



LGPS2015 for Practitioners

Seminar Notes

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

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Index

	Page
Foreword	3
1 Membership	4
2 Refunds, Deferreds and Aggregation	17
3 Pensionable Pay	28
4 Employee Contributions	43
5 Absences	58
6 Revaluation	64
7 Retirement Benefits	75
8 Death Benefits	103
9 Annual Benefit Statements	116
10 Transfers	120
11 Miscellany	126
12 Annex 1 – letter from DCLG re ongoing final salary link	138

Foreword

At the time of compiling this version of the notes both The Local Government Pension Scheme (Scotland) Regulations 2014 [SSI 2014 No. 164] (the “2014 Regulations”) and The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 [SSI 2014/233] (the “2014 Transitional Regulations”) were on the Statute book.

These notes have been prepared on the basis that certain technical amendments are made to the “2014 Regulations” as we believe they will. It is therefore impossible to be definitive in exactly how every aspect of the LGPS will operate going forward at this present time. Obviously, things may change or be clarified from this point forward and so these notes may become out-of-date or even become technically incorrect in some areas.

These notes do not purport to cover every aspect of the LGPS but instead mainly concentrate on those areas that will change on 1 April 2015. They do not cover the position of councillors who already have a career average scheme. The scheme changes for Councillors from 1 April 2015 were the subject of a leaflet which can be located on the [Scottish Member's LGPS 2015 website](#).

References in these notes to the “2008 Benefit Regulations” and the “2008 Administration Regulations” are shortened references to the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 and the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 respectively.

You are advised to keep a watchful eye on the Scotland - LGPS 2015 area of our website at www.lgpsregs.org. Information will be added to the site as and when it becomes available. In addition, of course, it is always a good idea to keep an eye on the LGPS Useful Resources section of SPPA’s website www.sppa.gov.uk.

We hope you find these notes of some assistance.

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1) MEMBERSHIP

There is no change to the range of employers given access, and there are two types listed in Schedule 2 of the 2014 Regulations as follows:

- Part 1 “Scheduled Bodies” – those employers that must make the LGPS available to all eligible employees;
- Part 2 “Admission Bodies” – those employers participating in the LGPS through an admission agreement which will specify which employees are eligible for membership.

The only bars to membership are those employees aged 75 or above; those employed by an admission body who are members of another occupational pension scheme; those 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 the Scheme employer to remain in the LGPS.

As before, if eligible for membership of the LGPS, a 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 three months.

A person employed under a contract of employment of less than 3 months is contractually 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, they would be contractually 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 auto-enrolment date).

By issuing a postponement notice, employers who have passed their “staging date” can, if they wish, effectively exclude such employees from the LGPS. However, any employee with a contract of less than 3 months who is not in the LGPS (e.g. an “eligible jobholder” who has been issued with a “postponement notice”, a “non- eligible jobholder” or an “entitled worker”) 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.

New Starters

There is no particular need for administrative procedures from 1 April 2015 to change although, obviously, documentation (letters, forms, leaflets, scheme guides and information on Fund websites) will alter on account of the 2015 Scheme.

Under Disclosure of Information legislation, basic information about the Scheme has to be provided by the 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 by no later than 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 auto-enrolment provisions, this time limit is just one month from the date the Administering Authority receives the jobholder information from the employer. The employer has to provide the jobholder information to the Administering Authority within 6 weeks of a person becoming a member under the auto-enrolment provisions of the Pensions Act 2008. There are not insignificant fines for non-compliance.

Obtaining details of new members from employers has always been an onerous task. Some administering authorities in Great Britain have moved to obtaining details of new members from their employers in an electronic format whilst others have moved to their employers having direct access to the pensions administration software. In addition to the notification of a new member, they have also sought to ensure that a form is received, completed by the scheme member, detailing (amongst other things) any other pension rights the member may have.

From 1 April 2015 it will be more important than ever to obtain such a form from scheme members in order to ascertain whether or not they:

- a) have other rights in the LGPS in Scotland (as these will have to be automatically aggregated, except in circumstances where the member can choose to retain separate benefits – see the aggregation provisions later in these notes)
- b) have been in membership of a public service pension scheme (even a period for which they have received a refund of contributions or transferred out to another scheme) and, if so, whether there has been a continuous break in active membership of such schemes of more than 5 years (as a break of 5 years or less will not break the final salary link for pre-1 April 2015 LGPS (Scotland) membership or for any final salary benefits transferred in to the LGPS from another public service pension scheme). Membership of a public service pension scheme is active membership of a scheme covering civil servants, the judiciary, the armed forces, any scheme in England, Wales or Scotland covering local government workers, or teachers, or health service workers, or fire and rescue workers or members of the police forces; or membership of a new public body pension scheme. It should be noted that if a person leaves the LGPS, goes to the private sector for 4 years, moves to the NHS for 6 months, returns to the private sector for 4 years, then comes back to the LGPS, the fact that they may have taken a refund from the NHS Pension Scheme will not have broken continuity. However, if a person leaves the LGPS, goes to the private sector for 4 years, comes back to local government for 6 months but opts out within 3 months of joining the LGPS, returns to the private sector for 4 years, then comes back to the LGPS, continuity will have been broken (because the person is treated as never having been a member of the LGPS during the middle 6 months of local government employment).

The form will need to include a section which the member signs to authorise the Administering Authority to:

- a) obtain a CETV quotation from any non-Club scheme or Club scheme from which the member wishes the administering authority to investigate a potential transfer of pension rights into the LGPS, and
- b) obtain previous scheme membership details from any other LGPS administering authority or the administrators of any other public service pension scheme:
 - i) regardless of whether or not the member has ongoing rights in those schemes i.e. even if they have taken a refund from the other public service pension scheme, and

- ii) regardless of whether or not the member wishes to transfer the previous rights.

When, in respect of (b) above, the Administering Authority contacts the former scheme to seek confirmation of the dates, the Administering Authority should ask whether or not a refund has been paid and, if so, whether that was under a rule akin to that in the LGPS where a person opting out within a specified period of time is treated as never having been a member.

Members can also complete an Expression of Wish Form (i.e. a form on which the member can express their wish as to who they would like any lump sum death grant to be paid to upon their death, although the Administering Authority retains absolute discretion over who to pay any lump sum death grant to). There is, from 1 April 2015, no requirement for a member to complete a nomination form to ensure a survivor's pension is payable to an eligible cohabiting partner (as, for deaths occurring on or after 1 April 2015 for members who ceased active membership after 31 March 2009 a survivor's pension will automatically be paid to a surviving cohabiting partner who meets the criteria in the regulations for payment of such a pension).

50/50 Section Membership

The 2015 Scheme has an option that allows employees eligible for LGPS membership to elect, from the beginning of the next available pay period, to contribute less and receive less benefit in return instead of opting out of the Scheme altogether.

Although unlikely, it is possible for a member with two (separate) concurrent jobs to opt for the 50/50 section in only one of those jobs. If this is the case, the person would be paying full contributions into the main section in one job, and half contributions into the 50/50 section in the other. Similarly, they would be accruing a pension at 49ths and 98ths respectively.

This option to elect for the '50/50 section' (per job) simply enables members to pay half their normal rate of contribution and in return build up half pension during that period. They will still retain the full value of other benefits such as the death in service lump sum and 49ths ill health enhancement and any survivor benefits payable following the member's death are also not affected by the member being in the 50/50 section.

As with automatic enrolment (where a person cannot complete an opting out form before they have joined the scheme) a person:

- a) cannot elect for the 50/50 section before 1 April 2015 (i.e. before the 2015 Scheme comes into operation), and
- b) cannot elect for the 50/50 section

- before employment has commenced, or
- for those being automatically enrolled, immediately before their automatic enrolment or automatic re-enrolment date, or
- for those being enrolled following an extension of a contract of employment from less than 3 months to 3 months or more, before the contract has been extended, or
- for those opting into the LGPS, immediately before opting in.

They have to be brought into the main section first and can then opt for the 50/50 section and, if they do so before the first payroll is closed, can be brought into the 50/50 section from day one.

Members electing for the 50/50 section will see their contribution halved from the beginning of the pay period in which they are placed in the 50/50 section and, from that date, their accrual rate becomes one 98th (instead of one 49th). The employer contributions are not halved and remain payable in full. This 'overpayment' will be accounted for in the next triennial valuation (but for employers in a 'pool', if there are any, this will be spread across all employers in the pool – so an employer in the pool who has a higher proportion of members opting for 50/50 than the average of the other employers in the pool will not be fully recompensed for the 'overpayment' at the next valuation). However, in the case of a Scheme employer ceasing to be a Scheme employer, or ceasing to have active members in a Fund before the next valuation, the Administering Authority may obtain a revised rates and adjustments certificate under Regulation 62 of the 2014 Regulations with a view to ensuring assets and liabilities match.

Members can elect to move from the main section to the 50/50 section (and vice versa) as many times as they wish.

The employer of a member electing for the 50/50 section is required to give the member information about the effect on that member's likely benefits as a result of that election. This can be a simple statement (potentially even included on the 50/50 election form itself, completed and signed by the member) saying that, for the period during which the member remains in the 50/50 section, they will pay half the contribution and accrue half the pension they would otherwise have done had they been in the main section of the scheme during that period of time but that ancillary benefits such as the lump sum paid on death in service, the amount of enhancement granted if they are retired on the grounds of permanent ill health with a Tier 1 or Tier 2 ill health pension, and any survivor benefits payable upon their death will not be affected i.e. those benefits would be calculated as if the member had been in the main section of the Scheme. The 50/50 election form should also contain notes explaining when the 50/50 election will lapse – see next sub-section. A sample 50/50 election form and notes for employers is available on the Scotland - LGPS 2015 area of our website at www.lgpsregs.org. However,

employers should check with their 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.

A member electing for 50/50 cannot continue to pay into or take out an Additional Pension Contribution (APC) arrangement or a shared cost APC arrangement (unless it is to purchase an amount of pension “lost” due to a trade dispute or unpaid authorised leave of absence, including a period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave).

A member electing for 50/50 can continue to pay into or take out an Additional Voluntary Contribution (AVC) arrangement or a shared cost AVC arrangement.

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

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;
- 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 1 April 2015

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.

The fact that there are two sections to the 2015 Scheme, the main section and the 50/50 section will have big implications for payrolls. In effect, these should be treated as if they were separate schemes on the payroll (e.g. LGPS1 and LGPS2, with contributions and cumulative pensionable pay for the period of time a member is in the main section during a Scheme year being held separately in LGPS1 and the contributions and cumulative pensionable pay for the period of time a member is in the 50/50 section during a Scheme year being held separately in LGPS2).

Whether or not the 50/50 provision in the Scheme will ultimately reduce employer costs will depend on the make-up of the people who opt for 50/50. If

the majority of members who opt for 50/50 are existing members, the long term liabilities will reduce and so this would ultimately have a beneficial impact on the employer's contribution rate. If, however, the majority of people who opt for 50/50 are people who would previously have opted out, or who have already opted out and decide they can afford to join the 50/50 section, then not only will the employer then have to pay employer contributions in respect of those employees but the long term liabilities will have increased. Of course, technically this is not an increase in costs but, rather, a forgone saving (because the employer was previously saving money each time an employee who was statutorily entitled to membership of the Scheme did not take up that right to join). The loss of the employees' contracted-out National Insurance rebate from April 2016 may see an increase in the number of scheme members electing to move to the 50/50 section.

50/50 Section election lapses

The 50/50 option is not designed to replace long term membership of the main section and, therefore, membership of the 50/50 section will cease from the beginning of the pay period following the **employer's** automatic re-enrolment date and the person would move back into the main section. This would happen irrespective of what category of worker they were for the purposes of the Pensions Act 2008.

In other words, the pay period immediately following the employer's automatic re-enrolment date will become the point in time when employees in the 50/50 section would be moved back into the main section; although the person will 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.

In the period leading up to the employer's automatic re-enrolment date, the employer should forewarn their employees who are in the 50/50 section that on [date] (being the employer's re-enrolment date) the member will be moved back into the main section of the scheme but will, if they wish, be able to make a further 50/50 election on or after that date.

Note that the initial "staging date" for those employers who meet their "staging date" after 31 March 2015 has no implication on existing 50/50 elections.

In addition, a person going on to no pay as a result of long-term sickness or injury is moved back into the main section on the first day of the next pay period (provided that the member is still on no pay at the beginning of that pay period). Similarly, a person going on to no pay during ordinary maternity, paternity or adoption leave is moved back into the main section on the first day of the next pay period. This is because, in both cases, the member will then accrue pension at a 1/49th accrual rate (at no cost to themselves) rather than at a 1/98th accrual rate. The person will have the right to make a further 50/50 election, which they might wish to do upon returning to work.

Finally, a member in the 50/50 section in a job always has the right to elect to rejoin the main section from the beginning of the next pay period following their election. From that pay period their contribution rate doubles and their accrual rate changes from one 98th to one 49th. On rejoining the main section the member would stay in that section unless/until they make a subsequent election to move back to the 50/50 section.

Existing members on 1 April 2015

Those employees who are employed on 31 March 2015 and who are active members of the Scheme will, on 1 April 2015, automatically become active members of the main section of the 2015 Scheme unless they choose to opt out, or opt to join the 50/50 section, or they happen to cease to be eligible for membership on that date (for example, they attain age 75 on that date).

The employer must determine the appropriate employee contribution rate for each employee moving into the 2015 Scheme on 1 April 2015. In many cases the contribution rate from 1 April 2015 will be different to the rate that applied prior to that date because, from 1 April 2015, the band an employee falls within will be determined by reference to the actual pensionable pay received (not the full-time equivalent rate of pay), and pensionable pay will, from 1 April 2015, include excess hours for part-timers (up to full-time equivalent) and the person may also have a pay rise or increment on 1 April.

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 (i.e. 1 April 2015). In practice, employers will wish to do so before the first payment made in April - otherwise employees might see a reduction or increase in their net pay due to an increase or reduction in the contribution rate to the LGPS that they had not been informed of (and those seeing a reduction in net pay might complain if they had not been forewarned).

Communicating the changes to existing members

Under The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, the Scheme Manager (i.e. the Administering Authority) is required to inform Scheme members and beneficiaries of any change in basic scheme information automatically either (a) before the change takes effect or (b) within 3 months of the effective date of the change.

Non-compliance with this piece of overriding law can result in significant financial penalties being imposed by the Pensions Regulator.

As regulations have always provided, the 2015 Scheme contains a provision that as well as notifying the Administering Authority of all decisions it makes, each employer is bound to “give the Administering Authority such other information as it requires for discharging its Scheme functions”. In the context of notifying details of the changes to scheme members, it is probably wise to remind them of their duty and to ask them to double-check, come 31 March 2015, that the Administering Authority have been notified of every new starter.

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 (an opt-out form). A person cannot complete an opting out form before commencing employment.

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 (so from the end of the week if weekly paid, end of the month if monthly paid, and so on).

If they opt out within 3 months of joining, they will be treated as not having been a member of the LGPS on that occasion and will be entitled to a refund via payroll.

Opting out after 3 months but before 2 years, they would be entitled to claim a refund via the Administering Authority unless they are disqualified from receiving a refund e.g. they already have, in the LGPS in Scotland, a deferred pension or a pension in payment – see section 2 under “Refunds and Deferred Pensions” for more information - 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.

It is important to note that, once an employer has reached its staging date (for the purposes of the Pensions Act 2008), it is not allowed to issue an opt-out form to its employees. Instead, the opt-out form must be obtained by the employee direct from the Administering Authority. Indeed, many administering authorities have changed their procedures already so that opt-out forms can only be obtained directly from them for all employers participating in the Fund, irrespective of whether their staging date has been reached or not.

Opting-in

A person who is eligible for membership, but who is not an active member in that employment, can apply 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 (but can then elect for 50/50).

A person is free to opt out of the Scheme and rejoin as many times as they wish. A rule allowing employers to block applications to rejoin if a person had already opted out twice was removed from the LGPS some years ago.

Auto-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 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”). An employer can also choose not to automatically enrol or re-enrol an “eligible jobholder” who has, before the end of the period of 6 weeks beginning with the “automatic enrolment” date or “automatic re-enrolment” date, given notice to terminate employment; or who has opted out within 12 months prior to the “automatic enrolment” date or “automatic re-enrolment” date; or if the employer has reasonable grounds to believe the “eligible jobholder” has Primary Protection, Enhanced Protection, Fixed Protection 2012, Fixed Protection 2014 or Individual Protection 2014.

Where an employer has an “eligible jobholder” who is eligible for membership of the LGPS but who has opted out of membership and the employer has enrolled them into another “qualifying scheme” (for example NEST) 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.

Where employees have been enrolled into a “qualifying scheme” other than the LGPS, it is recommended that the employer reminds those employees on the employer’s “automatic re-enrolment” date that the employee still has the right to be a member of the LGPS.

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 which can be found in the Administration Guides to the 2015 Scheme section under the Scotland - LGPS 2015 tab at www.lgpsregs.org.

Membership before 1 April 2015

It is important to appreciate that all pensions built up before 1 April 2015 are protected (including membership that is derived from any ongoing added years, part-time buy back or additional survivor benefit contributions and any additional pension being purchased by ARCs). People already in receipt of a pension or with a deferred benefit entitlement are not affected adversely in any way by these changes (except for a change to the lump sum death grant provisions if a member with a pre-1 April 2015 deferred pension or pre-1 April 2015 pension in payment dies as an active member of the scheme post-31 March 2015 – see “Death Grants – Active members” in section 8 of these notes).

