. The pre 1 April 2015 membership will then be attached to the new active pension account.

Note that if the pre 1 April 2015 membership is derived from a variable-time employment and the new employment is not a variable-time employment, the membership is to be adjusted by the following formula:

Period of membership from the variable-time employment multiplied by

$$\frac{\text{annual rate of pay in the variable-time employment}}{\text{annual rate of pay in the new employment}}$$

= adjusted period of membership [TP regulation 10(10)].

If the member elects not to aggregate their post 31 March 2015 deferred pension account with their new active pension account it will be held as a separate deferred pension account and the pre 1 April 2015 membership will remain as a deferred benefit. The deferred benefit for the pre 1 April 2015 membership would **not** retain an **ongoing** final salary link [see s20 and paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 and the letter from DCLG at Annex 1].

The reason a person might wish to retain separate benefits is, for example, that the new full-time equivalent pensionable pay is less than that upon which the deferred benefit is based.

C1: Active member who has a deferred refund from an earlier period of membership which is based on pre 1 April 2015 **and** post 31 March 2015 membership **and** the member was an active member on both 31 March 2015 and 1 April 2015 **and**, since becoming entitled to the deferred refund, the member **has** had a continuous break in active membership of a public service pension scheme of more than 5 years.

In a case:

- i) where a member ceases active membership in **an employment, does not have** qualifying service for a period of at least **2 years** (as defined in regulation 3(6)) and rejoins the Scheme having had a continuous break in active membership of a public service pension scheme of more than 5 years
- the member is only entitled to a refund of contributions, which should already have been paid [regulation 18(5)]

C2: Active member who has a deferred benefit from an earlier period of membership which is based on pre 1 April 2015 and post 31 March 2015 membership and the member was an active member on both 31 March 2015 and 1 April 2015 and, since becoming entitled to the deferred benefit, the member has had a continuous break in active membership of a public service pension scheme of more than 5 years.

In a case:

- i) where a member ceases active membership in **an employment, has** qualifying service for a period of at least **2 years** (as defined in regulation 3(6)) and subsequently rejoins the Scheme
 - the amount in the member's (post 31 March 2015) deferred pension account (see the revaluation paper) **must** automatically be aggregated with the new active pension account **unless**, within 12 months of the date the member rejoined the Scheme (or such longer period as the employer in relation to the new employment allows) the member makes an election to the appropriate administering authority (i.e. to the Fund within which the member holds the active pension account) to retain the deferred benefit as a separate benefit []. If the member does aggregate and the deferred pension account is in a different Fund, an Inter Fund Adjustment must be paid from the former Fund to the new Fund [regulation 100].
- AND**
- if the member aggregates their post 31 March 2015 deferred pension account, the transfer value in respect of the pre 1 April 2015 membership will purchase an amount of earned pension in the member's active pension account and, if the membership relating to the deferred pension account is held in a different Fund to the new employment, an Inter Fund Adjustment is to be paid from the former Fund to the new Fund [TP regulation 10(3) and (4)].

It should be noted that if a member does aggregate, subsequently cease to be an active member and rejoins the Scheme some time later, the aggregation rules set out in section A should then be followed (i.e. treat all the membership as if it had all been post 31 March 2015 membership).

If the member elects not to aggregate their post 31 March 2015 deferred pension account with their new active pension account it will be held as a separate deferred pension account and the pre 1 April 2015 membership will remain as a deferred benefit.

The reason a person might wish to retain separate benefits is, for example, that the new full-time equivalent pensionable pay is less than that upon which the deferred benefit is based.

If the member subsequently ceases active membership and rejoins the Scheme some time later the rules set out in this section (C2) would again apply.

D1: Member left prior to 1 April 2015 with a deferred refund **and** rejoins the Scheme on or after 1 April 2015.

