

LGPS 2015 HR Guide



This guide sets out the requirements for HR sections in respect of the Local Government Pension Scheme (Scotland) 2015 (LGPS), effective from 1st April 2015. The guide only applies to the LGPS relating to employees and councillors in Scotland. It does not cover employees or councillors in England or Wales.

Please note this guide is in addition to, and does not replace, any requirements agreed with the Pension Fund administering authority in respect of information to be provided to them to enable them to administer the 2009 Scheme. It is intended to inform employers of the minimum information needed to effectively manage the 2015 Scheme (and its interaction with the 2009 Scheme – see [section 16](#)). **Wherever possible, we ask that users contact their Pension Fund administering authority with any queries they have regarding the new Scheme before getting in touch with a member of the Scottish Public Pensions Agency.**

The examples provided in sections of this guide are for illustration only and do not override any regulatory or statutory requirements.

The information in this guide applies to equally to employees and councillors except where the LGPS Regulations require councillors to be treated differently for certain purposes. Where that is the case, the guide sets out what the different treatment for councillors is. References to “employee” in this guide include “councillors” unless stated otherwise.

~~It is intended that the~~This guide will continue to be updated to reflect any legislative changes as and when they occur.

~~PDFs of the most recent versions of the guide are below. Tracked changes within the PDFs detail how newer versions differ from their earlier incarnations. PDF copies of all previous versions of this guide are available on request from the LGA Pensions team.~~

Contents

- [1. Who can join](#)
- [2A. New Starters](#)
- [2B. Existing employees on 31st March 2015](#)
- [3. Opting out](#)
- [4. Rejoining](#)
- [5. Automatic enrolment](#)
- [6. Pensionable pay](#)
- [6A. Pensionable pay and salary sacrifice](#)
- [7. Records to be maintained](#)
- [8. The two sections to the 2014 Scheme](#)
- [9. Impact on additional pension and AVC contracts, etc of moving between the main and 50/50 sections](#)
- [10. Movements between contribution rates](#)
- [11. Assumed Pensionable Pay \(APP\)](#)
- [11A. Certificate of Protection](#)
- [12. Buying extra pension](#)

13. Termination
14. Retirements
15. Payments made after leaving
16. Existing scheme processes
16A. Absences spanning 31st March 2015 / 1st April 2015
17. Discretions policy
18. Payment of sums to the pension fund
19. Glossary of acronyms
20. Appendix 1
21. Appendix 2

1. Who can join

There is no change to the range of employees (under age 75) who will have access to the LGPS. They are

- Employees of Scheduled Bodies; and
- Employees of Admission Bodies whose employer has designated them, or a class of employees to which they belong, as being eligible for membership of the Scheme under the terms of the Admission Agreement the employer has with the Pension Fund administering authority.

The only bars to membership relate to employees aged 75 or above, retained and voluntary firefighters who are or may be required to engage in firefighting, those employed by an Admission Body who are members of another occupational pension scheme in the employment, and employees eligible for membership of another public sector pension scheme (although there are some with dual eligibility for the LGPS and NHSPS and those eligible for membership of the Armed Forces Pension Scheme whilst on reserve forces service leave can elect to their Scheme employer to remain in the LGPS).

As in the 2009 Scheme, if a person is eligible for membership of the LGPS, that person is contractually enrolled into the LGPS from the first day of employment or the first date they become eligible, if later, providing they have a contract of employment for at least 3 months.

A person who is eligible for membership of the LGPS and who is employed under a contract of employment of less than 3 months is, under the terms of the LGPS, to be enrolled on their “automatic enrolment” date. This means that an “eligible jobholder” with a contract of less than 3 months would join the LGPS on the first day of employment unless the employer issues a “postponement notice” delaying the “automatic enrolment date”. “Non-eligible jobholders” and “entitled workers” with a contract of less than 3 months would not be contractually enrolled on commencement but if they subsequently became an “eligible jobholder” under that contract and are eligible for membership of the LGPS they would be enrolled from the first day of the “pay reference period” in which they first became an “eligible jobholder” by reason of their earnings, or from age 22 if they first became an “eligible jobholder” on attaining that age, (although, once again, an employer could issue a “postponement notice” delaying the “automatic enrolment date”).

By issuing a “postponement notice” employers can, if they wish, effectively exclude such employees from the LGPS, although any employee who is not in the Scheme but is eligible

for membership of the LGPS has the right to opt into the LGPS at any time and, if the employee does so, would be brought into the Scheme on the first day of the payment period following the election to join.

If a person employed under a contract of less than 3 months has that contract extended to be for 3 months or more and they have not already joined the LGPS they should be brought into the Scheme on the first day of the payment period following the extension to the contract of employment.

NB: Those terms highlighted in quotations marks in the text above are to be construed in accordance with the Pensions Act 2008.

For more information on Automatic Enrolment and the LGPS please read the LGPC's [Automatic Enrolment Guide](#).

2A. New Starters

On commencement of employment all new employees who are contractually eligible for membership of the Scheme and who have a contract of employment of 3 months or more should be made members of the main section of the 2015 Scheme.

The rules for those with a contract of employment of less than 3 months are set out in [section 1](#).

A person cannot elect to join the 50/50 section of the Scheme prior to becoming a member of the main section of the 2015 Scheme. So, for example, a new starter with a contract of employment of 3 months or more could not opt for the 50/50 section before commencement of employment; but they could elect on or after starting and, if they do so before the first payroll is closed, can be brought into the 50/50 section from the first day of employment.

Notification of the new member should be sent to both the payroll administrator (together with the confirmation of the relevant section – main or 50/50 - and the appropriate employee contribution rate unless allocation to a rate has been automated on the payroll) and to the Pension Fund administering authority (together with a copy of the election to join the 50/50 section where relevant).

Under Disclosure of Information legislation, basic information about the Scheme has to be provided by the Pension Fund administering authority:

- a. automatically to prospective members (i.e. those people who are about to take up employment), if it is practicable to do so, and
- b. automatically to new members if not already provided under (a), and
- c. on request to existing members (if they have not already been given the information in the last 12 months).

For those falling within (a) or (b) the information has to be provided within 2 months of joining the LGPS and for those falling within (c) by no later than 2 months of the request being made. It should be noted that if a person has become a member as a result of

overriding automatic enrolment provisions (under the Pensions Act 2008), this time limit is amended to 6 weeks from the date the Pension Fund administering authority receives the jobholder information from the employer. The employer has to provide the jobholder information to the Pension Fund administering authority within 6 weeks of a person becoming a member under the automatic enrolment provisions of the Pensions Act 2008. There are not insignificant fines for non-compliance.

The bands of contribution rates are as shown below for contributions taken in respect of pensionable pay received from 1st April 2015. The employee pays contributions at the appropriate average rate (derived from "Look up" Table 2 in Annex C of [Appendix 1](#)) on all pensionable pay received in respect of that job (or at half that rate if the employee is in the 50/50 section).

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Note that if a person holds more than one employment and these are treated as separate jobs, each job (and the pensionable pay from that job) is assessed separately when determining the contribution rate for each job. Conversely, if the employer determines that a single employment relationship exists (see [section 7](#)) then the pay from each job should be combined to determine the contribution rate.

2017/185/46

Band	Range for an employment	Contribution rate for that employment
1	On earnings up to and including £20,750	5.5%
2	On earnings above £20,750 and up to £25,300	7.25%
3	On earnings above £25,300 and up to £34,740	8.5%
4	On earnings above £34,740 and up to £46,380	9.5%
5	On earnings above £46,380	12.0%

The figures in the second column (Range) of the table above are to be increased by any increase applied to pensions under the Pensions (Increase) Act 1971 – currently applied each April on the first Monday falling on or after 6th April – using a pensions increase date of 1st April 2014 and rounding the resulting figure down to the nearest £100. The next increase will be applied in **April 2018**.

The appropriate contribution rate is to be determined by the employer estimating the annual equivalent of the actual (NOT FTE) pay to be received in a full Scheme year (1st April to 31st March). This can be done in a number of ways for example:

- o The annual rate of contractual pay
- o The annual rate of contractual pay plus an estimation of the additional hours worked in excess of the contractual hours (up to a maximum of the hours of the standard full-time working week for the employee in that employment) which might be worked in a full year

- The hourly contractual rate multiplied by an estimate of the number of hours to be worked in a full year (excluding non-contractual overtime worked in excess of the standard full-time working week for the employee in that employment)
- The weekly contractual rate multiplied by 52.14 (or whatever multiplier an employer deems appropriate)
- The weekly contractual rate multiplied by 52.14 (or whatever multiplier an employer deems appropriate) plus an estimate of other pensionable payments to be made in a full year (excluding non-contractual overtime worked in excess of the standard full-time working week for the employee in that employment)

Each employer should make an assessment in a reasonable and consistent manner.

Allocating employees to an appropriate rate is relatively straight forward where the employee is not expected to undertake any additional hours in excess of the contractual hours (up to a maximum of the hours of the standard full-time working week for the employee in that employment). However, it is less straight forward where the number of hours an employee may work in a year is not known.

Where an employee with part-time contractual hours is likely to undertake a number of additional hours in excess of their contractual hours (up to a maximum of the hours of the standard full-time working week for the employee in that employment), the employer could:

- a. use one of the methods in the first and fourth bullet points above i.e. determine the appropriate rate by reference to their contractual hours only and subsequently review the rate allocation at an appropriate time (see [section 10](#)), or
- b. use one of the methods set out in the second, third or fifth bullet points above, perhaps taking account of the hours worked by the previous holder (if any) of the post, and subsequently review the rate allocation at an appropriate time (see [section 10](#)).

The advantage of option (a) is that it is less likely to lead to an appeal by the employee against the rate to which they have been allocated and the employer can, in any case, review the rate allocation at a later date and reallocate to a new rate, as appropriate (see [section 10](#)). The disadvantage of option (a) is that it can initially result in a lesser contribution being collected from an employee's pay for a period of time than the actual hours eventually worked might have warranted. The advantage of option (b) is that it results in a contribution rate that the employer deems reasonable based on the employer's expectation of the number of hours to be worked by the employee. It could result in a higher or lower contribution rate than the actual hours eventually worked might have warranted (depending on how many hours the employee actually works) and this could, respectively, result in an appeal by the employee against the rate to which they have been allocated or result in a 'loss' to the Pension Fund (which, in turn, would become a cost to the employer). The employer could reallocate to the correct rate following a successful appeal. Equally, the employer could undertake a review of the contribution rate at an appropriate time (see [section 10](#)) regardless of whether or not there had been an appeal.

Matters become more complicated with employees who have no contractual hours of employment e.g. casual employees, or employees on zero hours contracts. In these cases employers will need to either:

- a. make a reasonable initial assessment of the number of hours (up to a maximum of the hours of the standard full-time working week for the employee in that employment) which the person is likely to work on an annual basis, perhaps taking account of the hours worked by the previous holder (if any) of the post, and subsequently review the contribution rate at an appropriate time (see [section 10](#)), or
- b. allocate the employee to the lowest rate (5.5%) and subsequently review the contribution rate at an appropriate time (see [section 10](#)), or
- c. allocate the employee a 6.3% rate (on the basis that this is the expected average contribution rate for Scheme members) and subsequently review the contribution rate at an appropriate time (see [section 10](#)).