Those people who are currently a contributing scheme member will get their pre-1 April 2015 pension (and automatic lump sum, if any) based on their final pay at eventual retirement, calculated under the 2009 Scheme definition of final pay and pensionable pay. It should be noted that Regulation 9 of the 2008 Benefit Regulations, Regulation 43 of the 2008 Administration Regulations and regulation 93 of the 2014 Regulations apply to the final pay calculation for calculating the pre 1 April 2015 benefits regardless of whether a reduction or restriction in pay occurs before, on or after 1 April 2015. This protection is referred to as maintaining the final salary link.

This means that when a member retires, if they have membership prior to 1 April 2015, that portion of their benefits would be calculated separately. The upshot of this is that, for such active members, as well as calculating pensionable pay (and assumed pensionable pay) post-1 April 2015, the employer will need to be able to calculate final pay under the old definition too.

The other strand to pre-1 April 2015 protection is that, for this element of benefits (and any additional pension purchased via an ARC), the old definition of NPA is retained (i.e. age 65 except for those persons covered by 2008 Benefit Regulations 16A, 16B, 16C and 16D). For example, this means that any actuarial reduction for early retirement would be based on how far short of their 2009 Scheme NPA (or even “critical retirement age” for those with Rule of 85 protection) they had retired and not how far short of their NPA in the 2015 Scheme had they retired.

The only way that the above protections* can be lost is if a person has a continuous break in excess of five years out of active membership of any

public sector pension scheme and then aggregates their former deferred benefit entitlement with their current membership of the Scheme.

*The 85 year rule protection is not lost – see “Protection – Rule of 85” in section 7 of these notes.

There is also an underpin for certain older members of the Scheme who were within 10 years of their 2009 Scheme NPA on 1 April 2012. This is also covered in section 7 of these notes.

An account-based system

Rather than recording earnings year-by-year and then revaluing those earnings and eventually, when a person leaves or retires, working out the average earnings to be then multiplied by the person’s membership and divided by the accrual rate, CARE schemes can be operated by running them on an account-based system.

Effectively what then happens is the pension earned in each year gets calculated (a relatively simple operation) and revalued rather than revaluing the earnings on which the pension is based.

A separate pension account has to be opened in relation to each employment where a member is or was employed in two or more Scheme employments.

There are a number of different pension accounts as follows:

- an active member’s pension account;
- a deferred member’s pension account;
- a deferred refund account;
- a retirement pension account;
- a flexible retirement pension account;
- a pension credit account; and
- a survivor member’s account.

Active members build up their pension year-by-year in their active member’s pension account. If an active member retires, the money simply transfers into a retirement pension account and, subject to commutation and other adjustments (e.g. an early retirement reduction), commences to be paid.

If they flexibly retire then the amount drawn is transferred into a flexible retirement pension account and the active member's pension account is reduced accordingly.

If they leave before retirement age, the money is transferred to a deferred member's pension account if they qualify for deferred benefits, or to a deferred refund account if they do not.

There are also survivor member's accounts and others to cover the various types of member and beneficiaries under the terms of the LGPS.

The regulations require the Administering Authority to open and maintain an account, or accounts as the case may be, for each member of the scheme. The regulations do not prescribe, however, what form these accounts should take but allow the Administering Authority to hold them in such form it deems appropriate. It is anticipated, however, that the Administering Authority will hold these accounts as records within a computer system rather than literal accounts with a financial institution.

2) REFUNDS, DEFERRED BENEFITS AND AGGREGATION

Refunds and Deferred Pensions

On 1 April 2015 we continue to have the position of having a two year vesting period. A person is deemed to have the necessary 2 years qualifying membership to be entitled to benefits, and therefore not be entitled to a refund, if:

- they have spent two years as an active member in the LGPS;
- a transfer has been received in from a different occupational pension scheme (or under a European pensions institution) and the length of service in respect of benefits in that scheme was two or more years;
- the aggregate of the period the person has spent as an active member of the LGPS and of a different occupational pension scheme or European Pensions Institution in respect of which a transfer value payment has been accepted, is two years;
- a transfer value payment has been received in respect of rights accrued in a scheme or arrangement that does not permit a refund of contributions to the member (for example, from a defined contribution occupational pension scheme that an individual joined on or after 1 October 2015 and in which the individual had at least 30 days qualifying service, or from a personal pension or stakeholder scheme);
- the member has paid National Insurance contributions whilst an active member and ceases active membership after the end of the tax year preceding that in which the member attains pensionable age (i.e. age 60 for a female or age 65 for a male if the member has a GMP or, in any other case, State Pension Age);
- the member already holds a deferred benefit or is in receipt of a pension from the LGPS (other than a survivor's pension or pension credit member's pension);
- a transfer value payment has been made from the LGPS to a qualifying recognised overseas pension scheme;
- the member ceases active membership at age 75; or

- the member dies in service.

NB: In the above bullet points, reference to “LGPS” are reference to the LGPS in Scotland. As the English and Welsh and Northern Irish versions of the LGPS are separate schemes, membership of them would not debar a refund from the LGPS in Scotland.

The 2015 Scheme contains the same additional exclusions from entitlement to a refund as the 2009 Scheme (e.g. if a person rejoins the Scheme within a month and a day or before the refund has been issued, etc.)

As now, a refund cannot be forced upon a person on leaving active membership. If they choose not to take a refund, the money in their active pension account is simply transferred into their deferred refund account. It should be noted, however, that the maximum length of time a deferred refund can be held is five years or to age 75, whichever comes first. A refund is then automatically payable.

It should also be noted that, as an alternative to a refund of contributions, a person has a right to a cash equivalent transfer value if they have more than 3 months’ membership of the scheme (and have left the scheme before their Normal Pension Age).

A refund of contributions paid will include:

- any pension contributions paid by the member
- any additional pension contributions paid by the member, and
- any member contributions included in a transfer payment received from a registered pension scheme or arrangement of a European Pensions Institution

In addition, any AVCs paid by the member are also refundable (other than AVCs paid for additional life cover). The Regulations also provide that any employer contributions to a SCAVC via a salary sacrifice arrangement would also be repayable – but this is an issue with HMRC who believe it would constitute an unauthorised payment. If not repaid it does beg the question of what happens to those employer SCAVCs sitting in the member’s AVC account. The regulations also provide that any other employer contributions to a SCAVC are refundable to the employer. Again, this might be an issue with HMRC and raises the same question posed above. Clarification is being sought.

If a refund is not paid within 1 year of cessation of membership, interest is payable at the rate of 1% above base rate on a day to day basis from the date of cessation to the day of payment compounded with three monthly rests.

If a person entitled to a refund dies before payment is made, the Administering Authority must pay the refund to the deceased member's estate.

The Administering Authority might wish to include on the refund application form a statement, such as the following, to be signed by the member:

"I certify that:

- I did not rejoin the Local Government Pension Scheme (LGPS) in Scotland within a month and a day of ceasing the employment in respect of which I am claiming the refund of contributions, and
- I am not currently making contributions to the Local Government Pension Scheme in Scotland, and
- I do not already hold a deferred benefit in the LGPS in Scotland, and
- I am not in receipt of a pension from the LGPS in Scotland (other than a widow's, widower's, civil partner's, cohabitee's or other survivor's pension or a pension awarded to me as part of a Pension Sharing settlement following a divorce or dissolution of a civil partnership), and
- I have not previously transferred pension rights from the LGPS in Scotland to an overseas pension scheme. "

Refund or deferred/pension? – an extra element of choice

An active member who moved into the 2015 scheme on 1 April 2015 can, if they subsequently leave without meeting the 2 year vesting period and who had transferred in rights from another pension scheme under the 2009 (or earlier) Scheme other than from a scheme that did not allow a refund of contributions) can choose between:

- A refund of contributions
- A deferred pension
- An immediate pension provided they had reached their normal pension age (as defined in the 2009 scheme)

The "choice" obviously depends upon their entitlement to a refund of contributions (see previous sub-section). It is also possible that they could choose to take a cash equivalent transfer value to another registered pension scheme instead of a refund or deferred pension, provided they have at least 3 months membership.

Their election must be made to the administering authority within six months of ceasing active membership and, in the absence of an election, the default is the award of a deferred or immediate pension as appropriate.

Aggregation

The golden rule is that a member's deferred benefits **can** be aggregated with a member's active pension account whereas a member's deferred refund **must** be aggregated with a member's active pension account. This rule applies equally to the cessation of a concurrent employment and also to optants-out just as they do for actual leavers.

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

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

- whenever a member has a deferred refund, aggregation is automatic - there is no entitlement to a refund of contributions as an alternative,
- wherever aggregation occurs, if the CARE amount and/or Final Salary benefits to be aggregated is/are held in a different Fund, an Inter Fund Adjustment must be paid,
- where permitted, if a member wishes to retain separate deferred benefits, an election has to be made to the new Fund within 12 months (or such longer period as the new / ongoing employer may allow). Although the member has 12 months to elect to retain separate deferred benefits, Funds will wish to get a signed decision from members as soon as possible in order to avoid:
 - having to delay aggregation (and payment of any Inter-Fund Adjustment payable) until the 12 month period has elapsed, or
 - having to unpick benefits (and any Inter-Fund Adjustment paid) if the benefits have been automatically aggregated before the 12 month period elapses and the member subsequently elects, after they have been aggregated but before the 12 month deadline has elapsed, to retain separate benefits,
- where the gap between the member's last day of membership to which the deferred benefit or deferred refund relates and the first day of rejoining the Scheme does not exceed 5 years, the amount in the deferred pension account / deferred refund account must be recalculated as if the Treasury Revaluation Orders had applied during that period, and not Pension Increase (Review) Orders. This recalculation is to be performed before the amounts are aggregated and prior to any Inter Fund Adjustment being paid.

As now, on concurrent membership aggregation, any pre-1 April 2015 membership is adjusted by multiplying it by (the rates of pay are as defined in the 2009 Scheme):

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

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

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

References to “variable-time employment” relate to employment under which an employee’s contract provides that their pay is calculated by reference to the duties undertaken (rather than by reference to the number of hours worked). In other words, the employee is paid a fixed sum of money for the work undertaken, regardless of how long it takes the person to undertake the work – for example, returning officers and acting returning officers. The references to “variable-time employment” **do not** relate to zero hours or variable hours contracts under which employees are paid for the hours of work undertaken.

Scenario A – post-15 only

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

Concurrent employment:

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

Previous employment:

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

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

Concurrent employment:

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

Previous employment:

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

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

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

Concurrent employment:

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

Previous employment:

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

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

Concurrent employment:

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

Previous employment:

Automatically aggregated with the new active pension account **and** the pre-1 April 2015 membership from the deferred benefit will entitle the member to a final salary benefit (the membership will be attached to the new active pension account) **unless** the member elects to retain separate benefits.

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

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

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

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

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

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

*Note: see "Protection – Rule of 85" in section 7 of these notes for an explanation of how any 85 year rule protection is taken account of.

Scenario D – pre-15 only

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

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

*Note: see "Protection – Rule of 85" in section 7 of these notes for an explanation of how any 85 year rule protection is taken account of.

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

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

The member can make an election to the new Administering Authority within 12 months of rejoining the Scheme to be treated as if he / she had been an active member on 31 March 2015 and 1 April 2015.

Where the member does so:

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

Where the member does not:

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

*Note: see "Protection – Rule of 85" in section 7 of these notes for an explanation of how any 85 year rule protection is taken account of.

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

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

*Note: see "Protection – Rule of 85" in section 7 of these notes for an explanation of how any 85 year rule protection is taken account of.

² See footnote 5.

Scenario E –re-joiners

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

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

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

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

The foregoing represents a summary of the aggregation provisions. A full guide to aggregation is available in the Administration Guides to the 2015 Scheme section under the Scotland – LGPS 2015 tab at www.lgpsregs.org.

3) PENSIONABLE PAY

Cumulative Pensionable Pay

This is the total of the “pensionable pay” and/or “assumed pensionable pay” in either section of the Scheme in the Scheme year. Cumulative pensionable pay must be provided separately for each section as different accrual rates will apply when calculating the pension in each section.

If the employee moves between sections more than once in a Scheme year there is no requirement to differentiate between different periods in the sections. The cumulative amounts should contain all of the pensionable pay and/or assumed pensionable pay in each section during the year.

Let’s say a member is on a salary of £24,000 throughout the entire Scheme year and moves to the 50/50 section after 3 months at which point they have already earned £6,000. They spend 5 months in the 50/50 section whilst they earn £10,000 before moving back into the main section earning another £8000. Their cumulatives at the end of the Scheme year are £14,000 in the main section and £10,000 in the 50/50 section.

Pensionable pay definition

The structure of the definition of Pensionable Pay is basically the same as the current Scheme – i.e. all payments in respect of the job apart from those listed in the regulations as exclusions. The biggest change is that non-contractual overtime has been defined as “overtime above the hours of the standard full-time working week that the employee (part-time or full time) is not contracted to work”.

So, if an employer has a standard full-time working week of 37 hours and a person had a contract for 15 hours but worked for 20 hours, all those 20 hours pay would be pensionable. If they worked 30 hours this would still be the case. If, however, they worked 42 hours, only 37 of those hours would be pensionable – the other 5 being classed as non-contractual overtime and therefore excluded from pensionable pay.

Another change is that a payment in consideration of loss of future pensionable payments or benefits is, from 1 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. 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 payment is made pensionable it leaves open the debate about when a certificate should first be issued i.e. where there is a pensionable marked time 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 payment commenced. Furthermore, at each subsequent April during the marked time period 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 period, resulting in multiple Certificates of Protection. Making the marked time payments non-pensionable avoids these issues.

A third change is that, from 1 April 2015, any actual pay paid by the employing authority to a reservist during Reserves 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.

A 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.

The new definition of pensionable pay (Regulation 20) is as follows:

- (1) Subject to regulation 21 (assumed pensionable pay), an employee's pensionable pay is the total of—
 - (a) all the salary, wages, fees and other payments paid to the employee, and
 - (b) any benefit specified in the employee's contract of employment as being a pensionable emolument.
- (2) But an employee's pensionable pay does not include—
 - (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;
- (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;
- (k) 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 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;
- (l) 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;
- (m) 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 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;
- (n) 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 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,
 - (iii) Parliamentary elections, or
 - (iv) European Parliamentary elections.

The 2014 Transitional Regulations 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 2014 Transitional Regulations 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.

Salary sacrifice, bought and sold leave

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.

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. The rules and mechanics on absences are different in the 2015 Scheme and are discussed later in these notes.

Even if an annual leave purchase scheme is an HMRC approved salary sacrifice scheme, the purchased annual leave is only pensionable where income tax liability has been determined on the value of that annual leave.

It should be noted that 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.

Under the second approach, however, 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 work 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). 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 deduction can be made provided it is:

- 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
- 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.

Dealing with arrears of pay etc.

In the current Scheme, benefits are based on the pensionable pay **due** for a period, not pensionable pay **received** in that period. This is necessary in a final salary scheme to prevent distortions in the calculation of final pay when benefits are eventually calculated.

Benefits in the 2015 Scheme will be calculated based on the pensionable pay that is received in the Scheme year (1 April to 31 March) and not the pay due during that period. There is therefore no need to adjust pensionable pay on payment of arrears or other payments which are paid in the current pay period but not related to the current pay period.

It is important to note, however, that when dealing with pre-2015 benefits under the old definition of pensionable pay, it will be necessary to allocate arrears to the period in time it was due when calculating "final pay". Also, any pensionable pay received after 31 March 2015 which relates to a period prior to 1 April 2015 should not be included in LGPS2015 cumulatives, but rather be allocated back to the period for which it is due.

The pensionable pay for the pre-1 April 2015 element should be based on the 2009 Scheme definition of pensionable pay and not the 2015 Scheme definition of pensionable pay and the employee contribution rate should be that which applied pre-1 April 2015 also (i.e. the rate that applied to them at the point in time their arrears are in respect of which would have been calculated at a whole-time equivalent rate).

It is permissible however to use the employer contribution rate applicable at the time of payment to both the pre- and post-1 April 2015 pensionable pay.

Also, any payments made after an employee elects to join the LGPS or is "automatically enrolled" or "automatically re-enrolled" into the LGPS that relate to a period prior to the employee joining the LGPS should not be pensionable and so should not be included in LGPS2015 cumulatives.

“Assumed” pensionable pay

This replaces the concept of notional or ‘as was’ pay in cases of reduced contractual pay or no pay as a result of sickness or injury; or during 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 whilst on reserve forces service leave (if the employee, although eligible to be in the Armed Forces Pension Scheme during that period, has elected to remain a member of the LGPS).

In these circumstances, the amount added to the cumulative pensionable pay should be the assumed pensionable pay and not the actual pensionable pay received (if any). The only exception is where the actual pensionable pay received for any given day is greater than the assumed pensionable pay (e.g. pay from a KIT or SPLIT day), in which case actual pensionable pay for that given day would be added into the cumulative and assumed pensionable pay added for the other days.