In a case:

- i) where a member ceases active membership in **an employment** before 1 April 2015, **does not have** qualifying service for a period of at least **2 years** and has **not had a transfer value credited** to the Fund [regulation 6(1) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008] and rejoins the Scheme on or after 1 April 2015, the transfer value in respect of the pre 1 April 2015 membership is to be used to purchase an amount of earned pension in the member's active pension account³ and, if the membership relating to the deferred refund is held in a different Fund to the new employment, an Inter Fund Adjustment is to be paid from the former Fund to the new Fund [TP regulation 10(5)].

The member is not entitled to a refund of contributions [regulation 42(3) of the LGPS (Administration) (Scotland) Regulations 2008].

D2: Member left prior to 1 April 2015 with a deferred benefit **and** rejoins the Scheme on or after 1 April 2015 **and**, since becoming entitled to the deferred benefit, the member **has not** had a continuous break in active membership of a public service pension scheme of more than 5 years.

Where a member ceases active membership in **an employment** before 1 April 2015, **has** qualifying service for a period of at least **2 years** or **has had a transfer value credited** to the Fund [regulation 6(1) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008] and rejoins the Scheme on or after 1 April 2015, the member can make an election to the appropriate administering authority (i.e. of the Fund within which the member holds the new active pension account) within 12 months of rejoining the Scheme to be treated as if he / she had been an active member on 31 March 2015 and 1 April 2015 [TP regulation 5(5)]. Where the member:

- i) makes an election to be treated as if he / she had been an active member on 31 March 2015 and 1 April 2015, the pre 1 April 2015 membership (reduced, if it was part-time, in accordance with regulation

³ It is not clear why, where a member left prior to 1 April 2015 with a deferred refund and rejoins the Scheme on or after 1 April 2015 and has not had a continuous break in active membership of a public service pension scheme of more than 5 years, regulation 10(5) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 requires that the transfer value in respect of the pre 1 April 2015 membership should purchase an amount of earned pension in the member's active pension account (rather than final salary membership in accordance with section 20 of, and paragraph 1 of Schedule 7 to, the Public Service Pensions Act 2013). Clarification has been sought from SPPA.

8(3) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008) will retain a final salary link [TP regulation 10(2)(a)] and, if the membership relating to the deferred pension account is held in a different Fund to the new employment, an Inter Fund Adjustment is to be paid from the former Fund to the new Fund [TP regulation 10(2)(b)]. The pre 1 April 2015 membership will then be attached to the new active pension account.

Note that if the pre 1 April 2015 membership is derived from a variable-time employment and the new employment is not a variable-time employment, the membership is to be adjusted by the following formula:

Period of membership from the variable-time employment multiplied by

$$\frac{\text{annual rate of pay in the variable-time employment}}{\text{annual rate of pay in the new employment}}$$

= adjusted period of membership [TP regulation 10(10)].

- ii) does not make an election to be treated as if he / she had been an active member on 31 March 2015 and 1 April 2015, the member may, within 12 months or rejoining (or such longer period as the employer may allow), elect for the transfer value in respect of the pre 1 April 2015 membership is to be used to purchase an amount of earned pension in the member's active pension account⁴ and, if the membership relating to the deferred benefit is held in a different Fund to the new employment, an Inter Fund Adjustment is to be paid from the former Fund to the new Fund [TP regulation 10(6)]; else, the pre 1 April 2015 membership will remain as a deferred benefit. The deferred benefit for the pre 1 April 2015 membership would **not** retain an **ongoing** final salary link [see s20 and paragraph 1 of Schedule 7 to the Public Service Pensions Act 2013 and the letter from DCLG at Annex 1].

D3: Member left prior to 1 April 2015 with a deferred benefit **and** rejoins the Scheme on or after 1 April 2015 **and**, since becoming entitled to the deferred benefit, the member **has had** a continuous break in active membership of a public service pension scheme of more than 5 years.

