



The Local Government Pensions Committee
Secretary: Terry Edwards

CIRCULAR

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No. 245 – FEBRUARY 2011

MATERNITY, PATERNITY AND ADOPTION LEAVE

Purpose of this circular

1. This Circular has been issued to replace Circular 215 (August 2008) in consequence of the Additional Paternity Leave Regulations 2010 [SI 2010/1055], the Additional Paternity Leave (Adoptions from Overseas) Regulations 2010 [SI 2010/1059], and related SIs¹ which apply:

- where the expected week of birth of the child begins on or after 3 April 2011, or
- where a child is adopted and the adopter is notified of the match on or after 3 April 2011, or,
- for adoptions from overseas, where the child enters Great Britain on or after that date.

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¹ The Additional Statutory Paternity Pay (General) Regulations 2010 [SI 2010/1056], The Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations 2010 [SI 2010/1057], The Employment Rights Act 1996 (Application of Section 80BB to Adoptions from Overseas) Regulations 2010 [SI 2010/1058] and The Additional Statutory Paternity Pay (Weekly Rates) Regulations [SI 2010/1060]

2. The pension treatment of ordinary maternity leave (OML), additional maternity leave (AML), ordinary paternity leave (OPL), ordinary adoption leave (OAL) and additional adoption leave (AAL) has not altered. However, the introduction of additional paternity leave (APL) has necessitated the issue of this Circular which, as well as reiterating the information on OML, AML, OPL, OAL and AAL contained in Circular 215, now covers the pension treatment of additional paternity leave (APL). The opportunity has also been taken to include information on:
- the effect that any pensionable child care vouchers received during maternity leave have on the calculation of pension contributions, and
 - the treatment, during maternity, paternity and adoption leave, of any additional survivor benefit contributions (ASBCs) being paid by employees.

Pension contributions - overriding legislative requirements

3. When the Sex Discrimination Act 1975 (Amendment) Regulations 2008 were published there was some concern that the amendments being made to the Sex Discrimination Act 1975 would have extended the period during which employer pension contributions are required to be made during any period of maternity leave to include any period of unpaid additional maternity leave.
4. The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008 [SI 2008/1966], the Additional Paternity Leave Regulations 2010 [SI 2010/1055] and the Additional Paternity Leave (Adoptions from Overseas) Regulations 2010 [SI 2010/1059] clarify the position and only require the employer to pay pension contributions when an employee is on ordinary maternity, paternity or adoption leave, regardless of whether they receive any statutory or occupational maternity, paternity or adoption pay. During the additional maternity, paternity or adoption leave period an employer is only required to pay contributions if an employee is receiving statutory or occupational maternity, paternity or adoption pay.
5. The impact of the above on the Local Government Pension Scheme is set out in the following paragraphs. It should be noted that both the Local Government Pension Scheme (Administration) Regulations 2008 and the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 may need to be updated to reflect the overriding requirements of the Additional Paternity Leave Regulations 2010. This Circular has been prepared on the assumption that any such amendments will be made and the LGPS provisions governing additional paternity leave will mirror those relating to additional maternity leave. Employers are advised to act in accordance with the guidance set out in this Circular.

6. The tables at Annex 1 of this Circular provide a useful summary of this information in this Circular.

Pension contributions during ordinary maternity leave (OML), ordinary paternity leave (OPL) or ordinary adoption leave (OAL)

Basic contributions

7. Throughout any periods of ordinary maternity leave (OML), ordinary paternity leave (OPL) or ordinary adoption leave (OAL) the **employee** must pay basic contributions, at the employee's normal contribution rate, on the pay, if any, the employee actually receives (including the value of any childcare vouchers that the employer treats as pensionable pay). If the employee receives no pay during this period, for example because the employee does not qualify for statutory pay, the employee will not have to pay any basic pension contributions² but the period will still count as membership under the pension scheme³.
8. An **employer** must pay pension contributions throughout any periods of ordinary maternity leave (OML), ordinary paternity leave (OPL) or ordinary adoption leave (OAL) whether or not the employee actually receives any pay. The employer's contributions will be based on what the employee would have been earning had the employee been working normally⁴.