The calculation

Assumed pensionable pay is calculated as an annual rate then applied to the relevant period as a proportion of that rate. The relevant period starts on the date the employee drops to reduced contractual pay or no pay due to sickness or injury, or when “relevant” child related leave or reserve forces service leave commences.

It should be noted that the relevant period does **not** include the unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave available at the end of “relevant” child related leave. This is treated as unpaid leave of absence and no assumed pensionable pay accrues during that period.

The annual rate is calculated as follows for an employee paid other than monthly:

- a) Calculate the average of the pensionable pay for the 12 complete pay periods prior to the start of the relevant period after removing any payments that are not payable every pay period (referred to in the Regulations as lump sums) but including any assumed pensionable pay already credited in those 12 weeks. If arrears of pay are paid in the 12 week period, some or all of which relates to a period prior to the commencement of the 12 week period, the back pay relating to the period prior to the commencement of the 12 week period can be treated as a lump sum payment and, thus, removed from the calculation.
- b) Gross up to an annual figure.

- c) If 12 complete pay periods do not exist, use whatever number of complete periods are available.

For a monthly paid employee three complete pay periods should be used instead of 12 but the calculation methodology is the same.

The calculation of assumed pensionable pay can include pensionable pay prior to 1 April 2015 (i.e. where the 12 weeks / 3 months goes back beyond 1 April 2015). If so it is pensionable pay as defined in the 2009 Scheme.

An Example

A monthly paid employee has received the following pensionable pay in the three complete months prior to the start of the relevant period and the employer expects assumed pensionable pay will apply for the next six months:

Month 1 £1,400
Month 2 £2,400 including a £1,000 annual (regular) bonus
Month 3 £1,400

Annual rate of assumed pensionable pay is:

$$(\text{£1,400} + \text{£1,400} + \text{£1,400}) / 3 * 12 = \text{£16,800}$$

Note that the £1,000 bonus is removed prior to the averaging and grossing up calculation. If it happened to be an annual bonus, for example, were it not removed it would result in a perverse outcome i.e.:

$$(\text{£1,400} + \text{£2,400} + \text{£1,400}) / 3 * 12 = \text{£20,800}$$

“Lump Sums”

Assumed pensionable pay, however, may be increased at the time of calculation where the employer, at their sole discretion, decides to add back into the assumed pensionable pay calculation any **regular** lump sum payment paid in the last 12 months.

The employer must determine, at the point assumed pensionable pay commences, whether there is a reasonable expectation that a regular lump sum payment received in the previous 12 months would have been paid again during the period where assumed pensionable pay will apply and, if so, whether that lump sum already paid should be added back into the annual rate of assumed pensionable pay.

In deciding whether or not the lump sum should be added back into the assumed pensionable pay annual rate the employer should reasonably assess if in their view the employee will still be on assumed pensionable pay the next time the lump sum is due to be paid.

In our previous example, if in the employer's reasonable assessment the period of assumed pensionable pay will extend to 11 months or more and the £1,000 bonus would have been paid again within the period of assumed pensionable then the amount could be added back into the assumed annual pensionable pay rate. If so, the calculation would be as follows:

$$(\text{£}1,400 + \text{£}1,400 + \text{£}1,400) / 3 * 12 = \text{£}16,800 + \text{£}1,000 = \text{£}17,800$$

APP and Separate Employments

The calculation of APP uses the 3 most recent months or 12 most recent weeks in which the member received pensionable pay relating to that employment before the period of reduced contractual pay or nil pay due to sickness or injury began, 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.

Proportioning

When determining the proportion of the annual assumed pensionable pay rate to be added into the cumulative pensionable pay, the same method used for determining part periods for pensionable pay should be maintained. Therefore you should use whatever method you would normally use to calculate one day's pay from an annual rate.

For three days in August for example, this could be:

$$\frac{\text{Annual rate}}{365} \times 3 \quad , \text{ or}$$

$$\frac{\text{Annual rate}}{12} \times \frac{3}{31} \quad , \text{ or}$$

$$\frac{\text{Annual rate}}{12} \times \frac{3}{22}$$

Which formula you would use would depend on how pensionable pay is normally derived for a part month (and in the case of a week is it 3/5, 3/6 or 3/7 of a week's pay?) and there are probably other methods in addition to the examples shown.

Keep in Touch days / Shared Parental Leave in Touch

In cases of employees on relevant child related leave who return for a KIT or SPLIT day, the pensionable pay for that day should be added to the cumulative pensionable pay rather than the assumed pensionable pay **if** the actual is higher than the assumed. The assumed pensionable pay applying after the KIT or SPLIT day will be the same as that applying before the KIT or SPLIT day (i.e. there is no need to recalculate it simply because of the KIT or SPLIT day).

Adjusting the Assumed Pensionable Pay figure

Once set, assumed pensionable pay is not subsequently adjusted unless it continues for a period that crosses two 31 March dates. Where an employee is, for example, on long term sick leave, assumed pensionable pay needs to be adjusted on account of inflation. It is adjusted at midnight on the second 31 March following the date the relevant period commenced.

The adjustment is the percentage adjustment specified in the Treasury Revaluation Order for that (second) Scheme year ending on that 31 March.

If the relevant period continues for a further year it will be revalued again at midnight on the next 31 March, and so on.

The 50/50 rule

If the member was in the 50/50 section prior to dropping to no contractual pay because of long-term sickness they are placed in the main section from the beginning of the next pay period (provided they are still on no pay at that time). Similarly, if the member was in the 50/50 section prior to dropping to no pay during ordinary maternity, paternity or adoption leave they are placed in the main section from the beginning of the next pay period.

So, for a monthly paid person dropping from half pay to no pay due to long-term sickness in the middle of August or dropping to no pay in the middle of August whilst on ordinary maternity, paternity or adoption leave, the assumed pensionable pay for August would drop into the cumulative pensionable pay in the 50/50 section whereas the assumed pensionable pay in September would drop into the main section cumulative pensionable pay.

Short periods of sickness

Typically this will occur when an employer has a policy of no pay for the first X days of sickness. In these cases, assumed pensionable pay is relevant for the first X days of sickness. Adjustments do not have to be made in arrears (i.e. they are done in the pay period the actual salary is deducted).

Reserve Forces Service Leave

Rather than replicate the complexity that exists in the 2009 Scheme, the opportunity has been taken to simplify things considerably by introducing an assumed pensionable pay solution to reserve forces service leave (provided, if the person is eligible to be in the Armed Forces Pension Scheme during that period, the person has elected to remain a member of the LGPS).

Effectively the employer will calculate assumed pensionable pay whilst the reservist is on leave and drops that into the person's cumulatives (i.e. into the main or 50/50 section depending on the section the member is in) so the person continues to build up a pension as if they were still at work. If the employer continues to pay the reservist some pay whilst they are on reserve forces service leave, no contributions are due on that pay (because that pay is non-pensionable), that pay is not added into the person's cumulatives (i.e. into the main or 50/50 section), and assumed pensionable pay is added into the cumulatives instead.

Final pay

As a result of the final salary link for pre-1 April 2015 membership it will be necessary for the employer to provide a final pay calculation under the 2009 Scheme definition, for any person who has membership prior to 1 April 2015 or who is subject to the underpin. This will have to be provided at the date of cessation of active membership and, for active members, at every 31 March for Annual Benefit Statement and Annual Allowance calculation purposes and, for members subject to the underpin, at their 2009 Scheme NPA if they remain active members of the Scheme beyond then.

It is not possible for the Administering Authority to derive, for Annual Benefit Statements, a final pay figure from contributions paid by the member as to do so accurately the Administering Authority would need to know the contribution rates paid during the year, the contributions paid per rate, the average pensionable hours worked per rate (as well as the contractual hours which are necessary for the underpin cases).

Under the 2009 Scheme presently, in the majority of cases, final pay is the total pay due, and on which contributions were paid or were deemed to be paid, in the last 365 days of employment (which, for Annual Benefit Statement and Annual Allowance calculation purposes shall be deemed to be the relevant 31 March; and for members subject to the underpin who remain active members of the Scheme beyond their 2009 Scheme NPA it shall be deemed to be their 2009 Scheme NPA). For part-time members, the pay used is the whole-time equivalent pay.

Where either of the immediately preceding two years would yield a higher figure, then that figure is used (hence, the old adage “best of the last 3 years”). For someone leaving on 13 August 2015 for example, one would be calculating whole-time equivalent pay in the year to 13 August 2015, year to 13 August 2014 and year to 13 August 2013 to see if either of the previous years was higher than the last.

Where there is a gap in membership in the final year (e.g. due to a break in employment, or some unpaid leave for which the member has not paid contributions), then the pay is mathematically grossed up to a full year. Where an absence was due to illness or injury, any reduction or loss of pay is disregarded (i.e. final pay is calculated as if the reduction or loss had not occurred). Where earnings, or a part of earnings, are derived from fees, the basis of calculation under 2008 Benefit Regulation 11 is the annual average in the last 3 years normally but the employer has discretion to use a different three year period in the last 10 years with the 3 year period ending on the anniversary of the date of leaving .

If a “certificate of protection of pension benefits” had been issued, and the certificate has not lapsed, then the calculation of final pay is improved from best of the last 3 years to the greater of (1) the best of the last 5 years and (2) the best average of any 3 consecutive years in the last 13 years (all years

ending on the anniversary of the date of leaving). The only proviso to this is that the first day of a selected period cannot be more than three years before the date of the reduction or restriction which led to the issue of the certificate.

The pay required for any subsequent calculation of final pay therefore covers a period of three years prior to, and ten years from, the reduction or restriction, hence a need for long-term payroll record keeping.

Calculating final pay has always been onerous. In England and Wales, consideration was given to whether the final pay calculation required for members' final salary linked benefits (and the underpin) could be simplified. Various options were considered but, as each of these had its own difficulties, none were taken forward.

Certificates of Protection

Employers should issue a Certificate of Protection where, post 31 March 2015, 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 2009 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 will be made available shortly.

At this point however, it is worth noting the following features:

- Members may request a certificate within 12 months of the reduction or restriction if the employer has not issued one.
- A certificate will, as under the 2009 Scheme, 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.
- 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) 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 will need to be aware 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 CARE 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.

4) EMPLOYEE CONTRIBUTIONS

Pensionable pay has been redefined for the 2015 Scheme and this is most important because:

- on 1 April 2015 for existing members, and
- at the outset of active membership for new members (upon commencing employment, or opting in, or being automatically enrolled or automatically re-enrolled, or being enrolled following an extension of a contract of employment from less than 3 months to 3 months or more), and
- from time-to-time thereafter (including every April)

the Scheme employer has to make a decision as to the rate of contributions a member will make on pay for a job. The employer may do this on an individual basis and notify payroll, or agree an automated process with their payroll provider. The rate of contribution a member will pay has to be notified to them as soon as is reasonably practicable together with their right of appeal under the Internal Disputes Resolution procedure (IDRP).

Unlike previous versions of the LGPS, part-time members' contribution rates will be assessed on actual pensionable pay rather than full-time equivalent rates of pay. The bandings and rates for 2015/16 are as follows:

Actual Pensionable Pay	Rate
On earnings up to and including £20,500	5.5%
On earnings above £20,500 and up to £25,000	7.25%
On earnings above £25,000 and up to £34,400	8.5%
On earnings above £34,400 and up to £45,800	9.5%
On earnings above £45,800	12%

As was the case with the 2009 Scheme, Scottish employers have the benefit of statutory guidance on tiered contributions "Employer Guidance for the Assessment of Member Contribution Rates" which includes a lookup table as follows:

Contribution rate	Actual Pay Min	Actual Pay Max	Contribution rate	Actual Pay Min	Actual Pay Max
5.5	Up to	21,102	8.4	59,185	60,852
5.6	21,103	22,421	8.5	60,853	62,615
5.7	22,422	23,916	8.6	62,616	64,485
5.8	23,917	25,330	8.7	64,486	66,469
5.9	25,331	26,323	8.8	66,470	68,579
6.0	26,324	27,397	8.9	68,580	70,827
6.1	27,398	28,563	9.0	70,828	73,228
6.2	28,564	29,833	9.1	73,229	75,798
6.3	29,834	31,220	9.2	75,799	78,554
6.4	31,221	32,743	9.3	78,555	81,518
6.5	32,744	34,415	9.4	81,519	84,715
6.6	34,416	35,622	9.5	84,716	88,173
6.7	35,623	36,918	9.6	88,174	91,925
6.8	36,919	38,311	9.7	91,926	96,011
6.9	38,312	39,813	9.8	96,012	100,476
7.0	39,814	41,438	9.9	100,477	105,378
7.1	41,439	43,202	10.0	105,379	110,782
7.2	43,203	45,122	10.1	110,783	116,770
7.3	45,123	46,456	10.2	116,771	123,442
7.4	46,457	47,478	10.3	123,443	130,924
7.5	47,479	48,544	10.4	130,925	139,370
7.6	48,545	49,660	10.5	139,371	148,982
7.7	49,661	50,829	10.6	148,983	160,018
7.8	50,830	52,054	10.7	160,019	172,819
7.9	52,055	53,339	10.8	172,820	187,847
8.0	53,340	54,689	10.9	187,848	205,738
8.1	54,690	56,110	11.0	205,739	227,394
8.2	56,111	57,606	11.1	227,395	254,147
8.3	57,607	59,184	11.2	254,148	and above

[For members in the 50/50 section divide the appropriate rate by 2]

For those workers employed on “zero hours” contracts, variable hour contracts and the like, the move to using actual pay in the assessment, will necessitate employers making an assumption as to what pensionable pay a person will probably receive in the Scheme year. In addition there are those part-timers who work over and above their contracted hours; their additional pay (up to normal whole-time hours) is now pensionable too. The rate that is based on that estimate of pensionable earnings will then apply for the rest of the scheme year, unless there is a permanent material change to the terms and conditions of the member’s employment that affects their pensionable pay. It is important, therefore, that the estimate is reasonable.

For a person who receives purely fees (e.g. a returning officer), the rate will be based on the amount of fee received, each time a fee is paid.

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 band / contribution rate.

Reattribution

The rates shown earlier will be inflation-proofed annually, and SPPA will create a new lookup table each year, so employers will need to reassess the appropriate band and rate each April.

Although generally once set, the rate remains in force for the rest of the Scheme year, an employer is permitted to attribute an employee to a different rate part way through the Scheme year where there is a permanent material change to the terms and conditions of a member's employment (e.g. on promotion, demotion, re-grading, variation to a member's contractual hours, a change of job, or a move from a casual post to a post 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. 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 (but should be taken into account when assessing the rate at the next 1st April).

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.

Whenever an employer changes a member's contribution rate, they must inform the member of the contribution rate applicable, the date from which it is to be applied and the member's right of appeal under the Internal Dispute Resolution Procedure (IDRP).

50/50 Contributions

For the avoidance of any doubt, if a person has opted into the 50/50 section, the contributions they will pay are exactly half of those shown earlier in these notes.

The 50/50 contribution rates are therefore as follows:

Actual Pensionable Pay	Rate
On earnings up to and including £20,500	2.75%
On earnings above £20,500 and up to £25,000	3.625%
On earnings above £25,000 and up to £34,400	4.25%
On earnings above £34,400 and up to £45,800	4.75%
On earnings above £45,800	6%

Multiple employments

The employee pays contributions at the appropriate band rate on all pensionable pay received **in respect of that job** (or at half that rate if in the 50/50 section).

So, 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.

For example, one job could have a rate of 5.5% and the other a rate of 5.8% if Job 1 was salaried at £20,000 and Job 2 at £24,000. Conversely, if the employer determines that a single employment relationship exists, then the pay from each job should be combined to determine the single contribution rate. In our example, the two salaries combined would be £44,000 meaning a single contribution rate of 7.2%.

From an employer's payroll perspective, separate pensionable cumulatives have to be held for each job, and reported to the Administering Authority periodically. Of course, if there is a single employment relationship then, assuming the member had not, during the Scheme year, changed from the main to the 50/50 section, or vice versa, or had a permanent material change to the terms and conditions of the member's employment that affects their pensionable pay and hence their contribution rate, there will only be one contribution rate, one set of cumulatives and, regardless of whether the member had changed sections during the scheme year, one pension record for the person (this could be a problem if, for example, to cope with different hourly rates on different parts of the job, the payroll system holds and then reports the single employment relationship as two separate records).

Additional Pension Contributions (APCs)

Employee only APCs and employer/employee shared cost APCs

Employees in the Scheme may choose to buy extra annual pension, up to a maximum of £6,500, using an Additional Pension Contribution (APC) contract (with or without a contribution from the employer). This is an increase from the maximum of £5,000 that applied under the 2009 Scheme and will be increased each April (starting April 2016) by Pensions Increase (assuming a PI date of 1 April 2015). Note that the maximum APC figure includes any amount the member is purchasing, or has purchased, under an Additional Regular Contribution (ARC) contract.

A member can enter into an APC contract:

- To buy extra pension. The employee may choose to make a one off contribution or regular additional contributions, 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 employee's age and the amount they wish to purchase. Note that an employee **cannot** commence an APC in this circumstance if they are in the 50/50 section.
- 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). Where an employee 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). An employee **can** commence an APC or shared cost APC in this circumstance even if they are in the 50/50 section. Further details are shown in the "Absences" section of these notes.
- To buy pension 'lost' due to industrial action. An employee **can** commence an APC in this circumstance even if they are in the 50/50 section. Further details are shown in the "Absences" section of these notes.