In a case:

- i) where a member ceases active membership in **an employment** before 1 April 2015, **has** qualifying service for a period of at least **2 years** or

⁴ It is not clear why, if the member **does not** elect to be treated as if he / she had been an active member on 31 March 2015 and 1 April 2015 and elects to aggregate, regulation 10(6) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 requires that the transfer value in respect of the pre 1 April 2015 membership should purchase an amount of earned pension in the member's active pension account (rather than final salary membership in accordance with section 20 of, and paragraph 1 of Schedule 7 to, the Public Service Pensions Act 2013). Clarification has been sought from SPPA.

has had a transfer value credited to the Fund [regulation 6(1) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008] and rejoins the Scheme on or after 1 April 2015,

- the member may, within 12 months of re-joining (or such longer period as the employer may allow), elect for the transfer value in respect of the pre 1 April 2015 membership is to be used to purchase an amount of earned pension in the member's active pension account and, if the membership relating to the deferred benefit is held in a different Fund to the new employment, an Inter Fund Adjustment is to be paid from the former Fund to the new Fund [TP regulation 10(6)]; else, the pre 1 April 2015 membership will remain as a deferred benefit.

E: Any member to whom scenarios A to D applied upon first re-joining the Scheme after 31 March 2015 and who left again post 1 April 2015 and subsequently re-joins again.

If, when scenario C2, D1, D2 or D3 was first applied, the pre 1 April 2015 membership was aggregated and purchased an amount of earned pension in the active account then, upon re-joining the Scheme again at some later date, scenario A will apply in respect of that membership as that membership is to be treated for the purposes of this aggregation paper as if it had all been post 31 March 2015 membership.

In any other case, scenarios A, B1, B2, C1, C2, D2 or D3 will apply, as appropriate.

Note: the above assumes that under D2 the member will still have the option to elect within 12 months of re-joining to be treated as if he/she had been a member on 31 March 2015 and 1 April 2015. Unfortunately, regulation 5(5) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 merely refers to a member being able to make such an election within 12 months of becoming a member of the 2015 Scheme (it does not clarify whether or not this means 12 months of **first** becoming a member of the 2015 Scheme). The above assumes it is not limited in that way.

Outstanding issues

The LGPS 2015 moved to a position where automatic aggregation is the norm unless, in the case of a member entitled to deferred benefits, the member makes an election within 12 months of re-joining the Scheme or of ceasing a concurrent employment to which the deferred benefit relates (or such longer period as the employer might allow) to retain separate benefits.

For automatic aggregation to work in the LGPS all LGPS Pension Funds need to work to, and apply, one consistent approach.

The LGPS Secretariat therefore recommended that, where a member has a deferred benefit in another Fund in England or Wales, a request for an Inter-Fund Adjustment is only made by the receiving Pension Fund after 12 months

has elapsed from the date the member re-joined the scheme unless the member has confirmed they don't want to retain separate deferred benefits before that date.

However, as a result of problems with the assessment of the pension input period for **annual allowance** purposes, issues connected with TUPE transfers and some concerns over the options available to certain categories of member, the LGPC Secretariat made the following comments in its response to DCLG's consultation on the draft LGPS (Amendment) Regulations 2015. Unfortunately, the comments were not taken on board by DCLG but they apply equally to the equivalent provisions in Scotland (although the issue regarding TUPE transfers has now been dealt with by the introduction of regulation 22(8) into the LGPS (Scotland) Regulations 2014. The LGPC Secretariat will continue to make the case to DCLG and to SPPA for changes to be made.

Comments to DCLG (which have also been shared with SPPA):

"We believe regulations 22(7) and (8) should be amended to mirror regulation 16(6) of the LGPS (Administration) Regulations 2008 i.e. to provide that the option to retain deferred benefits does not apply where the cessation of the concurrent employment, or the cessation of the employment, which gives rise to the deferred benefits, occurs because of –

(a) a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the TUPE Regulations") apply; or

(b) a transfer which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.