The advantage of option (a) is that it results in a contribution rate that the employer deems reasonable based on the employer's expectation of the number of hours to be worked by the employee (up to a maximum of the hours of the standard full-time working week for the employee in that employment). It could result in a higher or lower contribution rate than the actual hours eventually worked might have warranted (depending on how many hours the employee actually works) and this could, respectively, result in an appeal by the employee against the rate to which they have been allocated or result in a 'loss' to the Pension Fund (which, in turn, would become a cost to the employer). The employer could reallocate to the correct rate following a successful appeal. Equally, the employer could undertake a review of the contribution rate at an appropriate time (see [section 10](#)) regardless of whether or not there had been an appeal.

The advantage of option (b) is that it is less likely to lead to an appeal by the employee against the rate to which they have been allocated and the employer can, in any case, review the rate allocation at a later date (e.g. at each April and if the employee moves from a casual post to one with contractual hours) and reallocate to a new rate, as appropriate (see [section 10](#)). The disadvantage of option (b) is that it can initially result in a lesser contribution being collected from an employee's pay for a period of time than the actual hours eventually worked might have warranted. The advantage of option (c) is that it delivers the expected average contribution rate for Scheme members (upon which the LGPS 2015 has been costed). The disadvantage is that it is perhaps more likely to lead to an appeal by the employee against the rate to which they have been allocated if the member believes their pay does not justify that rate. Conversely, allocating the member to the 6.3% rate could initially result in a lesser contribution being collected from an employee's pay for a period of time than the actual hours eventually worked might have warranted (if the employee's pay turns out to be higher than assumed). In any case (regardless of whether or not there has been an appeal from the Scheme member), the employer can undertake a review of the contribution rate at an appropriate time (see [section 10](#)).

In order to seek consistency of approach across employers participating in the scheme it is recommended (with the recommendation being supported by COSLA) that option (b) should be adopted.

Further guidance on the operation of contribution assessment is shown in [Appendix 1](#).

Having determined an appropriate contribution rate (whether individually or by an automated process on payroll), the employer must (as soon as is reasonably practicable) notify the employee of the contribution rate to be deducted from the employee's

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pensionable pay and the date from which the rate is payable. It is for the employer to determine the method by which the notification is given to the employee but the notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained; must notify the employee of the right to appeal to an adjudicator against the decision (which must be lodged within 6 months of being notified of the initial decision, or such longer period as the adjudicator may allow); must set out the job title and address of the adjudicator (i.e. the person who has been appointed to consider appeals); and must notify the employee that, if they are unhappy with the adjudicator's decision, they would have the right to ask the Scottish Ministers, within 6 months of the adjudicator's decision, to undertake a further review of the decision.

On commencement the employee should be asked to declare any previous pension rights. The process for this should be agreed with the Pension Fund administering authority. It is important that the employee provides the relevant information as failure to do so could jeopardise certain pension protections they may have under the Public Service Pensions Act 2013 and / or the rules of the LGPS.

2B. Existing employees on 31st March 2015

~~In the lead up to the introduction of the 2015 Scheme employers should communicate the changes to the pension arrangements that will occur from 1st April 2015. Centrally produced topic based communication leaflets, videos and Powerpoint presentations are available but employers should liaise with their Pension Fund administering authority to determine the communication materials to be used for scheme members in that Fund. In addition a centrally maintained website for scheme members detailing the scheme changes is available at <http://www.scotlgps2015.org>.~~

Those employees who ~~we~~are employed on 31st March 2015 and who ~~we~~are active members of the Scheme ~~will, on 1st April 2015,~~ automatically become active members of the main section of the 2015 Scheme on 1st April 2015 – see [section 8](#) – unless they ~~choose to opted~~ out, ~~or opted~~ to join the 50/50 section, or they ~~happened~~ to cease to be eligible for membership on that date (for example, they attain age 75 on that date).

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Unless the process for allocating the appropriate contribution rate ~~has been was~~ automated on the payroll system, the employer must have determined the appropriate employee contribution rate for each employee moving into the 2015 Scheme on 1st April 2015 and ~~notified~~ this to payroll. Any reductions in pensionable pay at that time due to sickness, child related leave, reserve forces service leave or other absence from work ~~are to be~~ should have been disregarded when determining the appropriate contribution rate.

In many cases the contribution rate from 1st April 2015 will ~~have been be~~ different to the rate that applied prior to that date because, from 1st April 2015, a member's contribution the rate ~~will be is~~ determined by reference to the actual pensionable pay received (not the full-time equivalent rate of pay) and pensionable pay ~~will,~~ from 1st April 2015, includes additional hours worked in excess of the contractual hours (up to a maximum of the hours of the standard full-time working week for the employee in that employment). Having determined the appropriate contribution rate (whether individually or by an automated process on payroll), the employer must (as soon as ~~was~~ is reasonably practicable, but preferably before 1st April 2015 to avoid complaints from those whose contribution rate

increases, leading to a reduction in net pay and, potentially, difficulties for some members in meeting direct debit / standing order payments or leading to bank charges) have notified the employee of the contribution rate to be deducted from the employee's pensionable pay and the date from which the rate is payable (i.e. 1st April 2015). It was for the employer to determine the method by which the notification should have been given to the employee but the notification must have contained a conspicuous statement giving the address from which further information about the decision may be obtained; must have notified the employee of the right to appeal to an adjudicator against the decision (which must have been lodged within 6 months of being notified of the initial decision, or such longer period as the adjudicator may have allowed); must have set out the job title and address of the adjudicator (i.e. the person who has been appointed to consider appeals); and must have notified the employee that, if they were unhappy with the adjudicator's decision, they would have the right to ask the Scottish Ministers, within 6 months of the adjudicator's decision, to undertake a further review of the decision.

3. Opting out

A person ceases to be an active member in an employment from the date they specify in a written notice given to their employer that they wish to leave the Scheme (using an opt-out form). If they specify no date, or a date earlier than the date the notice is given, they cease to be an active member in that employment at the end of the payment period during which the notice is given (i.e. at the end of the week, end of the month and so on).

If they opt out within 3 months of joining, that person will be treated as not having been a member of the LGPS on that occasion and will be entitled to a refund via the payroll. Because the person is treated as not having been a member of the LGPS, no employee and employer contributions should have been paid to the fund in respect of that period of membership and, when the employer next pays its monthly contributions to the fund, the total contributions paid should be reduced by the employee and employer contributions relating to that person's membership which were, effectively, overpaid. This differs from the situation where a person ceases to be an active member within three months because they have left their employment (rather than because they have opted out). In such a case the refund of employee contributions would be paid by the fund and the member's contributions should therefore not be refunded via the employer's payroll. Additionally, no refund of employer contributions would be due.

If they opt out having been in the scheme for 3 months or more they should be treated as a normal 'leaver'. If they opt out after 3 months but before 2 years, they would be entitled to claim a refund via the Pension Fund administering authority unless they are disqualified from receiving a refund e.g. they already have, in an LGPS Fund in Scotland, a deferred pension or a pension in payment (in which case they would be entitled to a deferred benefit); or they could opt for a cash equivalent transfer value.

If the opt-out was after 2 years, they would be entitled to a deferred benefit (i.e. they would be a deferred member).

Once an employer has reached its staging date (for the purposes of the Pensions Act 2008) it should not issue an opt-out form to its employees. Instead, the opt out form must be obtained by the employee direct from the Pension Fund administering authority. Indeed,

many administering authorities have changed their procedures already so that opting out forms can only be obtained directly from them, irrespective of whether the employer's staging date has been reached or not.

A person cannot complete an opting out form before commencing employment.

Employers should agree with their Pension Fund administering authority the information to be sent to the administering authority in respect of an optant out and the process for retention of the opt out notice completed by the employee.

4. Rejoining

A person who is eligible for membership, but who is not an active member in that employment, can apply at any time to their employer to join the Scheme. If they do, they become an active member in that employment in the main section of the Scheme on the first day of the payment period following the application. A person is free to opt out of the Scheme and rejoin.

A person cannot elect to join the 50/50 section of the Scheme prior to becoming a member of the main section of the 2015 Scheme. So, an employee opting to join the Scheme would have to initially join the main section but they could elect, on or after joining the main section, to join the 50/50 section. If they do so before the first payroll is closed (after they opt into the Scheme), they can, in effect, be brought into the 50/50 section from the first day of joining the Scheme. Notification of the new member should be sent to both the payroll administrator (together with the confirmation of the relevant section – main or 50/50 - and the appropriate contribution rate unless allocation to a rate has been automated on the payroll) and to the Pension Fund administering authority (together with a copy of the election to join the Scheme and, if relevant, the election to join the 50/50 section). Note that any reductions in pensionable pay due to sickness, child related leave, reserve forces service leave or other absence from work at the point when the person opts into the 2015 Scheme are to be disregarded when determining the appropriate contribution rate.

Having determined the appropriate contribution rate (whether individually or by an automated process on payroll), the employer must (as soon as is reasonably practicable) notify the employee of the contribution rate to be deducted from the employee's pensionable pay and the date from which the rate is payable. It is for the employer to determine the method by which the notification is given to the employee but the notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained; must notify the employee of the right to appeal to an adjudicator against the decision (which must be lodged within 6 months of being notified of the initial decision, or such longer period as the adjudicator may allow); must set out the job title and address of the adjudicator (i.e. the person who has been appointed to consider appeals); and must notify the employee that, if they are unhappy with the adjudicator's decision, they would have the right to ask the Scottish Ministers, within 6 months of the adjudicator's decision, to undertake a further review of the decision.

5. Automatic enrolment

An "eligible jobholder" who is eligible for membership of the Scheme, but who is not an active member in that employment and who doesn't apply to their employer to join the

Scheme, nevertheless becomes an active member of the main section on the “automatic enrolment date” or “automatic re-enrolment date” relating to that employment (but an employer can delay automatic enrolment for up to 3 months by issuing a postponement notice or can, at the employer’s “staging date”, delay automatic enrolment until 1 October 2017 for those who are “eligible jobholders” on the employer’s “staging date” and who are not members of the LGPS on the “staging date”).

Although employees who are “automatically enrolled” or “automatically re-enrolled” would initially be brought into the main section they could elect, on or after joining the main section, to join the 50/50 section. If they do so before the first payroll is closed (after they are enrolled into the Scheme), they can, in effect, be brought into the 50/50 section from the first day of joining the Scheme.

Notification of the new member should be sent to both the payroll administrator (together with the confirmation of the relevant section – main or 50/50 - and the appropriate contribution rate unless allocation to a rate has been automated on the payroll) and to the Pension Fund administering authority (together with, if relevant, a copy of the election to join the 50/50 section). Note that any reductions in pensionable pay due to sickness, child related leave, reserve forces service leave or other absence from work at the point when the person is enrolled into the 2015 Scheme are to be disregarded when determining the appropriate contribution rate.

Having determined the appropriate contribution rate (whether individually or by an automated process on payroll), the employer must (as soon as is reasonably practicable) notify the employee of the contribution rate to be deducted from the employee’s pensionable pay and the date from which the rate is payable. It is for the employer to determine the method by which the notification is given to the employee but the notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained; must notify the employee of the right to appeal to an adjudicator against the decision (which must be lodged within 6 months of being notified of the initial decision, or such longer period as the adjudicator may allow); must set out the job title and address of the adjudicator (i.e. the person who has been appointed to consider appeals); and must notify the employee that, if they are unhappy with the adjudicator’s decision, they would have the right to ask the Scottish Ministers, within 6 months of the adjudicator’s decision, to undertake a further review of the decision.