It should be noted that during any subsequent 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 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. It should be noted, however, that a member electing for 50/50 cannot continue to pay into or take out an Additional Pension Contribution (APC) arrangement or a shared cost APC arrangement (unless it is to purchase an amount of pension 'lost' due to a trade dispute or unpaid authorised leave of absence, including a period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave).

The mechanics of APCs

If the employee wishes to go ahead with a purchase of extra pension in any of the above circumstances they will need to make an application in writing to the Administering Authority stating 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 active pension account, the account to which the APC contract is to be attached.

The Administering Authority can determine that payments cannot be made over a period of time where it would be impracticable. Additionally, the 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) before agreeing to an APC election and can refuse an APC contract application if they are not satisfied that the member is in reasonably good health. The Administering Authority might wish to have a policy on both of these matters (e.g. what payments would be impracticable and whether or not a medical will be required) and tell the employers in their Fund what the policy is. With regard to the policy on medicals, the Administering Authority might not wish to require a medical for

APCs taken out to cover pension 'lost' due to leave of absence or APCs taken out to purchase small amounts of additional pension.

At the end of each Scheme year, or at the date the APC contract is terminated if earlier, the member's active pension account is to be credited with the amount of additional pension purchased that year. If the contract is terminated early because the member is retired with a Tier 1 or Tier 2 ill health pension, the remaining amount of additional pension is deemed to have been purchased and is credited to the member's active account at the point of leaving.

Employer only APCs

Employers can award additional annual pension to active members of up to £5,000. Note that this is the same figure as applied in the 2009 Scheme and is less than the amount of £6,500 that an employee can purchase (at their sole cost or via a shared cost APC). The figure of £5,000 will be increased each April (starting April 2016) by Pensions Increase (assuming a PI date of 1 April 2015). As now, 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. Note that the maximum APC figure includes any amount of additional pension the employer may have awarded under regulation 13 of the Benefits Regulations 2008.

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.

Additional Voluntary Contributions (AVCs)

Additional Voluntary Contributions can be made by the employee or, in the case of a shared cost AVC (SCAVC), by both the employer and employee. Such contributions will be either a cash amount or a percentage of pensionable pay. Payroll will be notified of the employee amount or percentage per pay period and, in the case of a SCAVC, the employer amount or percentage per pay period.

The employer share of the SCAVC can vary across employees but the proportion for any individual employee will not vary. The split between an employee's and employer's additional contributions for an SCAVC can be any ratio as agreed but **not** 100% cost to the employer.

Contracts entered into from 1 April 2015

It will remain the case that AVCs up to 100% of pensionable pay, allowing for the statutory deductions (LGPS contributions, NI contributions etc.), are permissible.

It should be noted that during any subsequent 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 31 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).

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 31 March 2015.

A member electing for 50/50 can continue to pay into or take out an Additional Voluntary Contribution (AVC) arrangement or a shared cost AVC arrangement.

Contracts entered into before 1 April 2015

It remains the case that AVCs up to 100% of pensionable pay, allowing for the statutory deductions (LGPS contributions, NI contributions etc.), are permissible. The only thing to potentially watch out for is the redefinition of pensionable pay which could mean, in cash terms, 100% is a different amount.

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, 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 1 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.

A member electing for 50/50 can continue to pay into or take out an Additional Voluntary Contribution (AVC) arrangement or a shared cost AVC arrangement.

Transfer position (inter-funds)

Under the 2009 Scheme a member transferring from one LGPS Fund in Scotland to another Fund in Scotland could leave their AVC pot with the former Fund (as 'orphan' AVC funds), even if they aggregated their main scheme benefits.

Under the 2015 Scheme the AVC pot must be transferred if the member aggregates their main scheme benefits unless the member has not had a continuous break in active membership of a public service pension scheme of more than 5 years and either was an active member on 31 March 2015 and 1

April 2015 or, if he / she wasn't, had elected within 12 months of rejoining to be treated as if he / she had been an member on those dates, in which case the member can elect to leave the AVC pot with the former Fund. The reason for this 'concession' is to allow a member who has not had such a break to avoid any market value adjustment that might have been applied on a transfer of AVC funds. A member who has more than a 5 year break in continuous active membership of a public service pension scheme is not afforded the option of this 'protection' due to the length of the break.

Transfer position (other)

As from 6 April 2015 a member does not have to transfer out their AVC pot to another registered pension scheme or to a qualifying recognised overseas pension scheme if a transfer of main LGPS benefits is being made. If they do wish to transfer out their AVC pot, the transfer does not have to be made to the same scheme as that to which the transfer of their main scheme benefits is made.

Position on death

If a member with an AVC/SCAVC arrangement ceases active membership of the LGPS on or after 1 April 2015 and subsequently dies (or dies in service on or after 1 April 2015) before drawing the monies in the AVC arrangement, or dies whilst paying life assurance AVCs, the Administering Authority shall, at its sole discretion, decide to whom the monies due are to be paid.

Contrast this with the position of a member with an AVC/SCAVC arrangement who ceased active membership of the LGPS prior to 1 April 2015 and dies. In that case the 2014 Transitional Regulations provide that the member is still subject to the 2009 Scheme which means that, technically, the Administering Authority cannot exercise a discretion in relation to monies due under those arrangements and must simply pay the sums to the deceased's estate.

AVCs on retirement

Where a member with an AVC/SCAVC arrangement ceases active membership of the LGPS on or after 1 April 2015, the AVC benefits **must** be drawn at the same time as the main scheme benefits in most cases. There are two exceptions to this. The first is where the member is taking flexible retirement and decides not to take the benefits at the time of flexible retirement. However, when they eventually fully retire and draw their LGPS pension they would have to take their AVC pot then. The member cannot defer drawing their AVC pot beyond the date the main scheme benefits are drawn (except for the flexible retirement exception mentioned). The second exception, applicable from 6 April 2015, is if the member wishes to transfer their AVC fund to another scheme.

Where a member with an AVC/SCAVC arrangement ceased active membership of the LGPS prior to 1 April 2015, the 2014 Transitional Regulations provide that the member is still subject to the rules of the 2009 Scheme. However, as from 6 April 2015, the member can transfer their AVC fund to another scheme (even if they do not transfer their main scheme benefits).

Other additional contributions

Additional Regular Contributions (ARCs)

Contributions under existing ARC contracts entered into before 1 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 (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).

It should be noted that on movement to the 50/50 section any existing contributions to an additional regular contribution (ARC) contract are not reduced to half rate. The contributions under such a contract continue to be paid in full.

Added years contracts

Existing contracts entered into by members who elected before 1 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:

- 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 added years contract (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).

It should be noted that on movement to the 50/50 section any existing contributions to an added years' contract are not reduced to half rate. The contributions under such a contract continue to be paid in full.

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:

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

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

It should be noted that on movement to the 50/50 section any existing contributions to a Preston part-time buy-back contract are not reduced to half rate. The contributions under such a contract continue to be paid in full.

Additional Survivor Benefit Contributions (ASBCs)

Any existing ASBC contracts continue to be paid (unless the member elects to end the contract). Members who have not entered into an ASBC contract for all or part of their pre 6 April 1988 membership to count for a cohabitating partner's pension will not be able to enter into a contract to achieve this after 31 March 2015.

Payments under existing ASBC contracts at 31 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 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:

- 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 ASBC contract entered into before 1 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 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).

It should be noted that on movement to the 50/50 section any existing contributions to an additional survivor benefit contribution (ASBC) contract are not reduced to half rate. The contributions under such a contract continue to be paid in full.

5) ABSENCES

Relevant Child-related leave

During the period of ordinary maternity leave (OML), ordinary paternity leave (OPL), or ordinary adoption leave (OAL), any period of paid shared parental leave (SPL) and any period of paid additional maternity leave (AML), or paid additional adoption leave (AAL) the member will accrue 1/49th of assumed pensionable pay (APP) if they are in the main section (or actual pensionable pay for any period when that exceeds APP) or 1/98th of assumed pensionable pay (APP) if they are in the 50/50 section (or actual pensionable pay for any period when that exceeds APP). The member will pay basic pension contributions on the actual pay received (although the employer will pay contributions on APP). It should be noted that a person in the 50/50 section who goes on to no pay during ordinary maternity, paternity or adoption leave is moved back into the main section on the first day of the next pay period.

For a Keep In Touch (KIT) or Shared Parental Leave In Touch (SPLIT) day during that period the member will accrue 1/49th of the pensionable pay received for that day, if greater than APP, if they are in the main section or 1/98th of the pensionable pay they received for that day, if greater than APP, if they are in the 50/50 section. The employee will pay basic pension contributions on the actual pay received (although the employer will pay contributions on the higher of actual pay received or APP).

Authorised unpaid leave (including unpaid additional maternity, paternity and adoption leave or unpaid shared parental leave)

Whilst most of the rules have not changed from the 2009 Scheme (e.g. the member's automatic right to elect with a contribution from the employer lapses after 30 days from returning to work, the maximum unpaid leave period is 3 years etc.) it should be noted that deducting mandatory contributions on the first 30 days of authorised unpaid leave of absence is no longer a feature of the scheme and an election to pay contributions cannot be made after leaving. Note that contributions were not mandatory under the 2009 Scheme on the first 30 days of unpaid additional maternity, paternity or adoption leave.

Under the 2009 Scheme, a person was offered the opportunity to pay "their" contribution on the "lost" pay during the absence. If they decided to pay then (except for trade disputes – see below) the employer contribution also fell due.

In the 2015 Scheme, it does not work in quite the same way. 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 through an age-related Additional Pension Contribution (APC) contract, either over a period of time (except where the Administering Authority determine that

payment by regular contributions would not be practicable) or as a one off lump sum.

The amount of "lost" pension shall be calculated as 1/49th of the 'lost' pensionable pay during the period of the absence if the person was in the main section during that period, or 1/98th of the 'lost' pensionable pay for the period of the absence if they were in the 50/50 section during that period.

Provided they elect within 30 days of returning from the leave of absence (or such longer period as the employer may allow) the cost of the APC contract will be split 1/3rd employee and 2/3^{ds} employer. If they elect after the 30 day period (or such longer period as the employer may allow) the cost of the APC contract will be at full cost to the.

For a Keep In Touch (KIT) or Shared Parental Leave In Touch (SPLIT) day during a period of unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave, the member will accrue 1/49th of the pensionable pay received for that day, if they are in the main section, or 1/98th of the pensionable pay they received for that day if they are in the 50/50 section. The employee will pay basic pension contributions on the actual pay received and the employer will pay employer contributions on the actual pay received.

Jury Service

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.

Trades Dispute

Under the 2009 Scheme, a person was offered the opportunity to pay a contribution of 16% on the "lost" pay during the absence, with no associated employer contribution.

In the 2015 Scheme, it does not work in quite the same way. If the member wishes to buy-back what will often be a small amount of pension "lost" in respect of a period of strike action they can do so through an age-related Additional Pension Contribution (APC) contract, either over a period of time (except where the Administering Authority determines that payment by regular contributions would not be practicable) or as a one off lump sum.

The amount of "lost" pension shall be calculated as 1/49th of the pensionable pay 'lost' during the period of the absence if the person was in the main section during that period, or 1/98th of the pensionable pay 'lost' for the period of the absence if they were in the 50/50 section during that period.

There is no employer contribution towards the APC (unless the employer chooses to contribute towards the cost).

It should also be noted that the option for a person who has been on strike to make a decision is no longer limited to 30 days from the end of the recognised trades dispute.

Reserve Forces Service Leave

Under the 2009 Scheme, the situation regarding reserve forces service leave was rather convoluted and different rules applied according to whether the reservist received less, the same or more pay whilst they were on leave of absence.

In the 2015 Scheme, things have changed considerably by introducing an assumed pensionable pay solution. Effectively (provided the person, if eligible to be in the Armed Forces Pension Scheme during the period of reserve forces service leave, has elected to remain a member of the LGPS) the employer will calculate a notional pay figure (Assumed Pensionable Pay) whilst the reservist is on leave and drop that into the person's cumulatives (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 (see Section 4 under the heading "Employer contribution rates").

The employer would then tell both the reservist and, via the reservist, the Ministry of Defence of the assumed pensionable pay and the employee and employer contribution 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 contributions and the additional employee contributions (if any) from the reservist and pay those contributions, together with the employer contribution, to the employer for onward transmission to the Fund or directly to the Administering Authority (or to the AVC provider, where appropriate).

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 instead - and the pay the employer has continued to pay is not added into the person's cumulatives (i.e. into the main or 50/50 section) because the assumed pensionable pay is added into the cumulatives instead.

Impact on pre-15 protections

If the employee has pre-1 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-1 April 2015 membership (and for their benefits for their post-31 March 2015 membership if they are subject to the underpin calculation) 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 or absence due to a trade dispute as, if they do not do so, it could have the effect of putting back the date they meet the 85 year rule.

Sickness/injury

Under the 2009 Scheme, if a member was on leave due to sickness or injury and had a period of full contractual pay, then went on to a period of reduced contractual pay and then on to no pay, the member and the employer would

- during the full contractual pay period, pay basic pension contributions on the pensionable pay received (before any reduction on account of Statutory Sick Pay or Incapacity Benefit),
- during the reduced contractual pay period, pay basic pension contributions based on the pensionable pay received (before any reduction on account of Statutory Sick Pay or Incapacity Benefit), and
- during the no pay period, pay no basic pension contributions.

Under the 2015 Scheme, during a period on reduced contractual pay or no pay, "assumed pensionable pay" (APP) is added to the member's pensionable pay cumulative (and not the amount of any pay actually received).

APP could be higher than normal full contractual pay because, for example, the green book provides that when determining sick pay this will exclude any payments not made on a regular basis e.g. excess hours or non-contractual overtime.

Inevitably, although the member is accruing full membership of the Scheme, the Pension Fund is receiving far less than it needs in contributions to cover the liability it is accruing, especially in the case of no pay sickness.

Whilst the employee will, in the 2015 Scheme, pay a contribution on actual pay received (if any) it has been decided that the employer will pay contributions on APP during the period the employee is on reduced contractual pay or no pay. This means that from 1 April 2015 employers contributions will be payable “in full” on APP in cases of long-term sickness absence.

Additional contracts during absences

During any period of sickness on reduced contractual pay, any pre-existing APC / SCAPC contracts remain payable. If the employee is in receipt of no pay the employee contributions are deemed to have been paid but the employer must continue to pay the employer contributions to a SCAPC. Any employee APCs actually collected (but not those deemed to have been paid) must be added into the employee APC cumulative and any employer contributions to a SCAPC must be added into the employer SCAPC cumulative.

During **any** period of “relevant” child related leave (ordinary maternity, paternity or adoption leave or paid shared parental leave and paid additional maternity or adoption leave) any pre-existing APC / SCAPC contracts remain payable. If the employee is in receipt of no pay, the employer contributions to a SCAPC remain payable but the employee payments due to an APC or SCAPC which could not be collected roll over as a debt to be recovered from pay upon return to work.

During any period of absence due to a trade dispute or due to unpaid unauthorised absence any pre-existing APC / SCAPC contracts remain payable. Although the employee is in receipt of no pay for the period of the industrial action, the employer contributions to a SCAPC remain payable. The employee payments that were due to an APC or SCAPC should be deducted if there is enough pay in the period from which to deduct the payment. Otherwise, the employee payment that was due will roll over as a debt to be recovered from pay upon return to work.

During any other period of authorised leave of absence (including unpaid additional maternity, paternity or adoption leave or unpaid shared parental leave) any pre-existing APC / SCAPC contracts remain payable. Although the employee is in receipt of no pay, the employer contributions to a SCAPC remain payable but the employee payments that were due to an APC or SCAPC which could not be collected roll over as a debt to be recovered from pay upon return to work.

For the absences in the preceding three paragraphs:

- any employee APCs actually collected must be added into the employee APC cumulative and any employer contributions to a SCAPC must be added into the employer SCAPC cumulative, and

- it might be possible as an alternative to rolling over the debt, for the individual to pay the amounts due directly to the Administering Authority.

During any period of reserve forces service leave (provided the person, if eligible to be in the Armed Forces Pension Scheme during the period of reserve forces service leave, has elected to remain a member of the LGPS), employee contributions to any pre-existing APC / SCAPC contracts remain payable (but not via payroll). The employer sends the relevant details to the reservist to pass on to the MoD in order to get them to arrange the relevant deductions from MoD reservist pay and for MoD to pay these over to the Administering Authority.

For the effect of absences on other types of contracts please see under the heading "Other additional contributions" in section 4 of these notes.

6) REVALUATION

General

Active accounts will be revalued by HM Treasury Order each year. Benefits for non-actives will attract pensions increase, as before, authorised under annual Pensions Increase (Review) Orders.

The basis of revaluation for active accounts is to provide a full year revaluation to the closing balance at the end of each scheme year in line with Treasury Revaluation Orders (even for mid-year joiners).

In the case of leavers, there is no immediate part year adjustment at the date of leaving but there is an adjustment to the revaluation of the closing balance at the end of the year of leaving / beginning of the following year. This is done to ensure that each member gets the correct level of inflation-proofing in the scheme year of leaving, i.e. not too little (not receiving the part-year revaluation on earnings) and not double indexation (receiving both earnings revaluation and pensions increase for the same period in time).