More importantly, and in response to paragraph 27 of the consultation document, we would seek an amendment to regulation 22(8) to move away from a position of automatic aggregation with the right to elect within 12 months of re-joining the scheme (or such longer period as the Scheme employer allows) to retain separate deferred benefits to a position where the deferred benefits are not automatically aggregated but the member can elect to aggregate by making an election within 12 months of re-joining the scheme (or such longer period as the Scheme employer allows). That would mirror the position under the 2008 Scheme.

When we moved to the 2014 Scheme we took the view that, looking forward to a situation where people might only have benefits in the 2014 Scheme, it would make far more sense to move to a position where benefits were automatically aggregated unless the member made an election within 12 months of re-joining the Scheme (or such longer period as the Scheme employer might allow) to retain separate benefits. Thus, automatic aggregation would be the norm because, in a pure CARE environment, there would be little or no real benefit in retaining separate benefits.

However, we are now realising that this is having a number of consequences that we had not envisaged when making the decision to move to an automatic aggregation approach. The main issue that has arisen is that it is causing problems with the assessment of the pension input amount in a pension input

period for annual allowance purposes. A secondary problem is that not all administering authorities are only requesting an Inter-Fund Adjustment when the member has confirmed that they don't want to retain separate benefits or, in the absence of such confirmation, after 12 months has elapsed from the date of re-joining the Scheme. A divergence of approach between administering authorities is causing difficulties e.g. one administering authority might decide to request payment of an Inter-Fund Adjustment after 3 months but the sending administering authority refuses on the grounds that the member has not yet confirmed whether they wish to retain separate benefits and has 12 months to do so. Even if both administering authorities agree to process an Inter-Fund Adjustment after 3 months this could result in the receiving Fund having to unpick membership and repay the Inter-Fund Adjustment received if the member were to subsequently make an election to retain separate benefits within the permitted 12 month deadline. Furthermore, paying an Inter-Fund Adjustment prior to 12 months without an election from the member could cause complications (e.g. if a cash equivalent transfer value had been provided for divorce purposes in the period between the benefits being aggregated and unpicked). However, waiting for a decision for up to 12 months will result in the stockpiling of cases (albeit that, in essence, this is not much different to the position that applied under the 2008 Scheme where cases were not actioned unless / until a member made a positive election to aggregate benefits).

We are, therefore, of the view that, to overcome these issues, it would be better if regulation 22(8) was amended to revert back to the position where members retain separate deferred benefits unless they make an election within 12 months of re-joining the Scheme (or such longer period as the employer might allow) to aggregate. This would be subject to two provisos:

- (a) those who became entitled to the deferred benefit as a consequence of a notice served under regulation 5(2) (ending of active membership) or an equivalent regulation in the Earlier Schemes should not be able to elect to aggregate, and*
- (b) automatic aggregation of a deferred benefit should apply (with no right to elect to retain a separate benefit) if the cessation of the concurrent employment, or the cessation of the employment giving rise to the deferred benefit, occurred because of –*
 - (i) a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the TUPE Regulations") apply; or*
 - (ii) a transfer which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.*

Furthermore, it is not clear why, where a member left prior to 1st April 2014 and re-joins the Scheme on or after 1st April 2014 and has not had a continuous break in active membership of a public service pension scheme of more than 5 years, regulation 10(5) and (where the member does not make an election under regulation 5(5) to be treated as if they had been a member on 31st March and 1st April 2014) regulation 10(6) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 require that the transfer value in respect of the pre 1st April 2014 membership should purchase an amount of

earned pension in the member's active pension account (rather than final salary membership in accordance with section 20 of, and paragraph 1 of Schedule 7 to, the Public Service Pensions Act 2013). We believe it should purchase final salary membership (regardless of whether or not the member makes an election under regulation 5(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 to be treated as if they had been a member on 31st March and 1st April 2014."

The outcome of the above proposals would be as follows:

Scenario A – post-15 only

A1: Active member who has a **deferred refund** from an earlier period of membership or from a concurrent employment that has ceased and which is based on post-31 March 2015 membership only.