Keep in touch days

9. Where an employee works on a keep in touch day (KIT day) during the ordinary maternity, ordinary paternity or ordinary adoption leave period, both the employee and the employer will pay contributions based on the pay the employee receives for that day. The day will count as membership, but would have done anyway as it occurs during the ordinary leave period, which counts in full (see above).

Additional contributions

AVCs

10. During periods of ordinary maternity, ordinary paternity or ordinary adoption leave the employee will continue to pay any Additional

² Regulation 18(4) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 15(4) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

³ Regulation 6(a) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and regulation 7(a) of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008.

⁴ Regulation 39(6) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 35(6) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

Voluntary Contributions (AVCs) on the actual pay received⁵ (unless the employee opts to stop paying AVCs⁶). If the employee is paying AVCs for life assurance they should arrange to continue with these payments throughout the period of leave otherwise life cover may cease.

ARCs

11. During periods of ordinary maternity, ordinary paternity or ordinary adoption leave the employee must continue to make any additional regular contributions (ARCs) they were paying to purchase additional annual pension, with the contributions being based on the pay the employee would have received but for being on leave⁷, unless the employee opts to stop paying the ARCs⁸. It should be noted that if the employee opts to stop paying the ARCs, the employee will be credited with the proportion of extra pension they have paid for⁹. Although the employee could subsequently elect to recommence payment of ARCs, this would constitute a new contract. As the employee is likely to then be older than when they took out the original ARC contract, the contributions under the new ARC contract would be at a higher rate.

Added years contracts

12. During periods of ordinary maternity, ordinary paternity or ordinary adoption leave the employee must continue to make any additional contributions they were paying to purchase added years of membership, with the contributions being based on the pay the employee would have received but for being on leave¹⁰, unless the employee opts to stop purchasing extra membership¹¹. It should be noted that if the employee opts to stop paying those additional contributions, the employee will be

⁵ Regulation 18(7) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 15(7) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

⁶ Regulation 25(6)(b) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 22(6)(b) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

⁷ Regulation 18(8) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 15(8) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

⁸ Regulation 24(1)(a) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 21(1)(a) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

⁹ Regulation 24(3) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 21(3) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008..

¹⁰ Regulation 18(8) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 15(8) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

¹¹ Regulation 83(1) of the Local Government Pension Scheme Regulations 1997 as saved by Schedule 1 of the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 and regulation 82(1) of the Local Government Pension Scheme (Scotland) Regulations 1998 as saved by Schedule 1 of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008.

credited with the proportion of the added years they have paid for. Contributions for added years could not subsequently resume.

ASBCs¹²

13. Some pension scheme members may be paying additional survivor benefit contributions (ASBCs) to update some or all of their pre 6 April 1988 membership so that it counts in calculating a surviving nominated co-habiting partner's pension. At the time of writing this Circular the Local Government Pension Scheme (Administration) Regulations 2008 were silent on how ASBCs should be treated during periods of ordinary maternity, ordinary paternity or ordinary adoption leave. However, given that the scheme member has taken out a contract to update some or all of their pre 6 April 1988 membership the view is taken that, to protect the member's interests, the employee must continue to make any additional survivor benefit contributions (ASBCs) they were paying, with the contributions being based on the pay the employee would have received but for being on leave, unless the employee opts to stop paying the ASBCs¹³.

Pension Contributions during additional maternity leave (AML), additional paternity leave (APL) or additional adoption leave (AAL)

14. Pension contributions during additional maternity leave (AML), additional paternity leave (APL) or additional adoption leave (AAL) are governed by Schedule 5 to the Social Security Act 1989, the Employment Rights Act 1996, the Maternity and Parental Leave etc Regulations 1999 [SI 1999/3312 as amended], the Paternity and Adoption Leave Regulations 2002 [SI 2002/2788 as amended], the Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003 [SI 2003/921 as amended], the Additional Paternity Leave Regulations 2010 [SI 2010/1055], the Additional Paternity Leave (Adoptions from Overseas) Regulations 2010 [SI 2010/1059], regulations 18 and 22 of the Local Government Pension Scheme (Administration) Regulations 2008 and regulations 15 and 19 of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

Basic contributions

15. During additional maternity leave (AML), additional paternity leave (APL) or additional adoption leave (AAL) periods both the employer and the employee must pay pension contributions throughout the period in which the employee is entitled to receive any statutory and/or occupational pay

¹² At the time of writing this Circular there were no ASBC provisions contained in the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

¹³ Regulation 24B(1)(a) of the Local Government Pension Scheme (Administration) Regulations 2008.