Future increases after the year of leaving will be by Pensions Increase (Review) Orders and, where appropriate, Guaranteed Minimum Pensions Increase Orders. However, in the case of a deferred benefit, revaluation in line with Treasury Revaluation Orders (and not in line with Pensions Increase (Review) Orders) will apply if the member rejoins the LGPS, aggregates the periods of membership, and the gap in the person's pensionable service does not exceed 5 years. In these cases, a recalculation of revaluation will be required.

It should be noted that the proposed method of revaluation corresponds with the method of revaluing a closing balance for the purposes of the Annual Allowance test.

Finally, in the worked examples at the end of this section, the component elements of opening/closing balances are shown separately (for a number of reasons which include aiding understanding) as are the Treasury Order increases or pensions increases calculated on those elements. This can lead to the odd issue with rounding as, when the calculation is performed on the whole account, the resultant answer can differ by one penny per annum. This should be of no consequence.

Active Account

Active accounts will consist of the following elements:

Opening Balance	Calculated as closing balance of previous year adjusted by the Treasury Revaluation Order index.
Earned Pension	The amount of pension accrued during the scheme year calculated as pensionable pay divided by 49 (or divided by 98 for a 50/50 member).
Adjustments	<p>These are additions such as any pension derived from a transfer in received in the scheme year, and Additional Pension purchased by the member during the scheme year via an additional pension contract / shared cost additional pension contract or granted and paid for by the employer in the scheme year; and any deductions relating to Pensions Sharing Orders and Annual Allowance Scheme Pays elections.</p> <p><i>NB: we need actuarial guidance from Scottish Ministers on exactly how / when Pension Debits and Annual Allowance Scheme Pays deductions are to be made from accounts.</i></p>
Closing Balance	The total of the opening balance, earned pension and additional pension elements.

Deferred / Retirement Pension Account

These accounts will consist of the following elements:

Opening Balance (First Year)	Calculated as the amount transferred from the active account.
Closing Balance (First Year)	The total of the opening balance and any pension deduction (e.g. on account of a Pension Sharing Order).
Opening Balance (Second Year onwards)	The closing balance of the previous year (revalued at the beginning of the second year by an adjusted Treasury Order revaluation, unless the Treasury Order is negative, in which case the revaluation will simply be in line with the Treasury Order, not an adjusted Treasury Order revaluation).
Pensions Increase	Increases due under the Pensions Increase (Review) Orders ³ (proportioned as required by the Order) and Guaranteed Minimum Pensions Increase Orders.
Adjustments	These are any deductions relating to Pensions Sharing Orders and Annual Allowance Scheme Pays elections. <i>NB: We may need actuarial guidance from Scottish Ministers on exactly how / when Pension Debts and Annual Allowance Scheme Pays deductions are to be made from accounts.</i>
Closing Balance (Second Year onwards)	The total of the opening balance and any pension deduction

³ In the case of a deferred member the Pensions Increase is not due until the benefit is brought into payment and the member has met a qualifying condition for payment of PI under the Pensions (Increase) Act 1971. Thus, the PI amounts are not technically placed in the member's account until the PI payment is due under the Act but, from a systems software point of view, it may be decided to hold against the member's account each year the PI that would be due under the Act if the member had already met a qualifying condition.

Revaluation at one second after midnight of the 31 March of the year of leaving (if the Treasury Order revaluation is not negative)

If the Treasury Order revaluation on 31 March of the year of leaving is not a negative figure then the Treasury Order revaluation is an adjusted calculation in order to ensure there is no double indexation.

Step 1 – on 31 March of the year of leaving, calculate a full years Pension Increase on the closing balance at year ending 31 March, using the Pensions Increase (Review) Order for the immediately following April.

Step 2 – calculate the closing balance required before the appropriate part year Pension Increase is applied to the pension in payment in the April after leaving to result in the value in step 1.

Step 3 – subtract the opening balance from the value calculated in step 2 to produce the adjusted revaluation amount.

The adjusted revaluation amount is then added to the closing balance at one second after midnight of the 31 March of the year of leaving to give the opening balance for the year after leaving.

Without the above adjusted revaluation calculation the member would get “double indexation”. Take the example of a member leaving on 30 November with an accrued pension at the date of leaving of £1000 and that a full year’s CPI is 3%. The increase due under Treasury Order (for the part-year) would be 2% and the increase due under the Pensions Increase (Review) Order (for a part-year) would be 1%, making a total of 3%.

If the accrued pension is increased by 2% under the Treasury Order at one second after midnight of the 31 March after leaving, the accrued pension would increase to £1020.00. If PI of 1% is then added in April that will bring the figure to £1030.20. However, if the member had been active throughout the whole year, or had been a deferred or pensioner member throughout the whole year, the pension would only have increased to £1030.00 (not to £1030.20).

Thus, to avoid double indexation, the following calculation is performed:

One second after midnight on 31 March

Step 1:	£1000.00 x 103%	= £1030.00
Step 2:	£1030.00/101.0 x 100	= £1019.80
Step 3:	£1019.80 - £1000.00	= £19.80

April

£1019.80 x 101.0%	= £1030.00
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Although we need actuarial guidance from Scottish Ministers on exactly how / when Pension Debits (and indeed Annual Allowance Scheme Pays deductions) are to be made from accounts, if the member has a Pension Debit applied to the account the adjustment calculation is bound to be even more convoluted and involve a 4 Step process. The 4 Step process is explained (in the context of the England and Wales 2014 Scheme) in a guide to Revaluation which is available in the Administration Guides section under the Guides tab at www.lgpsregs.org and there will be a Scottish version available in early 2015.

Revaluation at one second after midnight of the 31 March of the year of leaving (if the Treasury Order revaluation is negative)

If the Treasury Order revaluation on 31 March of the year of leaving is a negative figure then the Treasury Order revaluation is simply applied at one second after midnight of the 31 March (not an adjusted calculation) and Pensions Increase of 0% is applied on the first Monday falling on or after the following 6th April. However, if a negative revaluation is applied to a pension in payment, thereby reducing the pension in payment, this would constitute an unauthorised payment under the Finance Act 2004. Clarification is being sought on this point.

Revaluation and commutation – retirements on 31 March

The revaluation that occurs at one second past midnight on 31 March 2016 does not count towards the amount of pension that a member retiring on 31 March 2016 can commute.

This can be evidenced by the following. Consider a member who retires on 30 March 2016 and the administering authority just happens to have all the paperwork from the employer and scheme member on 30 March 2016 to allow them to process and pay the benefit on 31 March 2016. The administering authority would not offer commutation of the revaluation amount applied at one second after midnight on 31 March 2016 – so why do so for the person who just happens to have retired one day later. This becomes even more evident if one looks at a member who retires on, say, 31 August 2015. That member will get a part year's Treasury Order Revaluation at one second after midnight on 31 March 2016 but the administering authority will not be offering the member the option to commute up to 25% of that balancing Revaluation payment.

Simple revaluation examples

The following three examples show a detailed breakdown of accruals, adjustments, Treasury Order revaluation and Pensions Increase. Pensions administration software providers may wish to consider holding a detailed breakdown to separately record each element of a member's pension build up as this:

- a) recognises that, for example, additional pension purchased via an APC or SCAPC under regulation 16 (but not under regulation 30) will be subject to an actuarial adjustment on retirement on redundancy or efficiency grounds before Normal Pension Age whereas the main LGPS pension and any APC granted by the employer under regulation 30 would not be subject to such an adjustment, and
- b) may simplify the eventual calculation of a surviving partner's / children's pension (as some elements count towards a child's and / or partner's pension and some do not – for example, an annual allowance scheme pays deduction impacts on the member's pension but not on a partner's or child's pension; a Pension Sharing Order impacts on the member's and partner's pension but not a child's pension), and
- c) recognises that where there is a pension debit held against a member's account, the timing of increases to that debit must match the timing of the increase on the pension credit (i.e. the first Monday on or after 6 April and not on 1 April), and
- d) it would also be wise to hold annual allowance scheme pays deductions separately from the member's pension account as, when benefits crystallise, the deduction might have to be adjusted in accordance with actuarial guidance from Scottish Ministers.

The foregoing and the following examples represent a summary of the revaluation provisions. A full guide to the revaluation provisions (in the context of the England and Wales scheme) is available in the Administration Guides section under the Guides tab at www.lgpsregs.org and there will be a Scottish version available in early 2015.

Example 1 – revaluation of active account

A member:

- commences on 1 July 2015
- receives a transfer in during 2017/18 which purchases additional pension of £200
- purchases £50 additional pension by a lump sum Additional Pension Contribution (APC) in May 2020, and
- leaves on 15 December 2022.

Treasury Revaluation Orders are 3% for the scheme years ending 31 March 2016 through to 31 March 2022.

Scheme Year Starting	Opening Balance	Earned Pension	Adjustments*		Scheme Year Ending (or date a/c closed)	Closing Balance	Treasury Order Revaluation			Value to Carry Forward
			TV in	AP			Earned Pension	TV in	AP	
1 April 2015	£0.00	£405.18	£0.00	£0.00	31 March 2016	£405,188.16	£405.18 x 3% ** = £12.16	£0.00	£0.00	£417.34
1 April 2016	£417.34	£413.27	£0.00	£0.00	31 March 2017	£830.61	£830.61 x 3% = £24.92	£0.00	£0.00	£855.53

* Key: TV in = pension purchased from a transfer in received in the scheme year
AP = additional pension purchased by the member via an APC/SCAPC contract (or granted by the employer) in the scheme year.

** The revaluation adjustment at one second after midnight on 31 March 2016 is not pro-rated even though the member only has 9 complete months of service in 2015/16.

Scheme Year Starting	Opening Balance	Earned Pension	Adjustments		Scheme Year Ending (or date a/c closed)	Closing Balance	Treasury Order Revaluation			Value to Carry Forward
			TV in	AP			Earned Pension	TV in	AP	
1 April 2017	£855.53	£418.37	£200.00	£0.00	31 March 2018	£1,473.90	£1,273.90 x 3% = £38.22	£200.00 x 3% = £6.00	£0.00	£1,518.12
1 April 2018	£1,518.12	£423.47	£0.00	£0.00	31 March 2019	£1,941.59	£1,735.59 x 3% = £52.07	£206.00 x 3% = £6.18	£0.00	£1,999.84
1 April 2019	£1,999.84	£428.57	£0.00	£0.00	31 March 2020	£2,428.41	£2,216.23 x 3% = £66.49	£212.18 x 3% = £6.36	£0.00	£2,501.26
1 April 2020	£2,501.26	£433.67	£0.00	£50.00	31 March 2021	£2,984.93	£2,716.39 x 3% = £81.49	£218.54 x 3% = £6.56	£50.00 x 3% = £1.50	£3,074.48
1 April 2021	£3,074.48	£438.78	£0.00	£0.00	31 March 2022	£3,513.26	£3,236.66 x 3% = £97.10	£225.10 x 3% = £6.75	£51.50 x 3% = £1.55	£3,618.66
1 April 2022	£3,618.66	£332.91	£0.00	£0.00	15 Dec 2022	£3,951.57				

When the member leaves on 15 December 2022 the active account is closed and the amount to be transferred to the deferred or retirement account on 16 December 2022 is £3,951.57 which includes revaluation up to 31 March 2022. The amount of £3,951.57 is made up of:

Revalued Earned Pension	Revalued TV in	Revalued AP	Total
£3,297.20 + £369.47 = £3,666.67	£200.00 + £31.85 = £231.85	£50.00 + £3.05 = £53.05	£3,951.57

Example 2 – active account closed, transferred to deferred pension account

Take the member in Example 1 who left on 15 December 2022 (with a deferred pension). An amount of £3,951.57 is transferred from the active account to become the opening balance in the deferred account. Assume PI for 10 April 2023 is 4% for a full year (and 1.333% proportioned for the period from 16 December 2022). PI is 4% each year in deferment after that.

Scheme Year Starting	Opening Balance	Made up of:			PI Order Reval'n on first Monday on or after 6 April	Scheme Year Ending (or date a/c closed)	Closing Balance	Treasury Order Reval'n	Value to Carry Forward
		Revalued Earned Pension + PI	Revalued TV in + PI	Revalued AP + PI					
16 Dec 2022	£3,951.57	£3,666.67	£231.85	£53.05	N/A	31 Mar 2023	£3,951.57	£104.00*	£4,055.57
1 Apr 2023	£4,055.57	£3,763.18	£237.95	£54.44	$\frac{£4,055.57 \times 4\%}{4/12} = £54.06$	31 Mar 2024	£4,109.63	N/A	£4,109.63

***Note:**

Step 1: $£3,951.57 \times 104\% = £4,109.63$
 Step 2: $£4,109.63/101.333 \times 100 = £4,055.57$
 Step 3: $£4,055.57 - £3,951.57 = £104.00$ (adjusted revaluation)

With each element of the revalued pension being calculated as follows:

Earned pension: $£3,666.67 \times 104\% = £3,813.34/101.333 \times 100 = £3,763.18 - £3,666.67 = £96.51$
 TV in: $£231.85 \times 104\% = £241.12/101.333 \times 100 = £237.95 - £231.85 = £6.10$
 AP: $£53.05 \times 104\% = £55.17/101.333 \times 100 = £54.44 - £53.05 = £1.39$

Deferred Account continued

Scheme Year Starting	Opening Balance	Made up of:			PI Order Reval'n on first Monday on or after 6 April	Scheme Year Ending (or date a/c closed)	Closing Balance	Treasury Order Reval'n	Value to Carry Forward
		Revalued Earned Pension + PI	Revalued TV in + PI	Revalued AP + PI					
1 Apr 2024	£4,109.63	£3,763.18 + £50.18 = £3,813.36	£237.95 + £3.17 = £241.12	£54.44 + £0.72 = £55.16	£4,109.63 x 4% = £164.39	31 Mar 2025	£4,274.02	N/A	£4,274.02
1 Apr 2025	£4,274.02	£3,763.18 + £202.72 = £3,965.90	£237.95 + £12.81 = £250.76	£54.44 + £2.93 = £57.37	£4,274.02 x 4% = £170.96	31 Mar 2026	£4,444.98	N/A	£4,444.98
1 Apr 2026	£4,444.98	£3,763.18 + £361.36 = £4,124.54	£237.95 + £22.84 = £260.79	£54.44 + £5.22 = £59.66	£4,444.98 x 4% = £177.80	31 Mar 2027	£4,622.78	N/A	£4,622.78
1 Apr 2027	£4,622.78	£3,763.18 + £526.34 = £4,289.52	£237.95 + £3.27 = £271.22	£54.44 + £7.61 = £62.05	£4,622.78 x 4% = £184.91	31 Mar 2028	£4,807.69	N/A	£4,807.69
1 Apr 2028	£4,807.69	£3,763.18 + £697.92 = £4,461.10	£237.95 + £44.12 = £282.07	£54.44 + £10.09 = £64.53	£4,807.69 x 4% = £192.31	31 Mar 2029	£5,000.00	N/A	£5,000.00
1 Apr 2029	£5,000.00	£3,763.18 + £876.37 = £4,639.55	£237.95 + £55.40 = £293.35	£54.44 + £12.67 = £67.11	£5,000.00 x 4% = £200.00	15 Dec 2029	£5,200.00		

Example 3 – deferred account closed and transferred to a pension account

The deferred member in Example 2 is female and attains age 60 on 16 December 2029 and opts to draw pension (with no commutation) but, as the pension is paid over 6 years before NPA (which, currently, is reached on 16 December 2036), there is an actuarial reduction of 31%.

The deferred account is closed and the amount to be transferred to the pensioner account on that day is £5,200.00 which includes PI up to April 2029 (to which an actuarial reduction is to be applied). PI from April 2030 is 4% each year.

Scheme Year Starting	Opening Balance	Made up of:				PI Order Reval'n on first Monday on or after 6 April	Scheme Year Ending (or date a/c closed)	Closing Balance to be Carried Forward
		Earned Pension	TV in	AP	PI			
16 Dec 2029	£5,200.00 – 31% = £3,588.00	£3,763.18 – 31% = £2,596.59	£237.95 – 31% = £164.19	£54.44 – 31% = £37.56	£1,144.43 (accumulated PI on DB) – 31% = £789.66		31 Mar 2030	£3,588.00
1 April 2030	£3,588.00	2,596.59	164.19	37.56	£789.66	£3,588.00 x 4% = £143.52	31 Mar 2031	£3,731.52
1 April 2031	£3,731.52	2,596.59	164.19	37.56	£933.18	£3,731.52 x 4% = £149.26	31 Mar 2032	£3,880.78

This revaluation then continues until death. Of course, in reality, the calculation of PI will be complicated where there is a Guaranteed Minimum Pension entitlement, but that is no different to the present situation. The revaluation paper on-line will give examples of cases where there is a GMP entitlement.

7) RETIREMENT BENEFITS

The retirement benefit provisions in the 2015 Scheme are pretty much unchanged but are tweaked because of the change in normal pension age (NPA) as defined in the regulations. In brief, the provisions are explained below.