Concurrent employment:

Automatically aggregated with the ongoing active pension account or, if there is more than one, with whichever one the member chooses. If there is more than one ongoing active membership the member must, within 12 months of the date the concurrent employment ceased, choose which one it is to be aggregated with (but, in the absence of an election, the administering authority shall make the decision).

Previous employment:

Automatically aggregated with the new active pension account or, if there is more than one, with whichever one the member chooses. If there is more than one new active membership the member must, within 12 months of the date the new active membership commenced, choose which one it is to be aggregated with (but, in the absence of an election, the administering authority shall make the decision).
(Note that the gap between employments cannot be more than 5 years as a deferred refund cannot be held for longer).

A2: Active member who has a **deferred benefit** from an earlier period of membership or from a concurrent employment which has ceased and which is based on post-31 March 2015 membership only.

Concurrent employment:

No automatic aggregation* with the ongoing active pension account but member may, within 12 months of the date the concurrent employment ceased (or such longer period as the employer in relation to the relevant ongoing active membership allows) elect to aggregate** and, if there is more than one ongoing active membership, the member must choose which one it is to be aggregated with.

Previous employment:

No automatic aggregation* with the new active pension account but member may, within 12 months of the date the new active membership commenced (or such longer period as the employer in relation to the relevant new active membership allows) elect to aggregate** and, if there is more than one new active membership, the member must choose which one it is to be aggregated with.

* Except where TUPE applies

** Except where the deferred benefit arose as a result of opting out of membership of the Scheme and the regulations debar such a member from aggregating.

Scenario B – mix of pre-15 and post-15 (without 5 year break)

B1: Active member who has a **deferred refund** from an earlier period of membership, or from the cessation of a concurrent employment, which is based on pre-1 April 2015 **and** post-31 March 2015 membership **and** the member was an active member on both 31 March 2015 and 1 April 2015 **and**, since becoming entitled to the deferred refund, the member **has not** had a break in active membership of a public service pension scheme of more than 5 years.

Concurrent employment:

Automatically aggregated with the ongoing active pension account or, if there is more than one, with whichever one the member chooses. If there is more than one ongoing active membership the member must, within 12 months of the date the concurrent employment ceased, choose which one it is to be aggregated with (but, in the absence of an election, the administering authority shall make the decision). The pre-1 April 2015 membership from the concurrent employment that has ceased will entitle the member to a final salary benefit (the membership will be attached to the same ongoing active pension account).

Previous employment:

Automatically aggregated with the new active pension account or, if there is more than one, with whichever one the member chooses. If there is more than one new active membership the member must, within 12 months of the date the new active membership commenced, choose which one it is to be aggregated with (but, in the absence of an election, the administering authority shall make the decision). The pre-1 April 2015 membership from the deferred refund will entitle the member to a final salary benefit (the membership will be attached to the relevant new active pension account).

B2: Active member who has a **deferred benefit** from an earlier period of membership or from the cessation of a concurrent employment which is based on pre-1 April 2015 **and** post-31 March 2015 membership **and** the member was an active member on both 31 March 2015 and 1 April 2015 **and**, since becoming entitled to the deferred benefit, the member **has not** had a

break in active membership of a public service pension scheme of more than 5 years.

Concurrent employment:

No automatic aggregation* with the ongoing active pension account but member may, within 12 months of the date the concurrent employment ceased (or such longer period as the employer in relation to the relevant ongoing active membership allows) elect to aggregate** and, if there is more than one ongoing active membership, the member must choose which one it is to be aggregated with. If aggregated, the pre-1 April 2015 membership from the concurrent employment that has ceased will entitle the member to a final salary benefit (with the membership being attached to the same ongoing active pension account as the post 2015 CARE benefits were aggregated with).

Previous employment:

No automatic aggregation* with the new active pension account but member may, within 12 months of the date the new active membership commenced (or such longer period as the employer in relation to the relevant new active membership allows) elect to aggregate** and, if there is more than one new active membership, the member must choose which one it is to be aggregated with. If aggregated, the pre-1 April 2015 membership from the previous employment will entitle the member to a final salary benefit (with the membership being attached to the same active pension account as the post 2015 CARE benefits were aggregated with).