(including any childcare vouchers which the employer is treating as pensionable).

16. The **employee** will make basic contributions based on the actual amount of statutory and / or occupational pay they receive (including the value of any childcare vouchers which the employer is treating as pensionable)¹⁴. The **employer's** contributions are based on the pay which the employee would have received had the employee been working normally¹⁵.

17. Subject to:

- paragraph 18,
- paragraphs 20 and 21 (KIT days), and
- paragraphs 22 to 25 (additional contributions)

no contributions will be payable by either the employee or the employer for any period of additional maternity leave (AML), additional paternity leave (APL) or additional adoption leave (AAL) during which an employee receives no pay and, subject to paragraph 18, that period will not count towards the employee's period of scheme membership.

18. When the employee returns to work, or equally if the employee resigns or is dismissed during or at the end of additional maternity leave (AML), additional paternity leave (APL) or additional adoption leave (AAL), the employee should be given the choice of paying the basic pension contributions relating to any period of unpaid additional maternity, unpaid additional paternity or unpaid additional adoption leave, so that the whole period will count as a period of scheme membership¹⁶. The employee must, within 30 days of returning to work or the termination of the contract if the employee does not return, or such longer period as the employer allows, elect to pay the relevant pension contributions¹⁷. If the employee elects, contributions (at the employee's normal basic contribution rate) will be based on the pay the employee was entitled to receive immediately before the unpaid period began (but ignoring any increase in pay on that last day of paid leave due to a KIT day)¹⁸. If the

¹⁴ Regulation 18(1) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 15(1) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

¹⁵ Regulation 39(6) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 35(6) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

¹⁶ Regulation 18(5) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 15(5) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

¹⁷ Regulation 22 of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 19 of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

¹⁸ Regulation 18(6) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 15(6) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

employee opts to pay basic contributions to cover the period of unpaid additional maternity leave (AML), unpaid additional paternity leave (APL) or unpaid additional adoption leave (AAL) then the employer will pay contributions on notional full pay¹⁹.

19. So, in a nutshell, an employee's membership in the pension scheme is maintained during a period of additional maternity leave (AML), additional paternity leave (APL) or additional adoption leave (AAL) whilst their contributions are payable. Thus, employees in the Local Government Pension Scheme will have their continuity of membership preserved during ordinary maternity, paternity or adoption leave and for any period of additional maternity, paternity or adoption leave during which they are entitled to receive statutory and / or occupational pay. Any period of unpaid additional maternity, paternity or adoption leave will not count as "reckonable" membership (unless an election is made to pay contributions for this period following return to work or resignation).

Keep in touch days

20. Where an employee works on a keep in touch day (KIT day) in the additional maternity, paternity or adoption leave period both the employee and the employer will pay contributions based on the pay received for that day. This day will count as a day of scheme membership²⁰ and, if it falls in a period of what would otherwise have been unpaid leave, the employing authority should notify the Pension Fund administering of the fact that the day will count as a day's membership.
21. Where an employee wishes to pay contributions for the unpaid period of additional maternity, paternity or adoption leave the pay received for working on a KIT day is disregarded for the purposes of determining the amount of pay on which to base his / her contributions²¹.

This is probably best explained via some examples.

Example 1 – KIT day during the unpaid additional maternity leave period

An employee is in receipt of SMP on the last day of paid maternity leave. She has a period of unpaid additional maternity leave but works a full KIT day in the middle of the unpaid additional maternity leave period.

¹⁹ Regulation 39(6) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 35(6) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

²⁰ Regulation 6(a) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and regulation 7(a) of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008.

²¹ Regulation 18(6) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 15(6) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

The unpaid additional maternity leave period either side of the KIT day does not count as “reckonable” membership in the LGPS but the KIT day does. The employee and employer pay contributions on the KIT pay received.

If the employee wishes the unpaid additional maternity leave period either side of the KIT day to count as “reckonable” membership, she would have to pay contributions to cover both those periods based on the pay she would have received if she had continued to receive SMP throughout the unpaid additional maternity leave periods falling either side of the KIT day and the employer would have to pay contributions based on the notional full pay for those periods. If the employee doesn’t elect to pay, the unpaid additional maternity leave period either side of the KIT day will not count as “reckonable” membership for pension purposes (and no employer contributions will be due for those periods).