Normal pension age (NPA)

In the 2015 Scheme the normal pension age for each member is equal to their State Pension Age (SPA) subject to a minimum of age 65. If a member chooses to retire before their NPA, their pension will be reduced for early payment (subject to the 85 year rule protections). If they retire after NPA their pension will be increased for late payment.

NPA will be whatever their SPA is at the time that they draw their benefits. Deferred members who leave post 31 March 2015 might have one NPA at the date of leaving but this could shift before they draw their pension. This means that members of the Scheme will have different NPAs determined by their date of birth and SPA rules at the time they draw their benefits. The Administering Authority will therefore no longer be able to quote a specific NPA payable date in deferred benefit notifications for post 31 March 2015 leavers (or on annual benefit statements issued to such leavers). Such notifications / statements will have to state that normal payable age for the post 31 March 2015 benefits will be whatever the member's SPA is at the time they draw their benefits, that their SPA is currently [ddmmyyyy] but that this may change in the future as and when the Government changes State Pension Ages.

Note that there are certain protections built in to the 2015 Scheme in respect of membership prior to 1 April 2015 – see the sub-section entitled “Membership before 1 April 2015” in the membership section of these notes. In time, it may prove difficult to explain to a retiree that, because they have retired at a point in time between their “old” and “new” NPAs, that part of their benefits are subject to an increase for late retirement and part subject to a reduction for early retirement!

In addition to NPA protection there is also Rule of 85 protection and some older members also have an underpin. These two protections are discussed later in this section of the notes.

Normal retirement

Normal retirement occurs at the age the Scheme pays benefits at 2015 Scheme NPA. Where retirement occurs at NPA there is no actuarial reduction to post-31 March 2015 benefits and no actuarial increase either. Of course,

where 2009 Scheme NPA was earlier, pre-1 April 2015 benefits will see an actuarial increase (see next paragraph).

Late retirement

Members who wish to work beyond their 2015 Scheme NPA will see their pension enhanced for payment after NPA. That enhancement will be calculated in accordance with the actuarial guidance from Scottish Ministers.

Unlike the present arrangement of a simple “per day” percentage increase, draft guidance shows the increase being performed akin to early retirement reductions (including separate gender-related percentage rates) as follows:

Years Late	Pension Male	Pension Female	Retirement Grant Unisex
0	0%	0%	0%
1	5%	5%	2%
2	11%	10%	4%
3	17%	16%	6%
4	24%	22%	8%
5	31%	29%	10%
6	39%	36%	13%
7	48%	44%	15%
8	58%	52%	17%
9	69%	62%	20%
10	80%	72%	22%

Note that where the number of years a person is retiring late is not an exact number, the necessary interpolations are made in the above table.

Redundancy/Efficiency retirement

Members who leave on the grounds of redundancy or interests of the efficiency of the service and who are aged 55 and above will receive their benefits immediately and without actuarial reduction for early retirement (other than additional pension bought by an Additional Pension Contribution contract or a Shared Cost Additional Pension Contribution contract under Regulation 16, or a pre-1 April 2015 Additional Regular Contribution contract). In the case of redundancy/efficiency retirement, any additional pension bought via Regulation 30 is NOT subject to actuarial deduction.

Comment [TE1]: What about APCs / SCAPCs being paid to cover 'lost' pension? It does not seem correct that these should be subject to reduction.

Note that the 2014 Transitional Regulations continue to provide an age 50 protection for a member who was in the Scheme on 5 April 2006 and clarify that this protection is lost if there has been a break in membership after that date.

Flexible retirement

Members who reduce their working hours or grade of an employment may, with the Scheme employer's consent, elect to receive their benefits immediately if they are aged 55 and above. Benefits would be reduced on account of early payment (subject to certain protections for pre-2015 members).

Members would have to draw:

- all of their pre-1 April 2009 benefits, plus
- all, some or none of their 1 April 2009 to 31 March 2015 benefits, plus
- all, some or none of their post-31 March 2015 benefits, plus
- any "additional benefits" in accordance with the actuarial guidance issued by Scottish Ministers.

"Additional benefits" are added years being purchased by the member, AVCs (if the member chooses to draw them), additional pension bought by APCs/SCAPCs, additional pension bought by ARCs and additional pension awarded by the employer.

Ill-health retirement

The basic structure of two-tier ill-health is retained. To qualify for ill-health benefits the following condition must be satisfied:

- The member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment the member was engaged in.

If this condition is satisfied, which tier of ill-health retirement a person falls into is then decided as follows:

- A member is entitled to Tier 1 benefits if that member is unlikely to be capable of undertaking gainful employment before Normal Pension Age.

- A member is entitled to Tier 2 benefits if that member (a) is not entitled to Tier 1 benefits; and (b) is likely to be able to undertake gainful employment before reaching Normal Pension Age.

The enhancement of membership in respect of future membership “lost” to age 65 is replaced with pension in respect of “assumed pensionable pay” from ill-health retirement to Normal Pension Age as follows:

- Tier 1 - adjusting the active member’s pension account by adding the equivalent of the amount of earned pension the member would have accrued between the day following the date of termination and Normal Pension Age, if that member had been treated as receiving assumed pensionable pay for each year and fraction of a year in that period.
- Tier 2 - adjusting the active member’s pension account by adding 25% of the Tier 1 adjustment described above.

No enhancement can be added if the member has previously received a Tier 1 ill health pension under the 2015 or 2009 Schemes or has received an ill health pension under any earlier Scheme.

The enhancement for a member entitled to a Tier 1 or Tier 2 pension is adjusted if the member has previously received a Tier 2 ill health pension under the 2015 or 2009 Schemes. The enhancement for both Tier 1 and Tier 2 shall not exceed three quarters of the number of years between the initial ill health retirement and the member’s NPA under the 2015 Scheme, less the number of years of active membership since the initial ill health retirement.

Administering authorities will wish to add a question to the pension application form to be completed by the member asking whether, for members being retired with a Tier 1 ill health pension, the member is already in receipt of an enhanced ill health pension from the LGPS in Scotland from another, earlier, employment and for member’s being retired with a Tier 2 ill health pension, whether the member is already in receipt of an enhanced Tier 1 or Tier 2 ill health pension from the LGPS in Scotland from another, earlier, employment.

Members covered by regulation 20(5) of the 2008 Benefit Regulations (minimum ill health enhancement for those who were active members before 1 April 2009) will continue to have that cover applied when working out the amount of enhancement to add under Tier 1 or Tier 2.

In order to calculate the enhancements, assumed pensionable pay (APP) will need to be calculated by the employer when terminating an active member’s employment on the grounds of permanent ill-health with a Tier 1 or Tier 2 ill health pension. *NB: The same applies where an active member dies in service.*

The APP figure is calculated in the normal way but using the average of the pensionable pay (excluding lump sums not payable every pay period) for the 12 (weekly) or 3 (monthly) most recent pay periods **prior to the date of leaving / 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.

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

When calculating the enhancements, if the person was in the 50/50 section at the point of retirement, the election for 50/50 is treated as lapsed.

The slight change in the wording of the regulations governing ill health retirement has necessitated an amendment to the ill health certificates used by the Independent Registered Medical Practitioners for ill-health retirements from April 2015. The new certificates can be found in [Bulletin 124](#) issued in March 2015. Employers will, however, be able to use an old certificate obtained from an IRMP before 1 April 2015 where the retirement occurs on or after that date.

Choice to retire before NPA

It is possible for a member to retire early and get an LGPS pension at any age on or after their 55th birthday (subject to obtaining employer consent for retirement before age 60) but the pension will (subject to the 85 year rule) be reduced on an actuarial basis depending on how long before NPA a person is retiring.

The present actuarial reductions to benefits are as follows:

Years Early	Pension Male	Pension Female	3/80ths Lump Sum Unisex
0	0%	0%	0%
1	6%	6%	3%
2	11%	11%	6%
3	16%	15%	8%
4	21%	20%	11%

5	25%	24%	14%
6	29%	28%	16%
7	33%	31%	19%
8	36%	35%	21%
9	39%	38%	23%
10	42%	41%	26%
11	46%	44%	N/A
12	49%	47%	N/A
13	52%	50%	N/A

Note that where the number of years a person is retiring early is not an exact number, the necessary interpolations are made in the preceding table.

“Employer consent” before age 60

As in the 2009 Scheme, employer’s consent is required if a person is under the age of 60. A significant change, however, is that the 2014 Transitional Regulations provide that the 85 year rule will not automatically apply in full if the employer gives consent to voluntary retirement on or after age 55 and before age 60. However, the employer will be able to, in effect, switch the rule back on.

Where the employer does so, the position is no different to that which applied under the 2009 Scheme where an employer consented to payment of benefits on or after 55 and before age 60 i.e. the scheme member would suffer an actuarial reduction on:

- the benefits relating to their fully protected 85 year rule membership calculated by reference to the period (if any) between the date the benefits are drawn and the date the member would meet the 85 year rule, and
- the benefits relating to their non-protected membership calculated by reference to the period from the date the benefits are drawn to NPA (2009 Scheme definition) for the pre 1 April 2015 membership; and SPA (with a minimum of age 65) for the post 31 March 2015 membership.

The employer would be responsible for meeting any remaining strain on fund cost relating to the payment of benefits before age 60.

If, however, the employer does **not** switch the 85 year rule on, the scheme member would suffer an actuarial reduction, calculated in accordance with actuarial guidance issued by Scottish Ministers. Following Schedule 2 of the 2014 Transitional Regulations governing this, the reduction would be based on:

- the benefits relating to their fully protected 85 year rule membership calculated by reference to the period between the date the benefits are drawn and the earlier of the date the member would have met the 85 year rule or age 65, but with a minimum reduction to age 60 where the 85 year rule is met before then
- the benefits relating to their non-protected membership calculated by reference to the period from the date the benefits are drawn to NPA (2009 Scheme definition) for the pre 1 April 2015 membership; and SPA (with a minimum of age 65) for the post 31 March 2015 membership.

So, in simple terms, if the employer switches on the 85 year rule they will pick up any strain on Fund cost as they did under the 2009 Scheme and, if they don't switch it on, the scheme member meets the strain on Fund cost of having their benefits paid early by having an actuarial reduction applied to their benefits. The cost of releasing benefits early is the same - it is merely a question of who pays.

The Administering Authority will need to ensure that leaver forms submitted by employers include a question asking the employer to confirm, for retirements on or after 55 and before age 60, whether or not they have switched on the 85 year rule.

Waiving actuarial reductions

An employer has the power to waive actuarial reductions from benefits. This is a discretion and the employer's powers have historically been different according to the type of retirement. In all cases bar flexible retirement, waiving actuarial reductions under previous regulations has only been permitted on compassionate grounds (e.g. the need to draw benefits in order to care for a sick relative, etc.). Where an employer exercises compassion under previous regulations, the whole of the actuarial reduction is waived which, of course, leads to pension strain.

In the case of flexible retirement, however, the employer had been permitted to waive part or all of the actuarial reduction and could exercise this discretion on any grounds (i.e. not just compassion).

For leavers after 31 March 2015 waiving actuarial reductions in whole or in part and on any grounds is now extended to all types of retirement thanks to the wording of regulations 3(5) and (12) of, and Paragraph 2(1) of Schedule 2 to, the 2014 Transitional Regulations.

The discretions above apply equally to post-31 March 2015 deferred members (other than on ill-health grounds as no actuarial reduction would apply).

For pre-1 April 2015 deferred members who are granted early release of their benefits (other than on ill-health grounds as no actuarial reduction would apply), waiving of any actuarial reduction can still only be on compassionate grounds and the entire reduction has to be waived.

Deferred benefits

Deferred benefits awarded under the Earlier schemes continue to be subject to regulations governing those Earlier Schemes (but see the aggregation rules in these notes).

Deferred benefits awarded under the 2015 Scheme are payable when the member attains Normal Pension Age under the 2015 Scheme, unless the member makes an election to defer payment (to age 75 at the latest) or to draw benefits on or after age 55 and before NPA (although employer consent will be required to draw benefits before age 60). Benefits drawn after NPA will be subject to an actuarial increase and benefits drawn before NPA (other than on ill-health grounds as no actuarial reduction would apply) will be subject to an actuarial reduction in accordance with actuarial guidance issued by Scottish Ministers. The provisions set out above under the headings "Choice to retire before NPA", "Employer consent before age 60" and "Waiving actuarial reductions" would apply.

Note that an optant out who has met the 2 year vesting period becomes a deferred beneficiary. The deferred benefit cannot be paid until the member has ceased to hold the employment in respect of which the deferred benefit was awarded (or age 75, if earlier).

A deferred member can commute some pension for a tax free lump sum.

Pension credit members

A pension credit awarded under the 2015 Scheme is payable when the credit member attains Normal Pension Age under the 2015 Scheme, unless the credit member makes an election to defer payment (to age 75 at the latest) or to draw benefits on or after age 55 and before NPA. Benefits drawn after NPA will be subject to an actuarial increase and benefits drawn before NPA will be subject to an actuarial reduction (in accordance with actuarial guidance issued by Scottish Ministers).

A pension credit member can commute pension for a tax free lump sum (but not if the debited member had already made an election to commute before the valuation date used when implementing the Pension Sharing Order).

Protection - The underpin

The underpin is effectively an additional payment which is payable where some older members would have been better off (subject to certain criteria) if the 2009 Scheme had continued in respect of the member's benefits that accrued from 1 April 2015 to the underpin date i.e. to Normal Pension Age (2009 Scheme definition) or to the date active membership ceases, if earlier.

The following process represents the policy intention behind the underpin set out in Regulation 4 of the 2014 Transitional Regulations.

Step 1

Determine whether the member will meet the criteria when their benefits are paid i.e. the member:

- (a) was an active member of the 2009 Scheme on 31 March 2012 and was, on 1 April 2012, 10 years or less from their normal retirement age under the 2009 Scheme;
- (b) was an active member immediately before the underpin date and receives payment of benefits under the 2015 Scheme on or after the underpin date;
- (c) does not have a disqualifying break in service; and
- (d) has not, prior to the underpin date, drawn benefits under the 2014 Regulations in relation to an employment

The underpin date is the earlier of:

- i) the date the member attained their normal retirement age under the 2009 Scheme, or
- ii) the date the member ceased to be an active member of the 2015 Scheme with an immediate entitlement to a pension
- iii) the date the member dies in service

A disqualifying break in service is a continuous break after 31 March 2012 of more than 5 years in active membership of a public service pension scheme

Note:

Regulation 4(1)(b) of the 2014 Transitional Regulations provides that Regulation 4 only applies to a member at the point they receive payment of benefits. Where a member meets all the other criteria for entitlement to an underpin calculation on the underpin date, the underpin addition is not applied until such time as the benefits are paid. Thus, a member leaving with a deferred benefit who, at the date of ceasing active membership, meets all the other criteria for entitlement to an underpin, is not actually credited with the underpin amount until the point the member draws those deferred benefits.

If the member meets the Step 1 criteria, move to Step 2.

Step 2

Determine whether the member is an active member immediately before the date the member attained their normal retirement age under the 2009 Scheme or, for a member ceasing to be an active member before their normal retirement age under the 2009 Scheme, whether the member ceased to be “an active member of the 2015 Scheme with an immediate entitlement to a pension” and “would have had an immediate entitlement to payment under the 2009 Scheme”. This would include:

- a) retirement on the grounds of permanent ill health [under regulation 34 of the 2014 Regulations]
- b) retirement under regulation 29(7) of the 2014 Regulations on the grounds of redundancy or business efficiency when aged 55 or over;
- c) retirement under regulation 29(7) of the 2014 Regulations on the grounds of redundancy or business efficiency when aged 50 or over if the person was a member of the LGPS on 5 April 2006 and
 - i) was an active member on 31 March 2015 and 1 April 2015, and
 - ii) has not had a break in membership after 1 April 2015
- d) voluntary retirement under regulation 29(5) of the 2014 Regulations when aged 60 or over
- e) voluntary retirement, with employer permission, under regulation 29(5) of the 2014 Regulations when aged 55 or over and under age 60
- f) flexible retirement, with employer permission, under regulation 29(6) of the 2014 Regulations when aged 55 or over

It should be noted that a member who opts out of membership prior to attaining their normal retirement age under the 2009 Scheme will not have an immediate entitlement to a pension (because they are still employed in the employment in respect of which they had been a member). They will, therefore, not meet the requirements of step 2 and so not be subject to the underpin calculation.

If the member meets the Step 2 criterion, move to Step 3.

Step 3

At the earlier of the date the member ceases to be an active member or the member's normal retirement age under the 2009 Scheme, calculate the underpin amount in accordance with regulations 4(4) to (6) of the 2014 Transitional Regulations.