~~It should be noted that where~~Where an employer has an “eligible jobholder” who, although eligible for membership of the LGPS, has opted out of the Scheme and the employer has enrolled them into another qualifying scheme before what would have been the “eligible jobholder’s” “automatic enrolment date” or “automatic re-enrolment date”, that person will not have an “automatic enrolment date” or “automatic re-enrolment date” because they are already in a qualifying scheme. Consequently, they would not be automatically enrolled into the LGPS. That person, and any “non-eligible jobholder” or “entitled worker” who is eligible for membership of the LGPS but who has opted out of membership and who the employer has enrolled into another qualifying scheme (for example NEST) will, however, retain the right to join the LGPS at any time up to age 75. It should be noted that the LGPS employers listed in part 1 of schedule 2 of the LGPS Regulations 2014 must use the LGPS for the purposes of fulfilling their automatic enrolment and re-enrolment duties.

Please note that both the main section and the 50/50 section of the LGPS are a “qualifying scheme” for automatic enrolment purposes from April 2015.

NB: Those terms highlighted in quotations marks in the text above are to be construed in accordance with the Pensions Act 2008.

For more information on Automatic Enrolment and the LGPS please read the LGPC's [Automatic Enrolment Guide](#).

6. Pensionable pay

The definition of Pensionable Pay in the 2014 Scheme is, basically, the same as in the 2009 Scheme – i.e. all payments in respect of the job, apart from those listed in regulations as exclusions, but there are four main differences.

The first significant change is that hours worked in excess of contracted hours will, from 1st April 2015, be pensionable up to the hours of the standard full-time working week for the employee in that employment. This can have major financial implications for employers and budget holders will need to factor this additional cost into budgets. Hours worked in excess of the hours for the standard full-time working week for the employee in that employment will, apart from contractual overtime, be non-pensionable.

~~The second change is that a payment in consideration of loss of future pensionable payments or benefits is, from 1st April 2015, not pensionable. So, for example, where an employer changes an employee's contract to remove contractual overtime and gives a lump sum payment in consideration for the loss of future pensionable payments (because the number of voluntary hours of overtime are expected to be less than the former number of contractual hours of overtime), that lump sum would be non-pensionable. Similarly, where an employer reduces the pay of an employee but offers a 'marked time' payment (e.g. to bring the employee's pay up to the former rate of pay for a limited period of time) the employer should define that 'top-up' sum in the 'marked time' agreement as a sum to be paid each pay period for a period of X months in consideration of the loss of future pensionable payments. The 'top-up' payment would then be non-pensionable.~~

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~~Some of examples of what this means in practice includes:~~

- ~~• Where employer changes an employee's contract to remove pensionable payments, including a reduction in contractual pay, and gives a lump sum payment in consideration for the future loss, that lump sum would be non-pensionable. If the lump sum is to be paid each pay period for a period of X months in consideration of the loss of these future pensionable payments, then this 'top-up' payment is non-pensionable.~~
- ~~• Where an employee continues to receive their whole preserved substantive salary and conditions during the period of protection, that salary would be pensionable.~~

~~When considering pay protection arrangements, employers should consider if they wish to make pay protection arrangements pensionable. The protection arrangements should~~

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reflect the regulations on pensionable pay as above and the intention should be recorded in any local agreement.

In the situation where an employer changes an employee's contract to remove pensionable payments, including a reduction in contractual pay, a Certificate of Protection would be issued because the base pensionable pay rate had been reduced. This has the advantage of clearly defining the point at which the rate of pensionable pay is reduced, and the date from which the 10 year protection under the Certificate of Protection commences. If the ~~marked-time~~top-up payment ~~is was made~~ pensionable it would ~~leaves~~ open the debate about when a certificate should first be issued i.e. where there is a pensionable ~~marked-time~~top-up payment the first actual reduction in the rate of pay will not occur until, say, the following April when an increment and / or pay award is due – meaning that it can be argued the 10 year protection starts then, rather than from the date the ~~marked-time~~top-up payment commenced. Furthermore, at each subsequent April during the ~~marked-time~~ period in which top-up payments were payable it could be argued that there had been a further reduction / restriction in the rate of pay and so a further Certificate of Protection should be issued at each April within the ~~marked-time~~protected period, resulting in multiple Certificates of Protection. Making the ~~marked-time~~top-up payments non-pensionable avoids these issues.

The third change is that, from 1st April 2015, any actual pay paid by the Scheme employer to a reservist during reserve forces service leave is not pensionable. Note that whilst on reserve forces service leave the employee and the Ministry of Defence pay contributions on the amount of Assumed Pensionable Pay (see [section 11](#)).

The fourth change is that the regulations now confirm that any award of compensation (excluding any sum representing arrears of pay) for the purpose of achieving equal pay in relation to other employees is non-pensionable. In October 2016, SPPA issued a circular (6/2016) clarifying that the payment of arrears of pay, made in respect of an equal pay claim, should be treated as pensionable. The circular notes that exclusion (h) in the list below makes a clear distinction between:

- a) The award of compensation for the purpose of achieving equal pay, which is non-pensionable, and
- b) A payment made in settlement of an equal pay claim where the payment represents arrears of pay, which is pensionable.

The circular also confirms that where such arrears are paid members would not have the choice to not pay contributions on the arrears because it would be required under the LGPS Regulations 2014, but that employers and administering authorities should agree an appropriately flexible approach for the repayment of the member contributions.

The full list of exclusions from Pensionable Pay is shown below:

- (a) any sum which has not had income tax liability determined on it;
- (b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;
- (c) any payment in consideration of loss of holidays;

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- (d) any payment in lieu of notice to terminate a contract of employment;
- (e) any payment as an inducement not to terminate employment before the payment is made;
- (f) any amount treated as the money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such provision;
- (g) any payment in consideration of loss of future pensionable payments or benefits;
- (h) any award of compensation (excluding any sum representing arrears of pay) for the purpose of achieving equal pay in relation to other employees;
- (i) any payment made by the Scheme employer to a member on reserve forces service leave;
- (j)* payments for non-contractual overtime;
the amount of any supplement paid to an employee whose employment was transferred on 1st April 2010, under a staff transfer scheme, from the Scottish
- (k) Administration to Learning and Teaching Scotland, in recognition of the difference in contribution rates between members of the principal civil service pension scheme and the Scheme;
the amount of any supplement paid to an employee whose entitlement to a pension was transferred on 1st May 2010 from the SDS Scheme to the Scheme, in recognition of the difference in contribution rates between members of the SDS Scheme and the Scheme;
- (l) the amount of any supplement paid to an employee whose employment was transferred on 1st October 2008, under a staff transfer scheme, from the Scottish
- (m) Legal Services Ombudsman to the Scottish Legal Complaints Commission in recognition of the difference in contribution rates between members of the principal civil service pension scheme and the Scheme;
the amount of any supplement paid to an employee whose employment was transferred on 1st April 2011, under a staff transfer scheme, from the Scottish
- (n) Administration to Social Care and Social Work Improvement Scotland, in recognition of the difference in contribution rates between members of the principal civil service pension scheme and the Scheme;
- (o) returning officer, or acting returning officer fees other than fees paid in respect of—
 - (i) local government elections,
 - (ii) elections for the Scottish Parliament,
 - (ii) Parliamentary elections, or
 - (iv) European Parliamentary elections.

The LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 provide that to the above list should be added “any supplement paid [to an employee] in recognition of the difference in contribution rates between the principal civil service pension scheme and

the 2009 or 2015 LGPS Schemes.” This would, for example, cover such a supplement paid to a scheme member who is employed by the Scottish Environment Protection Agency as a result of a relevant statutory transfer and who, immediately, before the transfer, was a pensionable civil servant.

The LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 also provide that, despite the entry at (f) above, if an employee’s pensionable pay at both 31st December 1992 and 31st March 1998 included an amount treated as the money value to the employee of the provision of a motor vehicle it, or any amount paid in lieu of such provision, remains pensionable until such time as the member leaves employment with the employer who was employing him / her on 31st December 1992 (otherwise than as a result of a transfer to another Scheme employer which is beyond the employee’s control) or ceases to be provided with a motor vehicle or an amount representing the money value to him / her of the provision of such a vehicle.

For a councillor, pensionable pay is the total of any payments of remuneration to the councillor by the local authority under the Local Government (Scotland) Act 2004 (Remuneration) Regulations 2007, including any payments made in respect of a councillor’s functions as a convenor or vice-convenor of a joint board.

* The reference in entry (j) in the table above to “payments for non-contractual overtime” relates to non-contractual hours worked in excess of the standard full-time working week for the employee in that employment. Such hours will be non-pensionable. However, hours worked in excess of contracted hours up to the hours of the standard full-time working week for the employee in that employment will be pensionable, as will contractual overtime worked in excess of the standard full-time working week for the employee in that employment.

6A. Pensionable pay and salary sacrifice

HMRC approved salary sacrifice arrangements where an employee has their contractual pay reduced by an agreed amount (supported by a variation to their contract) in return for a tax assessable benefit in kind from which income tax liability is then removed will remain pensionable under the 2015 Scheme (where the benefit in kind is specified in the employee’s contract of employment as being a pensionable emolument). Thus, the position remains the same as in the 2009 Scheme — ~~see LGPC Circular 244 for more information.~~ However, it should be noted that from 6th April 2017 significant reforms to salary sacrifice arrangements were introduced by the Government which have markedly restricted the types of benefits in kind which can benefit from income tax and National Insurance contribution advantages when provided to employees via a salary sacrifice arrangement.

Where holiday entitlement is sold in return for additional remuneration, the extra pay will (as in the 2009 Scheme) be non-pensionable, because it is a “payment in consideration of loss of holidays”.

Where an employee forgoes remuneration in return for additional days of holiday this is, in effect, authorised unpaid leave of absence. Many employers have introduced such cost saving arrangements as a mechanism to help deal with budget constraints. If such

authorised unpaid leave of absence reduces a person's income prior to tax and NIC deductions, the value of this cannot be added back in to a member's pensionable pay as a pensionable emolument because there has been no income tax liability determined on that amount. However, if instead a net deduction is made in respect of the value of the additional leave and income tax and NICs are deducted from the member's full pay, the member's pensionable pay would also be the full amount. This is set out in more detail in the third option described below.

~~Even if an annual leave purchase scheme is an HMRC approved salary sacrifice scheme, the~~Where a member does forego remuneration in return for additional days of holiday, the purchased annual leave is only pensionable where income tax liability has been determined on the value of that annual leave.

In the 2009 Scheme the employer and employee were required to pay their respective contributions on the first 30 days of authorised unpaid leave of absence, with the contributions being based on the amount of remuneration the employee would have received but for the absence. However, in the 2015 Scheme, there is no requirement for contributions to be paid for the first 30 days of authorised unpaid leave of absence. Instead, it is the employee's choice as to whether or not to cover the period of absence for pension purposes. If the employee chooses to do so this will be by paying an age-related Additional Pension Contribution (APC) to cover the amount of pension 'lost' during the period of authorised unpaid leave of absence – see [section 12](#) for further details.