Example 2 – KIT day on last day of paid maternity leave

An employee is in receipt of full pay on last day of paid maternity leave as a result of that day being a KIT day but, if it hadn’t been a KIT day, would otherwise have only received SMP on that day.

She has a period of unpaid additional maternity leave which does not count as “reckonable” membership in the LGPS.

If she wishes the unpaid additional maternity leave period to count, she would have to pay contributions to cover that period based on the pay she would have received had she continued to receive SMP throughout the period of unpaid additional maternity leave (i.e. the calculation would only be based on the rate of SMP as any increase in pay on the last day of paid maternity leave as a result of it being a KIT day must be ignored) and the employer would have to pay contributions based on the notional full pay for that period. If the employee doesn’t elect to pay, the unpaid additional maternity leave period will not count as “reckonable” membership for pension purposes (and no employer contributions will be due for that period).

Additional contributions

AVCs

22. During periods of additional maternity, additional paternity or additional adoption leave the employee will continue to pay any Additional Voluntary Contributions (AVCs) on the actual pay received²² (unless the

²² Regulation 18(7) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 15(7) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

employee opts to stop paying AVCs²³). If the employee is paying AVCs for life assurance they should arrange to continue with these payments throughout the whole period of leave otherwise life cover may cease.

ARCs

23. During periods of additional maternity, additional paternity or additional adoption leave the employee must continue to make any additional regular contributions (ARCs) they were paying to purchase additional annual pension, with the contributions being based on the pay the employee would have received but for being on leave²⁴, unless the employee opts to stop paying the ARCs²⁵. It should be noted that if the employee opts to stop paying the ARCs, the employee will be credited with the proportion of extra pension they had paid for. Although the employee could subsequently elect to recommence payment of ARCs, this would constitute a new contract. As the employee is likely to then be older than when they took out the original ARC contract, the contributions under the new ARC contract would be at a higher rate.

Added years contracts

24. During periods of additional maternity, additional paternity or additional adoption leave the employee must continue to make any additional contributions they were paying to purchase added years of membership, with the contributions being based on the pay the employee would have received but for being on leave²⁶, unless the employee opts to stop purchasing extra membership²⁷. It should be noted that if the employee opts to stop paying those additional contributions, the employee will be credited with the proportion of the added years they has paid for. Contributions for added years could not subsequently resume.

²³ Regulation 25(6)(b) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 22(6)(b) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

²⁴ Regulation 18(8) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 15(8) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

²⁵ Regulation 24(1)(a) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 21(1)(a) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

²⁶ Regulation 18(8) of the Local Government Pension Scheme (Administration) Regulations 2008 and regulation 15(8) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

²⁷ Regulation 83(1) of the Local Government Pension Scheme Regulations 1997 as saved by Schedule 1 of the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 and regulation 82(1) of the Local Government Pension Scheme (Scotland) Regulations 1998 as saved by Schedule 1 of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008.

ASBCs²⁸

25. Some pension scheme members may be paying additional survivor benefit contributions (ASBCs) to update some or all of their pre 6 April 1988 membership so that it counts in calculating a surviving nominated co-habiting partner's pension. At the time of writing this Circular the Local Government Pension Scheme (Administration) Regulations 2008 were silent on how ASBCs should be treated during periods of additional maternity, additional paternity or additional adoption leave. However, given that the scheme member has taken out a contract to update some or all of their pre 6 April 1988 membership the view is taken that, to protect the member's interests, the employee must continue to make any additional survivor benefit contributions (ASBCs) they were paying, with the contributions being based on the pay the employee would have received but for being on leave, unless the employee opts to stop paying the ASBCs²⁹.