The first stage is to calculate what pension would have built up in the member's pension account at the underpin date on the following assumptions:

- the member had been in the **main** section of the 2015 Scheme between 1 April 2015 and the underpin date (excluding any breaks and any absences/strike periods not paid for but including any Tier 1 or Tier 2 ill health enhancement under the 2014 Regulations)
- the amount calculated above includes any increase due to the member's CARE pension in accordance with any Certificate of Protection of pension benefits that applies
- any additional pension bought via APCs/SCAPCs (other than to cover pension 'lost' due to absence or strike) is ignored
- any AVC payments are ignored
- any pension purchased by a transfer in is ignored*
- any adjustment due to a pension debit or annual allowance scheme pays election is made to the account
- the balance in the account includes revaluation up to the beginning of the Scheme year in which the underpin date falls

*If the relevant date (i.e. date joined the scheme or the date the transfer is received if more than 12 months later) for a non-Club transfer in was post 31st March 2015, or a transfer from a public service pension scheme is treated as a non-Club transfer (because the person has had a continuous break of more than 5 years in active membership of a public service pension scheme) and the relevant date was post 31st March 2015, the transfer would have purchased an amount of pension in the member's post-15 pension account (as would the transfer payment in respect of post 31st March 2015 CARE pension from a Club Scheme and any transfer in respect of final salary benefits in a non-public service Club scheme where the transfer is treated as a non-Club transfer because there was a break between leaving the sending scheme and joining the LGPS of more than 5 years) – see regulations 9(3A), (3B) and (4) of the 2014 Transitional Regulations.

If the relevant date for a non-Club transfer in was pre 1st April 2015 the transfer would have purchased pre 1st April 2015 membership. Similarly, any final salary membership from a Club scheme transferred in as a Club transfer under the Club rules would have purchased pre 1st April 2015 membership.

If a transfer has purchased an amount of pension in the member's post-15 pension account that amount of pension is, as indicated in the fourth bullet point above, excluded from the first stage calculation. If, however, a transfer has bought pre 1st April 2015 membership, there is no need for an equivalent exclusion to be incorporated into the second stage calculation below because the

calculation under that stage is based on post 31st March 2015 membership only (and the transfer had bought pre 1st April 2015 membership).

The second stage is to calculate the final salary pension the member would have accrued and had an immediate entitlement to under the 2009 Scheme if the member had stayed in the 2009 Scheme between 1 April 2015 and the underpin date, based on the following assumptions:

- the membership to be used in the calculation is the period between 1 April 2015 and the underpin date (excluding any breaks and any absences/strike periods not paid for but including any Tier 1 or Tier 2 ill health enhancement under regulation 20 of the 2008 Benefit Regulations)
- any adjustment due to a pension debit or annual allowance scheme pays election is made to the pension

If the amount calculated at the second stage is higher than the amount calculated at the first stage the difference is the underpin amount. This should be held as a separate “guarantee amount” and, if the member is continuing in membership beyond the member’s normal retirement age under the 2009 Scheme, hold the accrued post 2015 CARE pension at that age as a separate amount of CARE pension from the CARE pension accruing thereafter.

Note:- In performing this calculation:

- the post 2015 CARE pension calculated under regulation 4(5) of the 2014 Transitional Regulations will be revalued up to the beginning of the Scheme year in which the member ceased to be an active member or attained their normal retirement age under the 2009 Scheme, and
- the post 2015 notional final salary pension calculated under regulation 4(6) of the 2014 Transitional Regulations will be based on the final pay⁴ under regulations 9 to 12 of the 2008 Benefit Regulations (or, where appropriate, regulation 43 of the 2008 Administration Regulations or regulation 93 of the 2014 Regulations where a Certificate of Protection of pension benefits has been issued in respect of a reduction or restriction in pay) including, where an earlier year’s pay has been used, PI under the Pensions Increase (Review) Order for the April of the Scheme year in which the member ceased to be an active member or attained their normal retirement age under the 2009 Scheme. Although PI is technically not a “benefit the member would have been entitled to under the 2009 Scheme”, because it is payable under the Pensions (Increase) Act 1971, it would be illogical not to include it in the calculation given that the 2009 Scheme specifically allowed an earlier year’s pay to be used in the benefit calculation which meant it became

⁴ Or, in the case of a councillor member, career average pay calculated in accordance with paragraph 1 of the Schedule to the 2008 Benefit Regulations.

an intrinsic part of the 2009 Scheme and the purpose of the underpin is to compare the member's post 2015 CARE pension (which does include revaluation) with the post 2015 pension the member would have received had they remained in the 2009 Scheme. It is important that the calculation compares apples with apples and not apples with pears.

If there is an underpin "guarantee amount" calculated at Step 3, move to Steps 4 to 10. To all intents and purposes where an underpin "guarantee amount" is paid, both

- a) the underpin "guarantee amount", and
- b) the amount of the pension in the member's post-15 pension account accrued prior to the member's 2009 NPA, but excluding any element of that post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence)

are treated as if they were pension accrued under the 2009 Scheme for the purposes of determining the actuarial reduction or actuarial increase due on them.

Furthermore –

- c) any amount of pension in the member's post-15 pension account accrued after the member's 2009 NPA, and
- d) any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence)

is treated as pension accrued under the 2015 Scheme for the purposes of determining the actuarial reduction or actuarial increase due on them (related to the member's NPA in the 2015 Scheme).

The rationale for (c) is that the underpin guarantee only applies for benefits accrued up to the member's NPA under the 2009 Scheme. The rationale for (d) is twofold. Firstly, regulations 4(5)(b)(i), 4(5)(c) and 4(5)(d) of the 2014 Transitional Regulations exclude the elements in (d) from the underpin calculation (and so they must, therefore, be paid in addition). Secondly, the amount of pension credited to the member's account from a transfer in and the amount of the additional pension purchased via the APC / SCAPC were based on the member's NPA under the 2015 Scheme.

Step 4

If, on or before attaining their normal retirement age under the 2009 Scheme, the member draws benefits on the grounds of permanent ill health, or on the grounds of redundancy or business efficiency, the underpin “guarantee amount” is added to the accrued post 2015 CARE pension and is payable without actuarial reduction (and the PI date attaching to the **total** pension is the day following the last day of the final pay period used to calculate the underpin amount).

Step 5

If the member

- (a) draws benefits under sub-paragraphs (d) to (f) in **Step 2**, and
- (b) this is before the member’s CRA / NRA under the 2009 Scheme

the underpin “guarantee amount” **and** the accrued post 2015 CARE pension (excluding any element of the member’s post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC, other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) are subject to an actuarial reduction to the member’s CRA / NRA under the 2009 Scheme (in accordance with the guidance on early payment of benefits issued by Scottish Ministers). The PI date attaching to that **total** pension is the day following the last day of the final pay period used to calculate the underpin amount.

Any element of the member’s post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) is subject to an actuarial reduction to the member’s NRA under the 2015 Scheme (in accordance with the guidance on early payment of benefits issued by Scottish Ministers). The PI date attaching to that element of the pension is, in the case of retirement under sub-paragraphs (d) and (e) in **Step 2** above, the day following the last day of membership and in the case of retirement under sub-paragraph (f) in **Step 2** above, the day the flexible benefits are payable from.

Step 6

If the member

- (a) draws benefits under sub-paragraphs (d) to (f) in **Step 2**, and
- (b) this is on or after the member's CRA but before the member's NRA under the 2009 Scheme

the underpin "guarantee amount" **and** the accrued post 2015 CARE pension (excluding any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC, other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) are subject to an actuarial reduction, **if any**, by reference to the member's CRA / NRA under the 2009 Scheme (in accordance with the guidance on early payment of benefits issued by Scottish Ministers). The PI date attaching to that **total** pension is the day following the last day of the final pay period used to calculate the underpin amount.

Any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) is subject to an actuarial reduction to the member's NRA under the 2015 Scheme (in accordance with the guidance on early payment of benefits issued by Scottish Ministers). The PI date attaching to that element of the pension is, in the case of retirement under sub-paragraphs (d) and (e) in **Step 2** above, the day following the last day of membership and in the case of retirement under sub-paragraph (f) in **Step 2** above, the day the flexible benefits are payable from.

Step 7

If the member

- (a) draws benefits under sub-paragraphs (d) to (f) in **Step 2**, and
- (b) this is on the member's NRA under the 2009 Scheme

the underpin "guarantee amount" **and** the accrued post 2015 CARE pension (excluding any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC, other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) are payable in full. The PI date attaching

to that **total** pension is the day following the last day of the final pay period used to calculate the underpin amount.

Any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) is subject to an actuarial reduction to the member's NRA under the 2015 Scheme (in accordance with the guidance on early payment of benefits issued by Scottish Ministers). The PI date attaching to that element of the pension is, in the case of retirement under sub-paragraphs (d) and (e) in **Step 2** above, the day following the last day of membership and in the case of retirement under sub-paragraph (f) in **Step 2** above, the day the flexible benefits are payable from.

Note:

If a member takes flexible retirement under regulation 29(6) of the 2014 Regulations on the member's NRA under the 2009 Scheme then the underpin calculation will be performed and applied at the member's NRA under the 2009 Scheme. An underpin does not apply to the benefits from the ongoing employment.

Step 8

If the member

- (a) ceases membership before or on attaining the member's normal retirement age under the 2009 Scheme, and
- (b) draws benefits after that age

the underpin "guarantee amount" **and** the accrued post 2015 CARE pension (excluding any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC, other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) are subject to an actuarial increase for the period of deferment beyond the member's NRA under the 2009 Scheme (in accordance with the guidance on late payment of benefits issued by Scottish Ministers). The PI date attaching to that **total** pension is the day following the last day of the final pay period used to calculate the underpin amount.

Any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) :-

- (i) is subject to an actuarial reduction to the member's NRA under the 2015 Scheme (in accordance with the guidance on early payment of benefits issued by Scottish Ministers) if drawn before the member's NRA under the 2015 Scheme, or
- (ii) is subject to an actuarial increase (in accordance with the guidance on late payment of benefits issued by Scottish Ministers) if drawn after the member's NRA under the 2015 Scheme.

The PI date attaching to that element of the pension is the day following the last day of membership.

Step 9

If the member

- (a) ceases active membership after attaining the member's normal retirement age under the 2009 Scheme and draws benefits, or
- (b) draws benefits upon flexible retirement under regulation 29(6) of the 2014 Regulations after attaining the member's normal retirement age under the 2009 Scheme

the underpin "guarantee amount" **and** the post 2015 CARE pension accrued to the member's normal retirement age under the 2009 Scheme (excluding any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC, other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) are subject to an actuarial increase for the period of deferment beyond the member's NRA under the 2009 Scheme (in accordance with the guidance on late payment of benefits issued by Scottish Ministers). The PI date attaching to that total pension (accrued to the member's normal retirement age under the 2009 Scheme) is the day following the last day of the final pay period used to calculate the underpin amount. It receives no subsequent Treasury Order increases.

The post 2015 CARE pension accrued after the member's normal retirement age under the 2009 Scheme and any element of the member's post-15 pension account which was derived from a transfer in or which relates to an APC / SCAPC (other than where the APC / SCAPC was to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of authorised unpaid leave of absence) :-

- (i) is subject to an actuarial reduction to the member's NRA under the 2015 Scheme (in accordance with the guidance on early payment of benefits issued by Scottish Ministers) if drawn before the member's NRA under the 2015 Scheme, or

- (ii) is subject to an actuarial increase (in accordance with the guidance on late payment of benefits issued by Scottish Ministers) if drawn after the member's NRA under the 2015 Scheme.

This element of the CARE pension accruing after the member's normal retirement age under the 2009 Scheme is subject to Treasury Order increases to the date of cessation of active membership and PI Orders thereafter (with the normal tweak being made to the Treasury Order increase in the year of leaving in order to avoid double indexation). The PI date attaching to that element of the pension is, in the case of (a) above, the day following the last day of membership and in the case of (b) above, the day the flexible benefits are payable from.

Note: If a member takes flexible retirement under regulation 29(6) of the 2014 Regulations after the member's NRA under the 2009 Scheme then the underpin calculation will be performed at the member's NRA under the 2009 Scheme. The underpin amount will be applied at the date of the flexible retirement. An underpin does not apply to the benefits from the ongoing employment.

General

Any underpin "guarantee amount" which is calculated will need to be apportioned to Part C2 and Part D2 as appropriate in order that the correct actuarial reduction can be applied (if drawn before the member's NPA under the 2009 Scheme). For example, if the member has membership from 1 April 2015 to 31 March 2021 (6 years), has final pay (2009 Scheme definition) of £40,000 and has an underpin "guarantee amount" of £91.67, the underpin amount would be allocated as follows:

	C2					D2	
	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
CARE accrued (revalued)	£850.00	£650.00	£600.00	£650.00	£625.00	£650.00	£550.00
Total CARE	£3,375.00					£1,200.00	
2009 Scheme comparison	$5/60 \times £40,000 = £3,333.33$					$2/60 \times £40,000 = £1,333.33$	
Difference	-£41.67					+£133.33	
Total	£3,333.33					£1,333.33	

This method of allocation ensures that where a member is subject to the 85 year rule the actuarial reduction applicable to Part C2 and Part D2 membership is applied to the amount of pension the member would actually have earned as Part C2 or Part D2 membership had they remained in the 2009 Scheme.

If a member subject to the underpin:

- leaves with a deferred benefit with an underpin “guarantee amount” attached,
- does not opt to draw those benefits
- rejoins the LGPS, and
- elects to retain separate benefits

the relevant administering authority should seek guidance from SPPA as to how / when the underpin “guarantee amount” is ultimately to be calculated / applied.

As any underpin amount, once calculated, will be held as a “guarantee amount”, the amount should not be shown on Annual Benefit Statements (or Annual Allowance Statements for members who have not commenced drawing their benefits prior to the end of the Pension Input Period to which the Annual Allowance Statement relates).

The appropriate proportion of any underpin calculated for the member flows through to any survivor benefits subsequently payable.

More information on the underpin can be found in the Underpin paper which is available in the Administration Guides to the 2015 Scheme section under the Scotland – LGPS 2015 tab at www.lgpsregs.org. That Underpin paper also contains an annex covering other potential issues connected with the Underpin i.e.

- Does the Underpin apply to a member with deferred benefits who does not aggregate membership?
- Does the Underpin apply where a member was in another public service pension scheme on 1 April 2012?
- Is the Underpin comparison calculated pre or post actuarial reduction?
- When is the Underpin calculation performed if, after 31 March 2015, a member continues in active membership beyond the 2009 Scheme NPA?

Protection - Rule of 85

Rule of 85 protections carry forward into LGPS2015 which means that Critical Retirement Age (CRA) under the 2009 Scheme is cast in stone. In their previous guidance on actuarial reductions, GAD gave the following table:

	Group 1	Group 2	Group 3
Part A	CRA	CRA	65
Part B	CRA	65	65
Part C	CRA	65	65
Part D	65	65	65

CRA and 65 refer to the rule that applies in calculating any actuarial reduction i.e. will it be based on how much earlier you have retired than your CRA or your 65th birthday. Parts, Groups and CRA are further explained below.

Parts

- Part A: membership to 31st March 2008
- Part B: membership 1st April 2008 to 31st March 2009
- Part C: membership 1st April 2009 to 31st March 2020
- Part D: membership 1st April 2020 onwards

Groups

- Group 1 member: a member who was an active member prior to 1st December 2006 and who was born on 31st March 1960 or earlier
- Group 2 member: a member who was an active member prior to 1st December 2006 and who was born on 1st April 1960 or later
- Group 3 member: a member who was not a member prior to 1st December 2006.

CRA

CRA is the earlier of

- a) the member's pre 1st December 2006 Normal Retirement Date which some members who joined the Scheme before 1st April 1998 had under Regulation 24 of the 1998 regulations (prior to being amended by SSI 2006/514);
- b) the earliest date at which the member would have satisfied the 85 year rule had the member remained in service, calculated in accordance with paragraph 4 of Schedule 2 to the 2014 Transitional Regulations, and
- c) age 65.

BUT CRA cannot be earlier than 60 for early retirements under Regulation 29(5) of the 2014 Regulations which the employer has agreed to under regulation 29(13) of those Regulations unless the employer has agreed, under paragraph 1(1)(c) of Schedule 2 to the 2014 Transitional Regulations that it should be.

2015 Scheme

These protections were difficult enough to explain but with the advent of LGPS2015 it will be necessary to expand GAD's table even further in order for the protections to remain as they were. This is because LGPS2015 links Normal Pension Age (NPA) to State Pension Age (SPA) from 1 April 2015 but Group 1 members have rule of 85 protection until 31 March 2020. That protection is based on age 65 and not NPA.

For example, a member retiring at 66 who would meet the 85 year rule at 65½ would still have a protected CRA of 65. Thus, if that member was a Group 1 member and retired at age 60 they would have an actuarial reduction on their pre 1 April 2020 membership for retiring 5 years earlier than their CRA and not an actuarial reduction for retiring 5½ years early. The CRA cannot be later than age 65.

In addition, although Part D membership is described as membership from 1 April 2020, some things already count as Part D (e.g. certain transfers in and augmented membership) and they will have been awarded based on formulae expecting retirement at age 65 and not NPA.

The table and its parts have therefore been revised as follows:

- Part A: membership to 31st March 2008
- Part B: membership 1st April 2008 to 31st March 2009
- Part C1: membership 1st April 2009 to 31st March 2015
- Part C2: membership 1st April 2015 to 31st March 2020
- Part D1 membership served 1st April 2020 onwards
- Part D2 membership not served but counting as 1st April 2020 onwards

	Group 1	Group 2	Group 3
Part A	CRA (can't be later than 65)	CRA (can't be later than 65)	65
Part B	CRA (can't be later than 65)	65	65
Part C1	CRA (can't be later than 65)	65	65
Part C2	CRA (can't be later than 65)	SPA (min 65)	SPA (min 65)
Part D1	SPA	SPA	SPA
Part D2	65	65	65

Although this may look quite complicated, essentially the only change to the existing position is where the acronym "SPA" appears. This refers to a person's "new" State Pension Age subject to a minimum age of 65.