An employer might take a different approach to that set out above. Instead of introducing a system whereby an employee forgoes remuneration in return for additional days of holiday, the employer might make a change to the employee's contract of employment whereby the employee is only required to work for, say 360 days a year (in the same way that a term-time employee may contractually only be required to work term-time). In the first approach, if the member is on, say, £20,001 a year and takes 5 days authorised unpaid leave of absence (for which a deduction will be made from pay) the employee contribution rate would be determined on a salary of £20,001 and the employee could purchase the pension 'lost' during those 5 days leave of absence by electing to pay an APC. If the member makes the APC election within 30 days of returning from the absence (or such longer period as the employer allows), it would be a shared cost APC i.e. the employer would compulsorily have to contribute 2/3rds of the cost of that APC – see [section 12](#) for further details. However, under the second approach, the member's salary would be £19,727 and if the member wanted to purchase the equivalent of the pension that would have been earned for another 5 days works they could do so via an APC. However, this would be at whole cost to the member (unless the employer voluntarily agreed to contribute towards the cost of that APC) – see [section 12](#) for further details. A third approach is where the employer continues to pay the employees in full (so each month's pay would attract full tax, National Insurance and pension contributions) but has the agreement of the employee to deduct a net sum on the deductions side of the payslip (i.e. the net sum the employee would have received for the day's leave after deduction of tax, NI and pension contributions). This overcomes the problem of having, in the first approach, to treat the leave as unpaid leave of absence and means there would be no effect on the employee's pension and no need for them to elect to purchase the period via an APC; and it overcomes the problem in the second approach of reducing the employee's pensionable pay.

A net reduction can be made provided it is:

- o authorised by the employee's contract - provided the employee has been given a written copy of the relevant terms or a written explanation of them before it is made, or
- o consented to by the employee in writing before it is made.

Local authority employers are recommended (with the recommendation being supported by COSLA) to adopt the first approach set out above whenever possible to ensure consistent application.

7. Records to be maintained

A separate record must be maintained for each job the employee holds unless the employer determines that a single employment relationship exists. This is the same requirement as under automatic enrolment legislation and although not a change from current requirements the need to calculate pensions on a year by year basis means that separate records are vital to the task and therefore worth re-emphasising.

Examples of where the employer may determine a single employment relationship exists are:

- o Two concurrent employments where, if one is terminated, the other must be terminated at the same time
- o Sequential employments without a break (e.g. a promotion)

Where a single relationship does not exist, separate records will be required for each job in order to calculate and hold the data needed to correctly determine the amount of pension accrued in each year for each job.

Example

An employee commences a new job and already holds a job with the same employer which the employee continues to hold. Unless a single employment relationship exists the employee is to be treated as a new starter for pension purposes in the new job with the payroll instructed to hold a separate record and the Pension Fund administering authority notified of a new member.

Where separate employment relationships exist and where the person is being paid on timesheet claim, it is imperative that timesheet design (and instructions for completion from HR) includes information that identifies which hours are in relation to which job.

8. The two sections to the 2015 Scheme

The LGPS 2015 contains two sections – the main or 100/100 section and the 50/50 section. Apart from the potential impact on additional pension, etc of moving between the main and 50/50 sections (see section 9) the only difference between the two sections is that in the 50/50 section the amount of contributions to be deducted from the employee is half that due under the main section (and, therefore, the member accrues half the normal pension whilst in the 50/50 section). However, if the member dies in service or retires with a Tier 1 or Tier 2 ill health pension whilst in the 50/50 section, the lump sum death grant (in the case of

death in service) and the amount of ill health enhancement granted (in the case of ill health retirement) will be calculated as if the member was in the main section of the Scheme. Any survivor benefits payable following the member's death are also not affected by the member being in the 50/50 section. Note that whilst an employee is in the 50/50 section the employer contribution is still the normal full contribution rate (not half).

The employee may elect to move between the main and 50/50 sections of the Scheme any number of times but each election only takes effect from the next available pay period. Note that for concurrent employments the employee may elect to move between sections for any or all of the jobs they hold.

An employer must give an employee who elects for the 50/50 section information on the effect on that person's likely benefits from the 2015 Scheme.

Although scheme regulations do not require a form to be completed to move between sections one may be advisable as the employer will be required to notify both the payroll administrator and the Pension Fund administering authority of the date of the move to a different section and to maintain a record of elections. A sample 50/50 election form (which includes the information an employer must give an employee who elects for the 50/50 section about the effect on that person's likely benefits from the 2015 Scheme) and notes for employers are available [here](#). However, employers should check with their Pension Fund administering authority whether they can use the sample form or whether the administering authority has its own form it would wish employers in its Fund to use. At year end (or date of leaving if earlier), employers should confirm to the administering authority which section the member was in at that time.

Each employer will need to determine the most effective method of holding the above information which may or may not involve the payroll system holding the relevant data. As stated in [section 2A](#) employees should always be put into the main section on being brought into, or upon electing to join, the Scheme in an employment after which the following circumstances may lead to a change of section during the Scheme year:

- Notification that the employee has elected to move from the main section to the 50/50 section (or vice versa) from the beginning of the next available pay period following the election.
- If the employee is in the 50/50 section and goes on to no pay due to long-term sickness or injury, the employee must be moved back into the main section from the beginning of the next pay period if they are still on nil pay at that time. The person will, of course, have the right to make a further 50/50 election upon returning to work.
- If the employee is in the 50/50 section and goes onto no pay during ordinary maternity, ordinary adoption leave or paternity leave, the employee must be moved back into the main section from the beginning of the next pay period.
- If the employee is in the 50/50 section they must be moved back to the main section from the beginning of the pay period following the employers' "automatic re-enrolment date". This would happen irrespective of what category of worker they are for the purposes of the Pensions Act 2008. Note that the initial "staging date" for those employers who meet their "staging date" after 31st March 2015 has no implication on existing 50/50 elections. The person will, of course, have the right to make a further 50/50 election which, if made before the payroll is closed, would mean the member would have continuous 50/50 membership.

Please note that the both the main section and the 50/50 section of the LGPS are a “qualifying scheme” for automatic enrolment purposes from April 2015.

NB: Those terms highlighted in quotations marks in the text above are to be construed in accordance with the Pensions Act 2008.

For more information on Automatic Enrolment and the LGPS please read the LGPC's [Automatic Enrolment Guide](#).

9. Impact on additional pension and AVC contracts, etc of moving between the main and 50/50 sections

If a member elects to move to the 50/50 section:

- any existing additional pension contribution (APC) contract which is at whole cost to employee must cease (unless it is to purchase an amount of pension “lost” due to a trade dispute or due to a period of authorised leave of absence or period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave where the member is paying the full cost of the APC*, in which case it continues, unless the member elects to terminate the contract);
- any shared cost additional pension contribution (SCAPC) contract must cease (unless it is to purchase an amount of pension “lost” during a period of authorised unpaid leave of absence or during a period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave in which case it continues, unless the member elects to terminate the contract); and
- any AVC or Shared Cost AVC contract continues, unless the member elects to terminate the contract.

[*i.e. the member made an APC election more than 30 days (or such longer period as the employer may allow) after returning from a period of leave of absence or period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave, thereby missing the deadline for the employer to compulsorily contribute to a shared cost APC, and the APC is not to cover a period of absence beyond 36 months.]

It should be noted that on movement to the 50/50 section any existing contributions to:

- an AVC/SCAVC;
- an APC to purchase an amount of pension “lost” due to a trade dispute or due to a period of authorised leave of absence or period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave where the member is paying the full cost of the APC;
- a SCAPC to purchase an amount of pension “lost” during a period of authorised unpaid leave of absence or during a period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave; or
- an additional regular contribution (ARC), added years, Preston part-time buy-back, or additional survivor benefit contribution (ASBC) contract / arrangement in force prior to 1st April 2015 – see [section 16](#)

are not reduced to half rate. The contributions under such contracts / arrangements continue to be paid in full i.e. the full percentage rate or flat rate sum due under the relevant contract / arrangement.

A member in the 50/50 section cannot commence payment of an APC contract which is at whole cost to the employee (unless it is to purchase an amount of pension “lost” due to a trade dispute or due to a period of authorised leave of absence or period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave where the member is paying the full cost of the APC).

A member in the 50/50 section can commence payment of a SCAPC contract only if such a contribution is to purchase an amount of pension “lost” during a period of authorised unpaid leave of absence or during a period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave, and can commence payment of an AVC or Shared Cost AVC contract.

A member in the 50/50 section can commence payment of Preston part-time buy-back contributions.

It should be noted that if a member moves to the main section any existing APC, SCAPC, additional regular contribution (ARC), added years, additional survivor benefit contribution (ASBC), AVC or Shared Cost AVC contract /arrangement must continue, unless the member elects to terminate the contract / arrangement. Any Preston part-time buy-back contributions must continue.

A member in the main section can commence payment of an APC contract which is at whole cost to the employee, commence payment of a SCAPC contract, and commence payment of an AVC or Shared Cost AVC contract.

A member in the main section can commence payment of Preston part-time buy-back contributions.

10. Movements between contribution rates

Once the initial contribution rate has been determined for an employee (see sections [2A](#), [2B](#), [4](#) and [5](#)) the employer must reassess the appropriate average rate each April (taking account of any increase in the figures in the “Look up” Table 2 in Annex C of [Appendix 1](#)) and is required by the regulations to review the appropriate average rate *‘when there has been a permanent material change to the terms and conditions of a member’s employment which affect the member’s pensionable pay in the course of a financial year’*. This would, for example, be where there is a variation to a member’s contractual hours, or a promotion / demotion, or re-grading, or a change of job, or a move from a casual post to one with contractual hours. This can result in a retrospective reallocation to a different contribution rate with a consequential adjustment to the employee contributions due (e.g. where there is a retrospective pay award or retrospective re-grading) but the employer can decide to only apply the new rate from the date the pay award or re-grading is actioned on the payroll. Where a change to a member’s contractual hours is not considered permanent by the employer (e.g. where there are frequent changes) or where a change is not considered material (i.e. where the change is not viewed in the context of the member’s pay as significant), an employer may decide to ignore the changes and assess at the next 1st April.

Field Code Changed

A change in the number of non-contractual excess hours being worked by a member would not constitute a change to the terms and conditions of the member's employment and, therefore, would not result in a rate reassessment part way through a Scheme year, but should be taken into account when assessing the rate at the next 1st April. Similarly, an increment or pay rise made part way through a scheme year is not a permanent material change to a member's terms and conditions of employment (but, rather, the fulfilment of an existing term or condition) and so would not, in itself, warrant a reassessment of the contribution rate part way through a Scheme year but should be taken into account when assessing the rate at the next 1st April.

Any reductions in pensionable pay due to sickness, child related leave, reserve forces service leave or other absence from work are to be disregarded when assessing / reviewing the appropriate contribution rate.

Further guidance on the operation of contribution assessment is shown in [Appendix 1](#).

Field Code Changed

Example

The rate set on commencement was based on contractual annual pay. However, when the rate is reviewed at the end of the year, it is clear that the employee worked a significant amount of additional hours in excess of their contracted hours (up to the hours of the standard full-time working week for the employee in that employment) which would have placed them on a higher rate. The employer may choose to apply the new rate applicable for the following year taking into account the level of the additional hours worked during the period to 31st March.

Employers should ensure that whatever process they adopt is reasonable and consistent in its application.