The effect of spreading occupational maternity pay (half pay) over a longer period than weeks 7-18 or paying it as a lump sum

26. Under paragraph 11.5(b)(ii) of Part Two of the National Agreement on Pay and Conditions of Service (the Green Book) an employee covered by the NJC for local government services can reach an agreement with the employer to receive the amount of occupational maternity pay they would have received in weeks 7-18 over a different timescale (e.g. weeks 7-39 now that SMP is payable for 39 weeks). Alternatively, it can be paid in a lump sum on their return to work. This does not affect the pension position however.
27. During a period of maternity leave an employee will pay pension contributions on the actual amount of occupational maternity pay (OMP) and statutory maternity pay (SMP) received during that period. Where an employee chooses to defer her occupational pay until her return, she will still pay contributions on it as she was entitled to receive it during the ordinary maternity leave period.
28. If an employee chooses to pay contributions for the unpaid additional maternity leave (AML) period the contributions would be based on the pay she was entitled to receive immediately before the unpaid period began (ignoring any increase in pay on that day if it happened to be a KIT day). Regardless of how she actually receives her occupational maternity pay, the LGPC Secretariat is of the view that an employee is actually entitled to receive her half pay during weeks 7-18 and so, even if it is paid over a different timescale e.g. up to week 39 or in a lump sum on return, it will, for pension scheme purposes, be deemed to have been

²⁸ At the time of writing this Circular there were no ASBC provisions contained in the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

²⁹ Regulation 24B(1)(a) of the Local Government Pension Scheme (Administration) Regulations 2008.

paid up to week 18. This means that in most cases an employee who chooses to pay her contributions for the unpaid additional maternity leave (AML) period will have them based on SMP only, as this is what she would be entitled to receive in week 39, immediately before the unpaid additional maternity leave (AML) period began. In cases where an employee is only entitled to occupational maternity pay she will have her contributions, for any unpaid additional maternity leave (AML) for which she opts to pay contributions, based on half pay as this is what she would have been receiving before she entered a period of unpaid leave. If a woman is not entitled to either occupational or statutory maternity pay, her contributions for any unpaid period of additional maternity leave (AML) will be based on the pay she received before she started maternity leave.

The effect of leaving part way through the ordinary or additional maternity, paternity or adoption leave periods

29. If an employee resigns, or is dismissed, during the ordinary maternity, paternity or adoption leave period or during the additional maternity, paternity or adoption leave period, the employee ceases to be a member of the LGPS at the date of resignation or dismissal³⁰. Statutory maternity pay (SMP) or statutory adoption pay (SAP) may still be payable e.g. where the date of leaving is within 39 weeks of going on maternity or adoption leave (but any occupational maternity pay or occupational adoption pay ceases to be payable); and any statutory paternity pay (SPP) may still be payable. How much of the statutory maternity pay (SMP), statutory paternity pay (SPP) or statutory adoption pay (SAP) is pensionable? In the view of the LGPC Secretariat, only that proportion of the SMP, SPP or SAP that was due up to the date of leaving is pensionable and any SMP, SPP or SAP due in respect of a period after leaving is not pensionable. This is because an employee can only make contributions for that part of the period of maternity, paternity or adoption absence for which the employee is an active member. Upon resignation or dismissal the employee ceases to be an active member.
30. Although an employer could, for example, pay all of the SMP, SPP or SAP as a lump sum before the employee leaves, HMRC do not recommend this – see <http://www.hmrc.gov.uk/manuals/spmmanual/spm21030.htm> . If an employer did make such a lump sum payment, only the sum due in respect of the period up to the date of leaving should be made pensionable. The logic of this position is best illustrated by looking at an extreme example. Let's assume that an employer pays all 39 weeks SMP as a lump sum in the first week of maternity leave and the employee resigns at the end of that week. If all 39 weeks SMP was made pensionable (rather than 1 week pensionable and 38 not

³⁰ See regulation 7(5) of the Maternity and Parental Leave etc Regulations 1999 [SI 1999/3312 as amended] and regulation 24 of the Paternity and Adoption Leave Regulations 2002 [SI 2002/2788 as amended]

pensionable) the final year's pay figure would be greatly distorted as it would include 39 weeks pensionable SMP for the last week plus 51 weeks' pay for the previous 51 weeks. Clearly, this would be nonsensical.

How to calculate final pay

31. The LGPC Secretariat's present view on how to calculate final pay where a scheme member has been on maternity or adoption leave is set out in Annex 2. Employers should check with their Pension Fund Administering Authority the procedures and method of calculation which their Administering Authority wishes them to use in such cases.

Actions for administering authorities

32. Administering authorities are asked to bring the Circular to the attention of employers by directing them to the Circular on the LGE website at <http://www.lge.gov.uk/lge/core/page.do?pagId=9889224> or, in some other way, bring the main messages in this Circular to the attention of the employers in their Fund.