* Except where TUPE applies

** Except where the deferred benefit arose as a result of opting out of membership of the Scheme and the regulations debar such a member from aggregating.

Scenario C – mix of pre-15 and post-15 (with 5 year break)

C1: Active member who has a **deferred refund** from an earlier period of membership which is based on pre-1 April 2015 **and** post-31 March 2015 membership **and** the member was an active member on both 31 March 2015 and 1 April 2015 **and**, since becoming entitled to the deferred refund, the member **has** had a break in active membership of a public service pension scheme of more than 5 years.

The member is only entitled to a refund of contributions, which should already have been paid.

C2: Active member who has a **deferred benefit** from an earlier period of membership which is based on pre-1 April 2015 **and** post-31 March 2015 membership **and** the member was an active member on both 31 March 2015 and 1 April 2015 **and**, since becoming entitled to the deferred benefit, the

member **has** had a break in active membership of a public service pension scheme of more than 5 years.

No automatic aggregation with the new active pension account but member may, within 12 months of the date the new active membership commenced (or such longer period as the employer in relation to the relevant new active membership allows) elect to aggregate** and, if there is more than one new active membership, the member must choose which one it is to be aggregated with. If aggregated, the transfer value in respect of pre-1 April 2015 membership from the deferred benefit will purchase an amount of earned pension in the member's relevant active pension account.

** Except where the deferred benefit arose as a result of opting out of membership of the Scheme and the regulations debar such a member from aggregating.

Scenario D – pre-15 only

D1A: Member left prior to 1 April 2015 with a **deferred refund**, re-joins the Scheme on or after 1 April 2015 and **has not** had a break in active membership of a public service pension scheme of more than 5 years.

Automatically aggregated with the new active pension account or, if there is more than one, with whichever one the member chooses. If there is more than one new active membership the member must, within 12 months of the date the new active membership commenced, choose which one it is to be aggregated with (but, in the absence of an election, the administering authority shall make the decision). The pre-1 April 2015 membership from the previous employment will entitle the member to a final salary benefit (with the membership being attached to the same active pension account as the post 2015 CARE benefits were aggregated with).

D1B: Member left prior to 1 April 2015 with a **deferred refund**, re-joins the Scheme on or after 1 April 2015 and **has** had a break in active membership of a public service pension scheme of more than 5 years.

Automatically aggregated with the new active pension account or, if there is more than one, with whichever one the member chooses. If there is more than one new active membership the member must, within 12 months of the date the new active membership commenced, choose which one it is to be aggregated with (but, in the absence of an election, the administering authority shall make the decision). The transfer value in respect of the pre-1 April 2015 membership is to be used to purchase an amount of earned pension in the member's relevant active pension account.

D2: Member left prior to 1 April 2015 with a **deferred benefit** and re-joins the Scheme on or after 1 April 2015 **and**, since becoming entitled to the deferred

benefit, the member **has not** had a break in active membership of a public service pension scheme of more than 5 years.

No automatic aggregation with the new active pension account but member may, within 12 months of the date the new active membership commenced (or such longer period as the employer in relation to the relevant new active membership allows) elect to aggregate** and, if there is more than one new active membership, the member must choose which one it is to be aggregated with. If aggregated, the pre-1 April 2015 membership from the previous employment will entitle the member to a final salary benefit (with the membership being attached to the same active pension account as the post 2015 CARE benefits were aggregated with).

** Except where the deferred benefit arose as a result of opting out of membership of the Scheme and the regulations debar such a member from aggregating.

D3: Member left prior to 1 April 2015 with a deferred benefit **and** re-joins the Scheme on or after 1 April 2015 **and**, since becoming entitled to the deferred benefit, the member **has had** a break in active membership of a public service pension scheme of more than 5 years.