Whenever an employer decides to change the rate to which the employee is allocated, the employer must, as soon as is reasonably practicable (but preferably before the new rate is implemented in order to avoid complaints from those whose contribution rate increases), notify the employee of the new contribution rate that is payable and the date from which it is to be applied. It is for the employer to determine the method by which the notification is given to the employee but the notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained; must notify the employee of the right to appeal to an adjudicator against the decision (which must be lodged within 6 months of being notified of the initial decision, or such longer period as the adjudicator may allow); must set out the job title and address of the adjudicator (i.e. the person who has been appointed to consider appeals); and must notify the employee that, if they are unhappy with the adjudicator's decision, they would have the right to ask the Scottish Ministers, within 6 months of the adjudicator's decision, to undertake a further review of the decision.

11. Assumed Pensionable Pay

If an employee moves to a period of reduced contractual pay or nil pay as a result of sickness or injury or commences relevant child related leave (i.e. ordinary maternity, paternity or adoption leave or paid shared parental leave and any paid additional maternity

or adoption leave) payroll should be notified of the date of the reduction (for sickness or injury), or the date the relevant child related leave began, and the requirement to apply Assumed Pensionable Pay (APP) for pension purposes (other than during any part of relevant child related leave where the pensionable pay received is greater than the Assumed Pensionable Pay for that part of the leave period). The employee will, as in the 2009 Scheme, pay contributions on any pensionable pay received during such periods of absence but, unlike in the 2009 Scheme, the employer will (other than during any part of relevant child related leave where the pensionable pay received is greater than the APP for that part of the leave period) pay contributions on the amount of APP. This is a significant change that employers need to take into account.

Please note that APP does not apply to councillor members. It is understood that this is because councillors will continue to receive full councillor allowances whilst sick or on relevant child related leave.

General

APP does NOT apply during any part of relevant child related leave (i.e. ordinary maternity, paternity or adoption leave or paid shared parental leave and any paid additional maternity or adoption leave) during which the pensionable pay received is greater than the assumed pensionable pay for that part of the leave period. On those days, the employee and employer pay contributions on the actual pensionable pay received.

APP also does NOT apply during any period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave available at the end of relevant child related leave; this is to be treated as unpaid leave of absence. If the member was in the 50/50 section prior to dropping to nil contractual pay because of long-term sickness, or prior to going on to no pay during ordinary maternity, paternity or adoption leave, they should be returned to the main section from the beginning of the next pay period (provided, if they went onto no pay because of long-term sickness, they are still on no pay at that time). If the employee has a period of authorised unpaid leave of absence or is absent due to industrial action, APP should not be added to the pensionable pay cumulative for that period of absence.

APP and Separate Employments

The calculation of APP uses the 3 complete months or 12 complete weeks pensionable pay the member receives relating to **that employment** before the period of reduced contractual pay or nil pay due to sickness or injury, or relevant child related leave commenced or the date the member commenced reserve forces leave.

If during the period of 3 months or 12 weeks pensionable pay used to calculate the APP the member ceases one employment and is reemployed on a new contract of employment the calculation of the value of the APP is based on the pensionable pay received in the new employment only using the number of complete weeks or complete months available in that employment to calculate the APP.

Reserve Forces Service leave

If an employee is on Reserve Forces Service Leave (and, if eligible to be in the Armed Forces Pension Scheme during that period, has elected to remain a member of the LGPS) the employer will calculate Assumed Pensionable Pay (APP) whilst the reservist is on leave and drop that into the person's pensionable pay cumulative on the payroll (i.e. into the main or 50/50 section) so the person continues to build up a pension as if they were still at work.

The employer would pay no employer contribution to the Fund on that Assumed Pensionable Pay. The employer would notify the reservist and, via the reservist, the Ministry of Defence (MoD) of both the Assumed Pensionable Pay figure and the employee and employer contribution rate due on that amount, and the amount of any additional contributions being paid by the member (except where the MoD pay is less than the member's pensionable pay as defined in the 2009 Scheme, and the additional contributions are Additional Regular Contributions (ARCs), contributions to purchase added years, or Additional Survivor Benefit Contributions (ASBCs)). The MoD would deduct the employee contribution and the additional employee contributions (if any) from the reservist and pay those contributions, together with the employer contribution, directly over to the Pension Fund administering authority or to the AVC provider, as appropriate. Note that any employer contributions to a SCAPC or SCAVC remain payable by the employer. If the employer continues to pay the reservist some pay whilst they are on reserve forces service leave, neither employee or employer contributions are payable on that pay (because that pay is non-pensionable and contributions are payable on the Assumed Pensionable Pay figure) and the pay paid by the employer is not added into the person's cumulative pensionable pay figure (i.e. into the main or 50/50 section pensionable pay cumulative) because the Assumed Pensionable Pay has been added into the pensionable pay cumulative.

Cessation of APP accrual

APP ceases to accrue when a member ceases to be absent on reduced contractual pay or nil pay following sickness or injury; or on ceasing relevant child related leave (i.e. ordinary maternity, paternity or adoption leave or paid shared parental leave and any paid additional maternity or adoption leave); or on ceasing reserve forces service leave.

Tier 1 and Tier 2 ill health pensions or death in service

APP will need to be calculated (by the employer - not held on payroll) when an employer terminates an active member's employment on the grounds of permanent ill-health with a Tier 1 or Tier 2 ill health pension or when an active member dies in service. Except in the case of returning officers and acting returning officers (see below), the APP figure is calculated in the normal way (see section 4.2 of [the Payroll Guide](#)) but using the average of the pensionable pay for the 12 (weekly) or 3 (monthly) complete pay periods prior to the date of termination / death (including any APP credited in and relating to those pay periods), to which any regular lump sums paid in the 12 months prior to the date or retirement / death which the employer determines there is a 'reasonable expectation' would again have been paid to the member are added back into the annual rate of APP. This APP figure is needed to calculate the amount of the enhancement to the benefits due under the LGPS.

Where a scheme member holds the post of returning officer at local government elections or Parliamentary elections (including Scottish Parliamentary elections) or as an acting

returning officer (including as a regional or local returning officer at European Parliamentary elections), the APP figure is calculated as the annual average pensionable pay the member received relating to that employment in the three years preceding the commencement of the pay period in which the ill-health retirement or death occurred (or received in the period of membership in that employment if less than three years).

11A. Certificate of Protection

Overview

Employers should issue a Certificate of Protection where there is a compulsory and permanent reduction in, or restriction to, a member's rate of contractual pensionable pay (but not hours worked).

A certificate will generally have the same effect as it does in the current final salary scheme with regard to membership up to 31 March 2015 but a new method of assessing the effect of a certificate is necessary in relation to membership thereafter. Detailed guidance is contained in [Appendix 2](#).

Field Code Changed

Employers are advised to note the following:

- Members may request a certificate within 12 months of the reduction or restriction if the employer has not issued one.
- A certificate will, as before, be valid for 10 years from the date of reduction or restriction but would lapse where the member leaves the same employment it was issued under (but remains a scheme member) except where the employment ceases upon the member being transferred to another Scheme employer under TUPE.
- A certificate will take effect where a member dies or becomes entitled to immediate or deferred benefits within 10 years of the date of reduction or restriction (including on opting out of membership)
- Where benefits would be greater in total, members will be able to elect, at retirement / on leaving the scheme, whether or not to use the certificate.
- Councillor members cannot be issued with a certificate.
- Where a member with a valid certificate takes flexible retirement it is applied to that first retirement only.
- Employee and employer contributions are based on actual pay (and, in the case of employer contributions, on any Assumed Pensionable Pay received) during the term of a certificate.
- More than one certificate may be held by a member.

In addition to the current requirement to keep pay records, employers should note that:

- a. to preserve pay protection for members with final salary (pre-2015) benefits, pay records must be kept for up to 13 years after issue of a certificate. This is as is the case for certificates issued under the 2008 or 1998 regulations.
- b. for members with a certificate issued under the 2008 or 1998 regulations, pay records will be required to facilitate protection for the remaining period of the certificate after 31 March 2015.

- c. the certificate will need to show the pensionable pay cumulative in the scheme year up to the day before the reduction or restriction in pay (a figure which should be available from the Pensionable Pay Cumulative on the payroll).
- d. in the case of a reduction in pay, the certificate will need to specify the multiplier to be used to increase the benefits accruing in the CA scheme post the reduction in pay (if the certificate is applied at retirement / leaving the scheme). This multiplier will be calculated by reference to the difference between the pay rates immediately pre and post the reduction in pay.

12. Buying extra pension

Employee only APCs and employee/employer shared cost APCs

Scheme members may choose to buy extra annual pension, up to a maximum of £6,500, using an Additional Pension Contribution (APC) contract (and, in the case of employees – but not councillors - with or without a contribution from the employer – known as a shared cost APC (SCAPC) where there is a contribution from the employer). This is an increase from the 2009 Scheme maximum of £5,000 and the maximum of £6,500 will be increased each April (~~starting April 2016~~) by Pensions Increase (assuming a PI date of 1 April 2015). Because there was no Pensions Increase (Review) Order in 2016, the maximum pension that could be purchased by scheme members was not increased in April 2017.

~~However, a~~ Pension Fund administering authority can require the member to produce a report by a registered medical practitioner of the results of a medical examination (undertaken at the member's own expense) and can refuse an APC contract application if they are not satisfied that the member is in reasonably good health. Subject to that, a member can enter into an APC contract:

- o To buy extra pension. The Scheme member may choose to make a one off contribution or regular additional contributions (and, in the case of employees – but not councillors -, with or without a contribution from the employer), in order to buy a set amount of additional pension. The cost (a cash amount NOT a percentage of pay) is determined by the Scheme member's age and the amount they wish to purchase. An employer may, if they wish (except in the case of a councillor member), agree to meet some or all of the cost of any additional pension purchased. Note that a Scheme member cannot commence an APC in this circumstance if they are in the 50/50 section.
- o To buy 'lost' pension for authorised unpaid leave of absence (including any period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave following a period of relevant child related leave i.e. following ordinary maternity, paternity or adoption leave or paid shared parental leave and any paid additional maternity or adoption leave). Where an employee (but not a councillor) elects to pay an APC to purchase any or all of the amount of pension 'lost' during the period of absence and makes the election within 30 days of returning to work (or such longer period as the employer allows) the employer shall, for any individual period of absence up to 36 months, but not any period beyond that, pay 2/3rds of the cost of the APC (a shared cost APC). The amount of 'lost' pension shall be calculated as 1/49th of the 'lost' pensionable pay for the period of unpaid leave if the person was in the main section during that period, or 1/98th of the 'lost' pensionable pay for the period of unpaid leave if they were in the 50/50 section during that period. A Scheme member can commence an

APC or (except councillor members) commence a shared cost APC in this circumstance even if they are in the 50/50 section.