Terry Edwards
Head of Pensions
February 2011

ANNEX 1

Type of Leave <i>(Maternity)</i>	Employee pays basic pension contributions on	Employer pays contributions on	How service counts under the LGPS
OML (wks 1-26)	Actual OMP and/or SMP, if any, received (including any OMP paid as a lump sum on return to work) and pensionable value of child care vouchers received, if any	Notional full pay	Counts in full as if the employee had been at work
Paid AML (<i>including any period where pensionable child vouchers are received</i>)	Actual pay received (including pensionable value of child care vouchers received, if any)	Notional full pay	Counts in full as if the employee had been at work
Unpaid AML	<p>Employee opts to pay contributions to cover unpaid AML period</p> <p>If before unpaid AML began, was entitled to receive:</p> <ul style="list-style-type: none"> SMP only SMP and OMP OMP only No SMP or OMP 	<p>Notional pay - based on pay employee received or was entitled to receive (including pensionable value of child care vouchers received, if any) immediately before unpaid period began (ignoring any increase in pay due to a KIT day)</p> <p>Notional pay based on:</p> <ul style="list-style-type: none"> SMP SMP and OMP OMP Full pay received before OML began 	<p>Counts in full as if the employee had been at work</p> <p>Counts in full as if the employee had been at work</p> <p>Counts in full as if the employee had been at work</p> <p>Counts in full as if the employee had been at work</p>

Unpaid AML	Employee does not opt to pay contributions for unpaid AML period	Not applicable – no basic contributions are due	Not applicable – no contributions are due	Does not count
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Note: If an employee is paying additional regular contributions (ARCs) to purchase extra annual pension, or is paying additional survivor benefit contributions (ASBCs) to uprate some or all of their pre 6 April 1988 membership so that it counts in calculating a surviving nominated co-habiting partner's pension, or is paying additional pension contributions to purchase added years of membership, those additional employee contributions continue to be paid throughout the whole period of any maternity leave on the employee's notional full pay (unless she opts to stop paying those contributions). AVCs continue to be paid on any pay received (unless she opts to stop paying those contributions).

Key:

AML = Additional Maternity Leave

KIT = Keep-In-Touch day

OML = Ordinary Maternity Leave

OMP = Occupational Maternity Pay

SMP = Statutory Maternity Pay

Type of Leave (Adoption)	Employee pays basic pension contributions on	Employer pays contributions on	How service counts under the LGPS
OAL (wks 1-26)	Actual OAP (if any) and/or SAP (if any) received (including any OAP paid as a lump sum on return to work)	Notional full pay	Counts in full as if the employee had been at work
Paid AAL	Actual pay received	Notional full pay	Counts in full as if the employee had been at work
Unpaid AAL	Employee opts to pay contributions to cover unpaid AAL period	Notional pay - based on pay employee received or was entitled to receive before unpaid period began (ignoring any increase in pay due to a KIT day)	
	<u>If before unpaid AAL began, was entitled to receive:</u>	<u>Notional pay based on:</u>	
	SAP only	SAP	Notional full pay Counts in full as if the employee had been at work
	SAP and OAP	SAP and OAP	Notional full pay Counts in full as if the employee had been at work
	OAP only	OAP	Notional full pay Counts in full as if the employee had been at work
	No SAP or OAP	Full pay received before OAL began	Notional full pay Counts in full as if the employee had been at work
Employee does not opt to pay contributions for unpaid AAL period	Not applicable – no basic contributions are due	Not applicable – no contributions are due	Does not count

Note: If an employee is paying additional regular contributions (ARCs) to purchase extra annual pension, or is paying additional survivor benefit contributions (ASBCs) to uprate some or all of their pre 6 April 1988 membership so that it counts in calculating a surviving nominated co-habiting partner's pension, or is paying additional pension contributions to purchase added years of membership, those additional employee contributions continue to be paid throughout the whole period of any adoption leave on the employee's notional full

pay (unless the employee opts to stop paying those contributions). AVCs continue to be paid on any pay received (unless the employee opts to stop paying those contributions).