No automatic aggregation with the new active pension account but member may, within 12 months of the date the new active membership commenced (or such longer period as the employer in relation to the relevant new active membership allows) elect to aggregate** and, if there is more than one new active membership, the member must choose which one it is to be aggregated with. If aggregated, the transfer value in respect of pre-1 April 2015 membership from the deferred benefit will purchase an amount of earned pension in the member's relevant active pension account.

** Except where the deferred benefit arose as a result of opting out of membership of the Scheme and the regulations debar such a member from aggregating.

Scenario E – re-joiners

E: Any member to whom scenario A to D applied upon first re-joining the Scheme after 31 March 2015 and who then left again post-1 April 2015 and subsequently re-joins again.

If, when scenario C2, D1B or D3 was first applied, the pre-1 April 2015 membership was aggregated and purchased an amount of earned pension in the active account then, upon re-joining the Scheme again at some later date, scenario A will apply in respect of that membership as that membership is to be treated for the purposes of this section of the notes only as if it had all been post-31 March 2015 membership.

In any other case, scenarios A, B1, B2, C1, C2, D1A, D2 or D3 will apply, as appropriate.

Note: the above assumes that under D2 the member will still have the option to elect within 12 months of re-joining to be treated as if he/she had been a member on 31 March 2015 and 1 April 2015. Unfortunately, regulation 5(5) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 merely refers to a member being able to make such an election within 12 months of becoming a member of the 2015 Scheme (it does not clarify whether or not this means 12 months of **first** becoming a member of the 2015 Scheme). The above assumes it is not limited in that way.

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.

Terry Edwards
Senior Pensions Adviser
15th January 2016



Department for
Communities and
Local Government

Annex 1

22 January 2015

Mr Terry Edwards
Senior Pensions Adviser, Workforce Team
Local Government Association
Local Government House
Smith Square
London
SW1P 3HZ

Dear Terry

**Local Government Pension Scheme –aggregation and the final salary link
and the Public Service Pension Act 2013**

There has been some debate about whether the final salary for a future period of active membership is taken into account when calculating retirement benefits when a deferred award made under the 2008 Scheme or earlier schemes is put into payment *and* the member chose to keep the deferred benefits separate from the subsequent period of active membership.

If it is clear from the earlier regulations that the pensionable earnings to be used in such a case is the earnings the member received when he was awarded the deferred benefit rather than the pensionable earnings he was receiving at the date his subsequent period of membership terminated, then this is the level of pensionable earnings that is used to calculate the benefits due in respect of the earlier period of membership.

If the subsequent period of membership happens to be in the 2014 Scheme the position is no different. At the point that the calculation is made as to what benefits the person is to be entitled to, the issue is whether under the earlier regulations there would have been any calculation of the member's benefits based on the member's subsequent period of service. If there would not, then it would be reasonable to say that nothing in Schedule 7 imposes any

requirement for such a calculation to be made. Schedule 7 seems to me to be designed in such a way that if the old regulations *did* require there to be a calculation of pensionable earnings based on what the member was receiving at the date of retirement in order to calculate the benefits payable in respect of an earlier unaggregated period of membership, that such a calculation could be carried out based on the member's pensionable earnings under the 2014 Scheme.

When considering the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, regulations 8 (1) – final pay, general; the final pay is the member's final pay whether this was accrued with the current or previous employing authority. There is no reference to pay in any future period of employment.

The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, regulation 3 (8) states benefits in earlier schemes, not aggregated with 2014 Scheme benefits, are payable in accordance with the earlier schemes' regulations and 3 (1) preserves the earlier schemes' regulations for these purposes.

I, therefore, form the view that under the earlier regulations no such recalculation of benefits was required in respect of any period of unaggregated deferred membership and there is no obligation otherwise under the Public Service Pensions Act 2013.

Yours sincerely

A handwritten signature in black ink that reads "Lynda Jones". The signature is written in a cursive style with a large initial 'L' and 'J'.

Lynda Jones