Note that in the 2015 Scheme it is no longer compulsory for the member (and employer) to pay contributions in respect of the first 30 days of authorised unpaid leave of absence (including any such period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave following a period of relevant child related leave i.e. following ordinary maternity, paternity or adoption leave or paid shared parental leave and any paid additional maternity or adoption leave). Instead, the member can choose whether or not to pay contributions to cover the pension 'lost' during the period of authorised unpaid leave of absence. If the member wishes to buy-back what will often be a small amount of pension 'lost' in respect of a period of authorised unpaid leave of absence they can do so by paying an age-related Additional Pension Contribution (APC) contract, either over a period of time (except where the Pension Fund administering authority determine that payment by regular contributions would not be practicable) or as a one off lump sum. Except in the case of councillor members, if the member elects within 30 days of returning from the leave of absence (or such longer period as the employer allows) the cost of the APC contract will, for any individual period of absence up to 36 months, be split 1/3rd employee and 2/3rds employer. If they elect after the 30 day period (or after such longer period as the employer allows) the cost of the APC contract will be at full cost to the employee. Similarly, the cost of purchasing 'lost' pension for a period of absence beyond 36 months will be at full cost to the employee, unless the employer chooses to contribute towards the cost. In the case of councillor members the authority cannot contribute to a shared cost APC (SCAPC). If an employee has pre 1st April 2015 membership they might, even if they decide not to pay for the amount of 'lost' pension in most years, wish to pay for the amount of 'lost' pension for a period of leave of absence that falls in their final year of membership in order to ensure that the final pay calculation for their benefits in respect of their pre 1st April 2015 membership (and for their benefits for their post 31st March 2015 membership if they are subject to the underpin calculation – see [section 16](#)) includes that period (if it would generate a higher final pay figure). Furthermore, a member subject to the 85 year rule might wish to cover the amount of pension 'lost' in respect of a period of authorised unpaid leave of absence as, if they do not do so, it could have the effect of putting back the date they meet the 85 year rule.

It should also be noted that, unlike in the 2009 Scheme, there are no longer any special rules governing jury service. In the 2015 Scheme if a member is on jury service on no pay (i.e. authorised leave of absence) the rules above apply.

- To buy pension 'lost' during a trade dispute. Where an employee is absent due to a trade dispute they may choose to buy extra pension to replace the amount of pension 'lost' during the period of the trade dispute. The amount of 'lost' pension shall be calculated as 1/49th of the pensionable pay 'lost' during the period of the trade dispute if the person was in the main section during that period, or 1/98th of the pensionable pay 'lost' for the period of the trade dispute if they were in the 50/50 section during that period. Note that an employee can commence an APC in this circumstance even if they are in the 50/50 section. If the employee has pre 1st April 2015 membership they might, even if they decide not to pay for the amount of 'lost' pension in any other year in which

they had taken part in a trade dispute, wish to pay for the amount of 'lost' pension for a period of absence due to a trade dispute that falls in their final year of membership in order to ensure that the final pay calculation for their benefits in respect of their pre 1st April 2015 membership (and for their benefits for their post 31st March 2015 membership if they are subject to the underpin calculation – see [section 16](#)) includes that period (if it would generate a higher final pay figure). Furthermore, a member subject to the 85 year rule might wish to cover the amount of pension 'lost' in respect of a period of absence due to a trade dispute, if they do not do so, it could have the effect of putting back the date they meet the 85 year rule.

If the Scheme member wishes to go ahead with a purchase of extra pension in any of the above circumstances they will need to sign a contract to do so and both the payroll and Pension Fund administering authority must be notified of:

- the amount to be purchased, the cash contribution,
- the period over which it is to be paid,
- the reason for the purchase and,
- if the member has more than one pensionable employment, the employment to which the APC contract is to be attached.

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~~-A self-service [modeller](#) calculator via which members can complete an application to purchase extra or lost pension is available on [www.scotlgps2015.org](#). will be made available. Initially, this is likely to be placed on the national website at [http://www.scotlgps2015.org](#) before being moved in due course to [www.scotlgpsmember.org](#). The code for administering authorities wishing to host the modeller on their own website will also be available on [www.scotlgpsregs.org](#) under Code for Calculators.~~

-A Pension Fund administering authority can determine that payments cannot be made over a period of time where it would be impracticable. Administering authorities will wish to have a policy on this and tell the employers in their Fund what the policy is.

It should be noted that, subject to the provisions explained in [section 9](#), during any period of:

- sickness or injury on reduced contractual pay or no pay, or
- child related leave (ordinary maternity, paternity or adoption leave or paid shared parental leave, plus paid additional maternity or adoption leave, plus unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave), or
- absence due to a trade dispute, or
- reserve forces service leave, or
- any other period of authorised leave of absence, or
- any period of unpaid unauthorised absence

any pre-existing APC / SCAPC contracts entered into after 31st March 2015 remain payable (unless the member elects to end the contract) with the exception that during a period of sickness or injury on no pay, the employee contributions to an APC / SCAPC are deemed to have been paid - see the notes under example 23 in section 5.3 of [the Payroll Guide](#) for further information and see [section 16](#) regarding contracts entered into before 1st April 2015.

Employer only APCs

Employers can award additional annual pension to active Scheme members (other than councillor members) of up to £5,000. This figure will be increased each April ~~(starting April 2016)~~ by Pensions Increase (assuming a PI date of 1 April 2015). Because there was no Pensions Increase (Review) Order in 2016, the maximum pension that could be awarded to scheme members was not increased in April 2017. Such an award may also be made within six months of leaving to those persons who have left on the grounds of redundancy or business efficiency.

The employer would make a one off contribution in order to buy a set amount of additional pension for the member. The cost is determined by the employee's age and the amount purchased.

AVCs

Additional Voluntary Contributions (AVCs) can be made by the employee or, in the case of a shared cost AVC (SCAVC), by both the employer and employee. A SCAVC cannot be entered into in respect of a councillor. Such contributions will be either a cash amount or a percentage of pensionable pay. The employer will notify the payroll of the employee amount or percentage to be deducted per pay period and, in the case of a SCAVC, the employer amount or percentage to be paid per pay period. The Pension Fund administering authority must also be notified. The split between an employee's and employer's additional contributions for an SCAVC can be any proportion as agreed but not 100% cost to the employer.

It should be noted that during any period of:

- sickness or injury on reduced contractual pay or no pay, or
- relevant child related leave (ordinary maternity, paternity or adoption leave or paid shared parental leave, plus paid additional maternity or adoption leave), or
- reserve forces service leave

any pre-existing AVC / SCAVC contracts entered into after 31st March 2015 remain payable (unless the member, or the employer in the case of a SCAVC, elects to end the contract) for so long as there is enough pay to cover them (and any member paying AVCs for additional life assurance cover will have to make arrangements to continue to pay the life assurance AVCs during any period when there is not enough pay to cover them if they wish to ensure their AVC life assurance cover does not lapse) – see the notes under example 27 in section 5.3 of [the Payroll Guide](#) for further information and [section 16](#) regarding contracts entered into before 1st April 2014.

It should also be noted that during any period of:

- unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave, or
- absence due to a trade dispute, or
- any other period of authorised leave of absence

the member may elect to continue payments in respect of any AVC / SCAVC contract that was entered into after 31st March 2015 – see the notes under example 27 in section 5.3 of [the Payroll Guide](#) for further information and see [section 16](#) regarding contracts entered into before 1st April 2014.

[Reserve Forces Service Leave](#)

The above rules on APCs / SCAPCs / AVCs / SCAVC equally apply to a Scheme member on reserve forces service leave (but see [section 9](#) concerning the impact of moving to the 50/50 section).

Subject to [section 9](#) (impact of moving to the 50/50 section), unless the member elects to end the contract, any pre-existing APC / SCAPC / AVC / SCAVC contracts that were entered into after 31st March 2015 remain payable during any period of reserve forces service leave (but not via payroll). The employer sends the relevant details to the reservist (i.e. the amount of APC or AVC payable by the reservist) to pass on to the Ministry of Defence (MoD) in order to get them to arrange the relevant deductions from the MoD reservist pay and for the MoD to pay the APC amounts over to the LGPS Fund and the AVC amounts to the relevant AVC provider. Note that any employer contributions to a SCAPC or SCAVC remain payable by the employer. See [section 16](#) regarding contracts entered into before 1st April 2015.

13. Termination

Where the Scheme member either opts out of the Scheme, or ceases pensionable employment, or retires, or attains age 75 the employer should inform the payroll administrator and the Pension Fund administering authority should be notified of:

- The date of cessation
- The reason for cessation
- The relevant section of the Scheme on cessation
- Any existing APC / SCAPC contracts in force (and the amount of employee and/or employer contributions paid to the APC / SCAPC in the final Scheme year)
- Pension contributions paid in relation to the job in the final Scheme year
- Cumulative pensionable pay (per section) in relation to the job in the final Scheme year
- An APP figure where employment has been terminated on the grounds of permanent ill-health with a Tier 1 or Tier 2 ill health pension or an active member dies in service. This APP figure is needed to calculate the amount of the enhancement to the benefits due under the LGPS
- The final pensionable pay figure, calculated under the rules of the 2009 Scheme, for those members who were in the Scheme on 31st March 2015 (see [section 16](#) for more information)
- Any changes in contractual hours or contractual weeks / days per year, or any service breaks, for those members who were in the Scheme on 31st March 2015 which have not already been notified to the Pension Fund administering authority (see [section 16](#) for more information)
- Whether, for voluntary (non-flexible) retirements on or after age 55 and before age 60 which the employer has agreed to, the employer has decided, under their discretions

policy, to apply the 85 year rule protection (for retirees who were members of the LGPS on 30th November 2006)

- Whether, for voluntary and flexible retirements, any actuarial reductions are to be waived in accordance with the employer's discretions policy.

14. Retirements

When a Scheme member retires the employer must provide the Pension Fund administering authority with the information set out in [section 13](#).

A significant change under the 2015 Scheme compared to the retirement provisions in the 2009 Scheme is that if the employer agrees to the early voluntary (non-flexible retirement) payment of benefits on or after age 55 and before age 60, the 85 year rule will not automatically apply. Please note that the 85 year rule protections for those Scheme members subject to the 85 year rule continue to automatically apply to members' benefits from both the pre and post 2015 membership if benefits are drawn at or after age 60. To have 85 year rule protections a member must have been a member of the LGPS on 30th November 2006. The 85 year rule does not, however, automatically apply if the employer agrees to the early voluntary (non-flexible retirement) payment of benefits on or after age 55 and before age 60 - but the employer can, subject to their discretions policy, agree to apply the 85 year rule. If the employer does apply the 85 year rule, the employer would have to meet any strain on Fund cost (as under the 2009 Scheme). If the employer does not apply the 85 year rule, the scheme member would meet any strain on Fund cost via an actuarial reduction applied to their pension. In the case of a voluntary retirement prior to Normal Pension Age the employer has the discretion, if their discretions policy so permits, to waive in whole or in part (at cost to the employer) any actuarial reduction that would otherwise apply.

Normal Pension Age in the 2015 Scheme will be the employee's State Pension Age (with a minimum of age 65). The Normal Pension Age for benefits accrued prior to 1st April 2015 will remain as it is in the 2009 Scheme, but those benefits cannot be drawn earlier than the post 31st March 2015 benefits (other than upon flexible retirement).

The normal ill health retirement (from any age), flexible retirement (from age 55, subject to their employer's discretions policy) and redundancy / efficiency retirement (from age 55, or age 50 for employees who were members of the Scheme on 5th April 2006 and who have not since that date had a break in membership) provisions continue. However, there are some minor changes to the wording of the regulations governing ill health retirement that have been reflected in the [sample ill health certificates](#) the LGPC Secretariat has issued. ~~see Bulletin 124~~. Employers ~~were~~ able to use an old certificate obtained from an Independent Registered Medical Practitioner before 1st April 2015 where the retirement occurs on or after that date.