Key:

AAL = Additional Adoption Leave

KIT = Keep-In-Touch day

OAL = Ordinary Adoption Leave

OAP = Occupational Adoption Pay

SAP = Statutory Adoption Pay

Type of Leave (Paternity)	Employee pays basic pension contributions on		Employer pays contributions on	How service counts under the LGPS
OPL	Actual pay (if any) received		Notional full pay	Counts in full as if the employee had been at work
Paid APL	Actual pay received		Notional full pay	Counts in full as if the employee had been at work
Unpaid APL	Employee opts to pay contributions to cover unpaid APL period	Notional pay - based on pay employee received or was entitled to receive immediately before unpaid period began (ignoring any increase in pay due to a KIT day)		
		<u>If before unpaid APL began, was entitled to receive:</u>	<u>Notional pay based on:</u>	
	SPP only	SPP	Notional full pay	Counts in full as if the employee had been at work
	SPP and OPP	SPP and OPP	Notional full pay	Counts in full as if the employee had been at work
	OPP only	OPP	Notional full pay	Counts in full as if the employee had been at work
	No SPP or OPP	Full pay received before OPL began	Notional full pay	Counts in full as if the employee had been at work
Employee does not opt to pay contributions for unpaid APL period	Not applicable – no basic contributions are due		Not applicable – no contributions are due	Does not count

Note: If an employee is paying additional regular contributions (ARCs) to purchase extra annual pension, or is paying additional survivor benefit contributions (ASBCs) to uprate some or all of their pre 6 April 1988 membership so that it counts in calculating a surviving nominated co-habiting partner's pension, or is paying additional pension contributions to purchase added years of membership, those additional employee contributions continue to be paid throughout the whole period of any maternity leave on the employee's notional full pay (unless the employee opts to stop paying those contributions). AVCs continue to be paid on any pay received (unless the employee opts to stop paying those contributions).

Key:

APL = Additional Paternity Leave
KIT = Keep-In-Touch day
OPL = Ordinary Paternity Leave
OPP = Occupational Paternity Pay
SPP= Statutory Paternity Pay

ANNEX 2 - How to calculate final pay

When an employee ceases membership of the LGPS the final pay period is generally the year ending with the date the employee ceases to be an active member or, if it would produce a higher pay figure, one of the previous 2 years pay³¹.

Let's take a case where an employee resigns at the end of 52 weeks maternity leave, 39 weeks of which were paid and 13 unpaid.

If that employee had elected to pay contributions for the 13 weeks of unpaid additional maternity leave (AML) the final year's pay for pension purposes would be the pay³² the employee would have received in the final year had she not been on maternity leave i.e. the pay for the year to the date of leaving at the end of the 52 weeks of maternity leave. This is because regulation 9(2) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and regulation 10(2) of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 say that "a member's pay for any period of maternity, paternity or adoption absence during the final pay period in respect of which the member pays or is treated as paying contributions is the pay that member would have received had that member not been absent."

But what if the employee had not elected to pay contributions for the 13 weeks of unpaid additional maternity leave (AML)? The LGPC Secretariat's interpretation of the relevant regulations is as follows:

The employee is still a scheme member up to the date of leaving as:

- a) she is required to pay any ARCs, ASBC's or contributions for added years of membership right up to the date of leaving;
- b) she is entitled to pay AVC's up to the date of leaving;
- c) she would have been treated as a death in service if she had died in that 13 week period; and
- d) she is still a member as defined in section 124(1) of the Pensions Act 1995 (and must be an active member as defined therein, as she is neither a deferred member nor a pensioner member)

Thus, the final pay period is still the year up to the date of leaving.

³¹ Regulation 8(2) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and regulation 9(2) of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008.

³² Full time equivalent pay in the case of a part time employee.

However, as only part of that year counts as membership (i.e. the last 13 weeks don't count as "reckonable" membership) then for leavers after 31 March 2008 (England and Wales) or leavers after 31 March 2009 (Scotland) the notional full pay for the first 39 weeks of the maternity leave period should be grossed up to a full year equivalent i.e. divide the notional full pay for those 39 weeks by the number of days in those weeks and multiply the resulting figure by 365 to arrive at the final year's pay figure³³;

³³ Regulations 9(2) and 9(4) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and regulations 10(2) and 10(4) of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008. Note that the Pensions Increase date would be the day following the date of leaving, not the day following the last day for which contributions were paid.

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