Where an employer agrees to flexible retirement, the employee will have to draw all of their pre 1st April 2009 benefits, plus some, all or none of their benefits accrued between 1st April 2009 and 31st March 2015, plus some, all or none of their benefits accrued after 31st March 2015. Any extra benefits the member or employer had paid for via extra contributions will be payable in accordance with guidance issued by the Scottish Ministers. The 85 year

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rule automatically applies to flexible retirements (where the Scheme member is subject to the 85 year rule), even to where the flexible retirement occurs on or after 55 and before age 60. Where flexible retirement occurs prior to Normal Pension Age the employer has the discretion, if their discretions policy so permits, to waive in whole or in part (at cost to the employer) any actuarial reduction that would otherwise apply. Note that flexible retirement does not apply to councillors.

15. Payments made after leaving

Any retrospective payments that come within the definition of pensionable pay will require the relevant employees and employer contributions to be paid on them. If further pensionable payments are made after termination of Scheme membership in a job and after data has already been submitted to the Pension Fund administering authority, the revised data (if the payment is made in the year of leaving) or new data (if the payment is made in a year after leaving) should be submitted to the Pension Fund administering authority together with the date the additional payment was made.

The additional pension derived from a retrospective payment made after leaving (e.g. from a backdated pay award or backdated re-grading) is treated as if it were received on the day before the active member's account was closed and the pension in the account is retrospectively recalculated which, for a pension already in payment, would require the Pension Fund administering authority to calculate and pay any arrears due and to undertake new lifetime allowance and annual allowance checks.

Note that if the member has pre 1st April 2015 membership the retrospective pay will result in a recalculation of the final year's pensionable pay and any pension already paid in respect of the pre 2015 membership (or the underpin) will need to be recalculated and, consequently, arrears of pension paid.

16. Existing scheme processes

The following elements of the 2009 Scheme are to be carried forward into the 2015 Scheme as outlined below.

Additional Voluntary Contributions

Contributions made by an employee to an AVC or, in the case of a shared cost AVC (SCAVC), made by both the employer and employee, continue to be payable in respect of a contract taken out before 1st April 2015 (unless the employee, or the employer in the case of a SCAVC, elects to end the contract). Such contributions will be either a cash amount or a percentage of pensionable pay, payable per pay period. Where a member is paying a percentage of their pensionable pay towards their AVC and the contract was taken out before 1st April 2015 the amount deducted from their pay in each pay period will be based on their pensionable pay (as defined under the 2009 scheme) in that pay period.

It should be noted that during any period of:

- sickness on reduced contractual pay or no pay, or

- relevant child related leave (ordinary maternity, paternity or adoption leave or paid shared parental leave, plus paid additional maternity or adoption leave), plus unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave, or
- reserve forces service leave, or
- absence due to a trade dispute, or
- jury service on reduced or no pay, or
- any other period of authorised leave of absence, or
- any period of unpaid unauthorised absence

the employee can continue with any pre-existing AVC / SCAVC contract entered into before 1st April 2015 (or can elect to cease the contract). If the member continues with the contract, and is paying AVCs for additional life assurance cover, they will have to make arrangements to continue to pay the life assurance AVCs during any period when there is not enough pay to cover them if they wish to ensure their AVC life assurance cover does not lapse.

For information on new AVC / SCAVC contracts taken out after 31st March 2015, see [section 12](#).

Additional Regular Contributions (ARCs)

Contributions under existing ARC contracts entered into before 1st April 2015 continue to be payable (but the member can elect to cease the contract). Payments under these contracts are flat sums payable per pay period (not percentages of pensionable pay).

It should be noted that during any period of:

- relevant child related leave (ordinary maternity, paternity or adoption leave or paid shared parental leave, plus paid additional maternity or adoption leave), plus unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave, or
- reserve forces service leave where the reserve forces pay is equal to or greater than the pay that would have been paid had the member continued to be employed by the Scheme employer, or
- absence due to a trade dispute, or
- jury service on reduced or no pay, or
- any other period of authorised leave of absence, or
- any period of unpaid unauthorised absence

the employee must continue to pay contributions under any pre-existing ARC contract entered into before 1st April 2015 (unless the employee elects to end the contract).

During any period of absence due to sickness on full or reduced pay the member will continue to pay the contributions under the ARC contract on the pay received. They do not pay contributions under the ARC contract during a period of sick leave on no pay.

During any period of reserve forces service leave where the reserve forces pay is less than the pay that would have been paid had the member continued to be employed by the

Scheme employer, the employee is not required to pay contributions under the ARC contract (the contributions are deemed to have been paid).

No new ARC contracts can be taken out after 31st March 2015 (but the member can take out an Additional Pension Contributions contract – see [section 12](#)).

Added years contracts

Existing contracts entered into by members who elected before 1st April 2009 to purchase added years of membership continue in force (unless the member elects to cease the contract). Payments under these contracts are expressed as a percentage of the member's pensionable pay (2009 Scheme definition of pensionable pay). The contributions should only be deducted on the 2009 Scheme definition of pensionable pay i.e. excluding any pay that is pensionable in the 2015 Scheme but which was not pensionable in the 2009 Scheme – such as pay for hours worked in excess of contracted hours up to the hours of the standard full-time working week for the employee in that employment.

It should be noted that during any period of:

- o relevant child related leave (ordinary maternity, paternity or adoption leave or paid shared parental leave, plus paid additional maternity or adoption leave), plus unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave, or
- o reserve forces service leave where the reserve forces pay is equal to or greater than the pay that would have been paid had the member continued to be employed by the Scheme employer, or
- o absence due to a trade dispute, or
- o jury service on reduced or no pay, or
- o any other period of authorised leave of absence, or
- o any period of unpaid unauthorised absence

the employee must continue to pay contributions under any pre-existing added years contract entered into before 1st April 2009 (unless the employee elects to end the contract).

During any period of absence due to sickness on full or reduced pay the member will continue to pay the contributions under the added years' contract on the pay received. They do not pay contributions under the added years contract during a period of sick leave on no pay.

During any period of reserve forces service leave where the reserve forces pay is less than the pay that would have been paid had the member continued to be employed by the Scheme employer, the employee is not required to pay contributions under the added years contract (the contributions are deemed to have been paid).

Preston part-time buy-back contracts

Any existing (Preston) part-time buy-back contracts continue to be payable and, where any new cases that are conceded by the employer, the scheme member can enter into a new contract to buy-back the part-time membership. Payments under these contracts are flat sums payable per pay period (not percentages of pensionable pay).

It should be noted that during any period of:

- o sickness on reduced contractual pay or no pay, or
- o relevant child related leave (ordinary maternity, paternity or adoption leave or paid shared parental leave, plus paid additional maternity or adoption leave), plus unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave, or
- o reserve forces service leave, or
- o absence due to a trade dispute, or
- o jury service on reduced or no pay, or
- o any other period of authorised leave of absence, or
- o any period of unpaid unauthorised absence

the employee must continue to pay contributions under any Preston part-time buy-back contract.

Additional Survivor Benefit Contributions (ASBCs) for cohabitee survivor's pension

Any existing ASBC contracts continue to be paid (unless the member elects to end the contract). Members who had ~~not~~ entered into an ASBC contract for all or part of their pre 6th April 1988 membership to count for a cohabitee survivor's pension ~~by 31st March 2015 can no longer do so will not be able to enter into a contract to achieve this after 31st March 2015.~~ Payments under existing ASBC contracts at 31st March 2015 are expressed as a percentage of the member's full time equivalent pensionable pay (2009 Scheme definition of pensionable pay). The contributions should only be deducted on the 2009 Scheme definition of pensionable pay i.e. excluding any pay that is pensionable in the 2015 Scheme but which was not pensionable in the 2009 Scheme – such as non-contractual overtime).

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It should be noted that during any period of:

- o relevant child related leave (ordinary maternity, paternity or adoption leave or paid shared parental leave, plus paid additional maternity or adoption leave), plus unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave, or
- o reserve forces service leave where the reserve forces pay is equal to or greater than the pay that would have been paid had the member continued to be employed by the Scheme employer, or
- o absence due to a trade dispute, or
- o jury service on reduced or no pay, or
- o any other period of authorised leave of absence, or
- o any period of unpaid unauthorised absence

the employee must continue to pay contributions under any pre-existing ASBC contract entered into before 1st April 2015 (unless the employee elects to end the contract).

During any period of absence due to sickness or injury on full or reduced pay the member will continue to pay the contributions under the ASBC contract on the pay received. They do not pay contributions under the ASBC contract during a period of sick leave on no pay.

During any period of reserve forces service leave where the reserve forces pay is less than the pay that would have been paid had the member continued to be employed by the

Scheme employer, the employee is not required to pay contributions under the ASBC contract (the contributions are deemed to have been paid).

Final Pay and changes of contractual hours and/or changes in contractual weeks/contractual days per year

Employers will still be responsible for providing to the Pension Fund administering authority:

(a) Final Pay (2009 Scheme definition) at each 31st March, and on ceasing membership of the Scheme (opting out, or termination of pensionable employment, or attaining age 75), for use in calculating pre 2015 benefits (other than for councillors), and

(b) Final Pay at Normal Pension Age (NPA) (2009 Scheme definition – normally age 65) or at the date of cessation of active membership, if earlier, to enable the Pension Fund administering authority to calculate the underpin on the post 31st March 2015 benefits for those members to whom the underpin calculation applies. The underpin has to be calculated for those members (other than councillors) who:

- were active members on 31st March 2012,
- were within 10 years of their NPA on 1st April 2012,
- have not (after 31st March 2012) had a continuous break of more than 5 years in membership of a public service pension scheme,
- have not already drawn any benefits from the 2015 Scheme in relation to the employment (e.g. upon flexible retirement), and
- have either ceased to be an active member before NPA (2009 Scheme definition) or are still an active member at NPA (2009 Scheme definition).

The final pay figure (2009 Scheme definition) for the underpin is the pay due for, normally, the 12 months preceding the date of cessation or NPA, whichever is the earlier. (NB: the underpin is calculated at NPA for those who continue working beyond NPA).

It should be noted that, where a Scheme member is subject to a reduction or, for members with pre 1 April 2015 membership, a restriction in pay, regulation 93 of the LGPS (Scotland) Regulations 2014 and regulation 43 of the of the LGPS (Administration) (Scotland) Regulations 2008 would apply (i.e. the issue, by the employer of a Certificate of Protection of pension benefits) – see [section 11A](#) for further information on Certificates of Protection.

(c) Changes of contractual hours for part time employees (or the average hours for the Scheme year for employees who have no contractual hours) in respect of:

- members to whom the underpin calculation applies where the change occurs prior to NPA (2009 Scheme definition – normally age 65) so that the underpin calculation can be accurately performed,
- members who have an added years contract (as the added years contract has to be adjusted upon a change in contractual hours), and
- members covered by regulation 20(5) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (minimum ill health enhancement for those who were active members before 1st April 2009) as a change in contractual hours can affect the level of the minimum ill health enhancement.

(d) Changes in contractual weeks / contractual days per year (if the Pension Fund administering authority prorates the membership of employees whose contractual weeks / contractual days per year are less than 52 per annum / 365 days per year) but only for:

- members to whom the underpin calculation applies where the change occurs prior to NPA (2009 Scheme definition – normally age 65) so that the underpin calculation can be accurately performed,
- members who have an added years contract, and
- members covered by regulation 20(5) of the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (minimum ill health enhancement for those who were active members before 1st April 2009) as a change in contractual weeks can affect the level of the minimum ill health enhancement.

For all employees in (c) and (d), employers will need to provide, at each 31st March, the relevant changes that have occurred during the Scheme year (as the information is required by the Pension Fund administering authority to calculate the member's benefits for the purposes of the Annual Benefits Statement and the annual allowance) and provide, at the date of leaving, the changes that have occurred during the Scheme year in which the date of leaving falls.

It should be noted that for the purposes of (a) and (b) above, if the employee elects to cover the whole of the amount of pension 'lost' during any period of absence due to a trade dispute, authorised unpaid leave of absence or unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave by the payment of contributions under an Additional Pension Contribution (APC) contract or Shared Cost APC contract, in calculating the final pay for the employee, the employee must be treated as having received the pay they would otherwise have received but for the absence. If, however, the employee does not make such an election, or has a period of unauthorised unpaid leave of absence, the final pay (if the absence falls in the final pay period – usually the last 12 months) will be the pay received during that final pay period divided by the number of paid days in that period multiplied by 365.

It should also be noted that, where a Scheme member is subject to a reduction or restriction in pay and has been issued with a certificate of protection of pension benefits under regulation 22 of the LGPS (Scotland) Regulations 1998, or regulation 43 of the LGPS (Administration) (Scotland) Regulations 2008, or regulation 93 of the LGPS (Scotland) Regulations 2014, the certificate of protection will continue to apply for the purposes of the final pay calculation for (a) and (b) above regardless of whether the reduction or restriction in pay occurs before, on or after 1 April 2015 – see [section 11A](#).

Service breaks

Employers will still be responsible for providing details to the Pension Fund administering authority of breaks in "membership" that occur prior to Normal Pension Age (2009 Scheme definition) due to:

- a trade dispute, or
- authorised unpaid leave of absence, or
- unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave, or

- o unauthorised unpaid absence

but only for those members:

- o to whom the underpin calculation applies, or
- o to whom the 85 year rule applies

and who have not taken out an Additional Pension Contribution (APC) contract to cover the whole of the pension that would have accrued during the trade dispute period, or taken out an APC or Shared Cost APC contract to cover the whole of the pension that would have accrued during the period of unpaid leave of absence (with compulsory employer contributions to a Shared Cost APC being limited to cover a maximum period of 36 months) or period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave. Note that unauthorised unpaid absences will always constitute a break as there is no facility to pay an APC specifically to cover the whole of the pension that would have accrued during such a period of absence.

Notification of service breaks are required in order that the Pension Fund administering authority can determine:

- o whether the final salary benefit underpin for members subject to the underpin exceeds their post 31st March 2015 career average pension, and
- o when the member meets the 85 year rule (as a break can potentially put back to a later date the date when the 85 year rule is achieved).

16A. Absences spanning 31st March 2015 / 1st April 2015

Where an absence spans 31st March 2015 and 1st April 2015 the absence prior to 1st April 2015 should be dealt with in accordance with the 2009 Scheme rules (see the paragraphs below) and the absence post 31st March 2015 should be dealt with in accordance with the 2015 Scheme rules (see [section 11](#)). Where an employee has an absence spanning those dates it is important that the employer notifies the employee of this fact and, if the employer has written to the employee before 1st April 2015 informing them of the provisions under the 2009 Scheme, the employer should write to them again to explain that new rules apply in respect of the period of absence falling after 31st March 2015.

2009 Scheme – rules for absences before 1st April 2015

Authorised unpaid leave of absence

For any period of authorised unpaid leave of absence falling before 1st April 2015, employee and employer pension contributions must be paid for the first 30 days of absence (or up to 31st March 2015 if the 30 day period extends beyond that date). The contributions are payable on the pay the person would have received but for the absence. Where the absence extends beyond 30 days the employee may elect, within 30 days of returning to work (or within 30 days of leaving if the employee does not return) or such longer period as the employer may allow, to pay contributions for the remainder of that part of the absence

that falls before 1st April 2015 (subject to a maximum absence period of three years). Those contributions would, just like the contributions due for the first 30 days of absence, be based on the pay the person would have received but for the absence. If they make such an election the employer must also pay contributions on that amount of pay. Where contributions are paid, the period counts as pre 2015 membership.

Unauthorised unpaid absence

Any absence falling before 1st April 2015 which is unauthorised by the employer and for which the employee receives no pay does not count as membership and contributions cannot be deducted in respect of the absence, whatever the length.

Jury Service

Jury service is a special type of absence. Employee and employer pension contributions are mandatory for the whole of any jury service falling before 1st April 2015 (and not just the first 30 days) and are based on the pay the person would have received but for the absence.

Trade dispute

Absence due to a trade dispute is treated, initially, the same as unauthorised absence, inasmuch as no pension contributions are payable and the membership does not count. However, the employee may elect within 30 days of returning to work (or within 30 days of leaving if the employee does not return) or such longer period as the employer may allow to make a payment, if they so wish, in respect of that part of the absence falling before 1st April 2015. The payment is the equivalent of 16% of the "lost" pay falling before that date and, if paid, entitles the member to count the period of absence due to a trade dispute prior to 1st April 2015 as membership. No employer contributions are due for that period.

Child-related leave

During any period of ordinary maternity, paternity or adoption leave and during any paid additional maternity, paternity or adoption leave falling before 1st April 2015 an employee must continue to pay pension contributions on the actual pay, if any, they are receiving. Benefits will continue to accrue as if they were working normally on full pay. The employer pension contributions are payable on notional full pay.

The employee can elect within 30 days of returning to work (or within 30 days of leaving if the employee does not return) or such longer period as the employer may allow to pay pension contributions for any period of unpaid additional maternity, paternity or adoption leave falling before 1st April 2015 so that the period of absence will count in full for pension purposes. The contributions will be calculated on the rate of pay (or reduced pay) that they were entitled to receive immediately before they commenced the period of unpaid leave. If they elect to pay contributions for this period, the employer will pay contributions on the employee's notional full pay for that period.

Reserve forces service leave

During any period of reserve forces service leave falling before 1st April 2015 the employee will continue to accrue membership but will only have to pay pension contributions on their reserve forces pay if it equals or exceeds their normal pay for that period; otherwise, no employee contributions are due from their reserve forces pay. The Ministry of Defence will be responsible for employer contributions during that period of time.

Additional contributions

The rules governing the payment of contributions under various types of added years, additional pension and AVC contracts that were entered into before 1st April 2015 are set out in [section 16](#).

17. Discretions policy

As is the case with the existing Scheme, each employer will be required to formulate, publish and keep under review a policy statement in relation to the exercise of a number of discretions under the LGPS. The LGPS Regulations 2014 stipulate this requirement in four areas, namely:

- Voluntary funding of additional pension via a Shared Cost Additional Pension Contribution (SCAPC) contract (other than for councillor members), either by regular ongoing contribution or one-off lump sum;
- Agreeing to the early payment of benefits for members seeking to voluntarily draw them on or after age 55 and before age 60 (other than flexible retirement);
- Flexible retirement (other than for councillor members);
- Waiving all or part of any actuarial reduction; and
- Award of additional pension at whole cost to the employer (other than for councillor members).

The LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 also require that employers have a policy on whether to agree to apply the 85 year rule to a scheme member for whom the employer has agreed a (non-ill health / non flexible retirement) request for early payment of benefits on or after 55 and before age 60. The 85 year rule does not automatically apply if the employer has agreed a (non-ill health / non flexible retirement) request for early payment of benefits on or after age 55 and before age 60 but the employer can agree to apply the 85 year rule. If the employer does apply the 85 year rule, the employer would have to meet any strain on Fund cost (as under the 2008 Scheme). If the employer does not apply the 85 year rule, the scheme member would meet any strain on Fund cost via an actuarial reduction applied to their pension. However, the employer has discretion to waive actuarial reductions (at cost to the employer). Whilst some of the existing discretions under the 2009 Scheme will simply fall away (e.g. the ability to augment membership), others are replaced by identical or similar provisions from April 2015 (granting additional pension, agreeing to the early release of benefits, flexible retirement and waiving actuarial reductions) and this will necessitate a rewording of existing policies to reflect the provisions of the 2015 Scheme and make the correct regulatory cross-references going forward.

It will also be necessary to draw up a new list of discretions for post-31st March 2009 / pre-1st April 2015 leavers as the employer will still have to publish a policy in respect of its discretions for these leavers. The 2015 Scheme contains a provision that discretions

policies under the Scheme must be prepared, published and copied to the Pension Fund administering authority within three months of 1st April 2015 and any subsequent revisions to the policies must be published and copied to the administering authority within one month of the change in policy. Revisions to the policies applying under the 2009 Scheme have to be published and copied to the administering authority within one month of the date of the change in policy. Employers are advised to consider their policy statements in advance of 1st April 2015 with a view to having them in place as soon after that date as is reasonably practicable.

Whilst this section has detailed those discretions on which an employer must have a written policy there are numerous other discretions the employer may exercise for which the employer is not required to have a written policy. However, for at least some of these, the employer might wish to have a written policy, or a statement of intent as to how such discretions might be exercised.

More information is available in the [Discretions Policies document](#).

Whether or not the introduction of the LGPS 2015 will require any fundamental changes to the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 and, in consequence, to employers' discretionary policies under those regulation, is currently under consideration.

18. Payment of sums to the pension fund

As well as the payover of employee and employer pension contributions (see section 9 of [the Payroll Guide](#)) employers are required to pay over to the appropriate Pension Fund on or before such dates falling at intervals of not more than 12 months as the Pension Fund administering authority may specify:

- any amount notified by the Pension Fund administering authority during the interval to cover any extra charge for payment of ill health pensions or early payment of deferred benefits on ill health grounds; any strain on fund costs in respect of flexible retirements, redundancy or business efficiency retirements; any strain on fund costs relating to the waiver by the employer of any actuarial reduction; and the cost of any additional annual pension (up to £5,000) granted to the member by the employer;
- a contribution towards the cost of the administration of the fund (where the cost of administration is not charged direct to the Pension Fund); and
- any amount specified in a notice given to the employer by the Pension Fund administering authority in consequence of additional costs that have arisen as a result of the employer's level of performance, and
- any employee and employer contributions received from the Ministry of Defence in respect of an employee on reserve forces service leave.

19. Glossary of acronyms

APC: Additional Pension Contributions (paid by scheme member)
APP: Assumed Pensionable Pay
ARC: Additional Regular Contributions (paid by scheme member)

ASBC: Additional Survivor Benefit Contributions (paid by scheme member)
AVC: Additional Voluntary Contributions (paid by scheme member)
FTE: Full-Time Equivalent final pay in respect of the employment for the scheme year
LGPC: Local Government Pensions Committee
LGPS: Local Government Pension Scheme
SCAPC: Shared Cost Additional Pension Contributions (cost met by scheme member and the employer)
SCAVC: Shared Cost Additional Voluntary Contributions (cost met by scheme member and the employer)

20. Appendix 1

Employer guidance for the assessment of member contribution rates can be found in [Appendix 1](#) (this version last updated March 2017).

21. Appendix 2

Detailed guidance on the use of Certificates of Protection from 1st April 2015 can be found in [Appendix 2](#) (this version last updated May 2015).

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