Notes to the above table:

1. Membership credited under Regulation 79 of the 2008 Administration Regulations or equivalent previous Regulations, or under regulation 9 of the 2014 Transitional Regulations (transferred-in membership), in respect of Group 1 or 2 members should:
 - a) if the transfer occurred before 1 April 2008, be treated as Part A Membership
 - b) if the member was an active member immediately before 1 April 2008 and the Membership was credited under Regulation 79 of the Administration Regulations on or after 1 April 2008 and before 1 April 2015, the Membership should be treated as Part A Membership
 - c) if the member was **not** an active member immediately before 1 April 2008 and the Membership was credited under Regulation 79 of the Administration Regulations on or after 1 April 2008 and

before 1 April 2015, the Membership should be treated as Part D2 Membership but note that such credited membership drags forward the 85 year rule for any pre-existing membership

- d) if the Membership was credited under regulation 9 of the 2014 Transitional Regulations where the relevant date was before 1 April 2015, the Membership should be treated as Part A membership if the member was an active member immediately before 1 April 2008 and, in any other case, Part D2 Membership but note that such credited membership does **not** drag forward the 85 year rule for any pre-existing membership.
2. Membership credited under Regulation 79 of the 2008 Administration Regulations or equivalent previous Regulations, or under regulation 9 of the 2014 Transitional Regulations (transferred-in membership), in respect of Group 3 members should:
 - a) if the Membership was credited under Regulation 79 of the Administration Regulations and the member joined between 1 December 2006 and 31 March 2009, be treated as Part A or Part B Membership, as appropriate.
 - b) if the Membership was credited under Regulation 79 of the Administration Regulations and the member joined between 1 April 2009 and 31 March 2015, be treated as Part D2 Membership.
 - c) if the Membership was credited under regulation 9 of the 2014 Transitional Regulations where the relevant date was before 1 April 2015, the Membership should be treated as Part A or part B Membership, as appropriate, if the member joined between 1 December 2006 and 31 March 2009 or as Part D2 Membership if the member joined between 1 April 2009 and 31 March 2015.
 3. Pension purchased by a transfer in under the LGPS (Scotland) Regulations 2014 (other than from the LGPS) and credited in to the member's post 31 March 2015 pension account will purchase Part D1 benefits and will not drag forward the 85 year rule for any pre-existing membership (because it is purchasing an amount of pension, not membership).
 4. Membership purchased under regulations 54 and 82 of the LGPS (Scotland) Regulations 1998 or equivalent previous Regulations (added years) should be treated as Part A Membership if the election was before 1 December 2006 and the contributions were due to cease before the member's 65th birthday. Other Membership under Regulation 54 of the LGPS (Scotland) Regulations 1998 (where the contributions were due to cease on the member's 65th birthday or where the contract was taken out between 1 December 2006 and 31 March 2009) should be treated as Part D2 Membership.

5. Membership credited under Regulation 36 of the 2008 Administration Regulations or the equivalent in previous Regulations e.g. regulation 51 of the LGPS (Scotland) Regulations 1998 (Employer Augmented Membership) in respect of Group 1 or 2 members should be treated as Part A Membership if it was credited before 1 April 2008. Other Membership under Regulation 36 of the 2008 Administration Regulations or the equivalent in previous Regulations should be treated as Part D2 Membership, except for Group 3 members who joined between 1 December 2006 and 31 March 2009, for whom it should be treated as Part A or Part B Membership, as appropriate.
6. Membership granted by the employer under regulation 52 of the LGPS (Scotland) Regulations 1998 will count as Part A Membership.
7. Pension awarded under Regulation 20 of the 2008 Administration Regulations (pension purchased by an ARC), as continued in effect by regulation 15(1)(d) of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014, should be treated as if it is payable unreduced from age 65.
8. Pension awarded under regulations 16 or 30 of the 2014 Regulations (pension purchased by an APC or SCAPC) is treated as payable from Normal Pension Age under the 2015 Scheme i.e. Part D1.
9. A transfer credit awarded under protected regulation 65(8) of the LGPS (Scotland) Regulations 1998 or equivalent previous Regulations should be reduced if it is taken earlier than the retirement age assumed for the calculation of the credit. For example, transfer credits awarded on or after 25 October 2011 (including transfer credits awarded after 1 April 2015) are calculated based on a retirement age of 65. Therefore, if taken before age 65, a reduction factor should be applied to the pension based on the period from the date of early retirement to age 65. Similarly, if a credit was previously calculated based on a member's CRA, then if taken early the pension should be reduced based on the period from the date of early retirement to the CRA.
10. Where:
 - (i) regulation 5(1) of the 2014 Transitional Regulations applies, or is deemed to apply by virtue of regulation 5(5) of those Regulations, and
 - (ii) the member subsequently left with a deferred pension or deferred refund, and
 - (iii) the member subsequently rejoins the LGPS after a break of more than 5 years in membership of a public service pension scheme, and

- (iv) the membership is aggregated

OR

- (i) the member left with a deferred benefit pre 1 April 2015, and
- (ii) regulation 5(1) of the 2014 Transitional Regulations does not apply, and is not deemed to apply under regulation 5(5) of those Regulations, and
- (iii) the member rejoins the LGPS after 31 March 2015 , and
- (iv) the membership is aggregated

OR

- (i) the member left with a deferred refund pre 1 April 2015, and
- (ii) regulation 5(1) of the 2014 Transitional Regulations does not apply, and
- (iii) the member rejoins the LGPS after 31 March 2015, and
- (iv) the membership is aggregated

the amount of CARE pension purchased by the transfer will reflect the fact that the CETV for the earlier membership will have been calculated by reference to the member's 85 year rule and will be treated as Part D1 membership. Thus, where a member rejoins and aggregates membership under regulations 10(3) to (6) of the 2014 Transitional Regulations, the cash equivalent transfer value in respect of the benefits being aggregated would reflect the effect of the 85 year rule applicable to those benefits. The CETV would recognise the member's 85 year rule and so would produce a higher CETV than if the member had not been subject to the 85 year rule and the amount of CARE pension bought by this CETV will therefore be higher than the amount bought by a member not subject to the 85 year rule.

The 85 year rule will continue to apply to that part of the member's post 2015 CARE pension accruing after rejoining if the member is a Group 1 member and rejoins before 1 April 2020 and, where that is the case, the qualifying period of membership that counted towards the 85 year rule in the calculation of the CETV for the earlier membership will count as 'qualifying' service towards when the 85 year rule is met for that part of the CARE pension accrued after rejoining the Scheme (but not for the CARE pension derived from the CETV, as the amount of pension

credited from that CETV will already have compensated for the 'loss' of the 85 year rule on that part of the benefits).

Membership and CRA

The following counts as membership when calculating the CRA for the purposes of the 85 year rule:

- total membership under the Earlier Schemes (i.e. under the 1974, 1987, 1998 and 2009 Schemes) which counts as membership in relation to the employment, including membership granted by the employer under regulations 51 or 52 of the LGPS (Scotland) Regulations 1998 including any aggregated membership (but see note 8)
- the total period for which the member has paid, or is treated as having paid, contributions under regulations 9 or 10 of the 2014 Regulations in relation to the employment, including any period of absence due to sickness or injury, child related leave (ordinary maternity, paternity and adoption leave or paid shared parental leave and paid additional maternity or adoption leave) or reserve forces service leave
- any period after 31 March 2015 of unpaid leave of absence due to industrial action, or absence from work with permission with no pensionable pay (other than because of illness or injury, child related leave or reserve forces service leave) provided contributions have been paid under regulation 16 of the 2014 Regulations (APCs and SCAPCs) to cover the whole of that period of absence
- any membership purchased under an added years contract in accordance with regulations 54 and 82 of the LGPS (Scotland) Regulations 1998 or equivalent Earlier Regulations, as continued in effect by regulations 15(1)(a) and (c) of the 2014 Transitional Regulations
- any membership credited on or before 1 February 2013 under Regulation 79 of the 2008 Administration Regulations or equivalent Earlier Regulations (transferred-in membership)
- any membership from a transfer credit awarded under protected regulation 65(8) of the LGPS (Scotland) Regulations 1998 or equivalent Earlier Regulations, as continued in effect by regulation 15(1)(b) of the 2014 Transitional Regulations
- membership after taking flexible retirement under regulation 31(4) of the 2014 Regulations, regulation 18 of the 2008 Benefit Regulations, or regulation 34(1A) of the LGPS (Scotland) Regulations 1998 (but only for the purposes of calculating the 85 year rule applicable to that part of benefits not drawn upon partial flexible retirement)

- the qualifying period counted by virtue of regulation 123 of the LGPS (Scotland) Regulations 1998 (qualifying service from a transfer in where the period in the former scheme exceeds the membership credited in the LGPS) where that qualifying service was awarded before 1 April 2008 to a person who was a member of the 1987 Scheme before 1 April 1998
- the notional period of membership between the date of cessation of active membership and the member's normal pension age (under the 2009 Scheme – normally age 65)
- the period of qualifying service from an earlier deferred benefit or frozen refund which has subsequently been aggregated and has bought an amount of pension in a CARE account (see note 10).

The following does not count as membership when calculating the CRA for the purposes of the 85 year rule:

- any membership credited under regulation 12 of the 2008 Benefit Regulations (power of employing authority to increase total membership of active members)
- any membership credited after 1 February 2013 under Regulation 79 of the 2008 Administration Regulations or under regulation 9 of the 2014 Transitional Regulations (transferred-in membership)
- membership after taking flexible retirement under regulation 31(4) of the 2014 Regulations, regulation 18 of the 2008 Benefit Regulations, or regulation 34(1A) of the LGPS (Scotland) Regulations 1998 (except for the purposes of calculating the 85 year rule applicable to that part of benefits not drawn upon partial flexible retirement), or
- in relation to a later period of membership, any period of membership that could have been aggregated with that later period of membership but which the member chose not to aggregate

The 85 year rule continues to apply to any period of membership to which it formally applied but which is not aggregated with a later period of membership (e.g. if a member with a deferred benefit to which the 85 year rule applies joins the LGPS in a new employment and does not aggregate the deferred membership with the new period of membership, the 85 year rule continues to apply to the deferred benefit but the membership from the unaggregated deferred benefit does not count towards the 85 year rule in the new employment).

More information on the 85 year rule can be found in the 85 Year Rule paper which is available in the Administration Guides to the 2015 Scheme section under the Scotland – LGPS 2015 tab at www.lgpsregs.org.

8) DEATH BENEFITS

Death Grants

Active members

The death in service lump sum changes from being three times final pay to being three times Assumed Pensionable Pay (per active membership i.e. there can be more than one death in service lump sum if the member has multiple active memberships).

However, if the member also has, from membership of the LGPS in Scotland, a deferred pension or a pension in payment, the lump sum death grant that would be payable from the Scheme if the member dies in service should be the aggregate death in service lump sum or the aggregate lump sum death grants due from those earlier benefits, whichever is the greater.

In such a case, if the aggregate death in service lump sum is the greater, no lump sum death grant should be payable from the Scheme in respect of those earlier benefits; conversely, if the lump sum death grant from those earlier benefits is greater, no death in service lump sum should be due from the current period of membership.

Administering authorities will, therefore, need to ensure that, before paying out any death grant, they obtain a declaration from the recipient to say that

- a) to the best of their knowledge, the deceased has no other benefits in the LGPS in Scotland (other than a survivor's pension or pension credit) and that, should the declaration turn out to be incorrect, they will refund to the Pension Fund any resulting overpayment, or
- b) the deceased does have other benefits in the LGPS in Scotland (other than a survivor's pension or pension credit) in which case details will need to be supplied e.g. is it a deferred pension or a pension in payment, which Fund is it held in, etc.

The Assumed Pensionable Pay used to determine the amount of the death grant is calculated in the normal way except where a scheme member holds the post of returning officer at local government elections or Parliamentary elections (including Scottish Parliamentary elections) or as a regional or local returning officer at European Parliamentary elections. The APP figure for that post 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 death occurred.

Deferreds

The death grant calculation for a deferred member is the same as under the 2009 Scheme i.e. it is 5 times the deferred pension (including any part of the deferred pension that relates to pre-1 April 2015 membership).

Deferred pension credit members

The death grant for a pension credit member who dies before the pension credit is brought into payment is the same as under the 2009 Scheme i.e. it is 5 times the credited pension (including any part of the deferred pension credit that relates to pre-1 April 2015 membership).

Pensioners

Under the 2009 Scheme, the amount of death grant for a pensioner is 10 times the post-commutation pension reduced by the post-commutation pension paid between retirement and death. However for the 2015 Scheme, the death grant for a pensioner should, for the post-2015 element of the pension, be 10 times the pre-commutation pension less the amount of pension paid between retirement and death and the commuted lump sum.

This does give a different result, of course, because the guarantee is a ten year one and the commutation factor is 12. Take this example:

Pre-commutation pension = £12,000

Amount commuted = £1,200

Post commutation pension = £10,800

Commuted Lump Sum = £14,400

Dies after 5 years exactly

$$\begin{aligned}\text{All pre-15} &= (\text{£}10,800 \times 10) - (\text{£}10,800 \times 5) \\ &= \text{£}108,000 - \text{£}54,000 \\ &= \text{£}54,000 \text{ (plus Pensions Increase)}\end{aligned}$$

$$\begin{aligned}\text{All post-15} &= (\text{£}12,000 \times 10) - (\text{£}10,800 \times 5) - \text{£}14,400 \\ &= \text{£}120,000 - \text{£}54,000 - \text{£}14,400\end{aligned}$$

= £51,600 (plus Pensions Increase)

Mixed = a little trickier – see next page

Basically, the pre-15 part is calculated the “old” way and the post-15 the “new”. Let’s say of the £12,000 total pre-commutation pension, £9,000 was pre-15 and £3,000 was post-15. For the purposes of the death grant, the pension commuted is split proportionately between the pre-15 and post-15 pension amounts.

So in our case, the member has pre-commutation pension of £12,000 of which £9,000 (75%) is pre-15 and £3,000 (25%) is post-15.

The member commuted £1,200 and for the purposes of the death grant calculation £900 (i.e. 75%) relates to pre-15 and £300 (i.e. 25%) relates to post-15.

So, at retirement, the pre-15 pension is:

$$£9,000 - (£1,200 \times 75\%) = £8,100$$

And the post-15 pension is:

$$£3,000 - (£1,200 \times 25\%) = £2,700$$

The amount of lump sum paid via commutation of pension is:

$$£1,200 \times 12 = £14,400$$

Using the same proportioning, £10,800 is pre-15 and £3,600 is post-15.

The death grant payable is calculated as:

Pre-15:	(£8,100 x 10) – (£8,100 x 5)	= £40,500
Post-15:	(£3,000 x 10) – (£2,700 x 5) - £3,600	= <u>£12,900</u>
Total		= <u>£53,400</u> (plus PI)

It should be noted that for anyone who commutes pension for lump sum on retirement, using the term “10 year guarantee of pension payments” could be termed misleading as the death grant entitlement **will** become nil before the expiration of ten years.

Pension credit pensioners

The death grant for a pension credit member in receipt of a pension is calculated in the same way as for a normal pensioner member.

Declaration

As mentioned earlier, if a member dies in service and also has, from membership of an LGPS Fund in Scotland, a deferred pension or a pension in payment, the lump sum death grant that is payable from the Scheme if the member dies in service should be the greater of death in service lump sum or the lump sum death grant due from those earlier benefits, whichever is the greater.

Administering authorities will, therefore, need to ensure that, before paying out any death grant they obtain a declaration from the recipient to say that

- a) to the best of their knowledge, the deceased has no other benefits in the LGPS in Scotland (other than a survivor's pension or pension credit) and that, should the declaration turn out to be incorrect, they will refund to the Pension Fund any resulting overpayment, or
- b) the deceased does have other benefits in the LGPS in Scotland (other than a survivor's pension or pension credit) in which case details will need to be supplied e.g. is it a deferred pension or a pension in payment, which Fund is it held in, etc.

Survivor Benefits

General

From 1 April 2015 it is no longer necessary for a cohabiting partner to be nominated for a pension. It is, however, still necessary on death to evidence that the conditions for a cohabitee's pension are met (e.g. financial dependency/interdependency, cohabitation etc.).

Following a tidying up of the rules in respect of pre and post leaving marriages, the difference between what membership counted under the 2009 Scheme and what membership counts under the 2015 Scheme and the 2014 Transitional Regulations for deaths occurring after 31 March 2015 can now be summarised in the table below.

Type	2009 Scheme	2015 Scheme and TP Regs
Widow of pre-leaving opposite sex marriage	All membership	All membership
Widow of post-leaving opposite sex marriage***	Post 5/4/78 contracted-out membership	Post 5/4/78 membership plus RAM
Widower of pre-leaving opposite sex marriage	All membership	All membership
Widower of post-leaving opposite sex marriage***	Post 5/4/88 membership plus RAM	Post 5/4/88 membership plus RAM
Civil partner of pre-leaving civil partnership	Post 5/4/88 membership plus RAM	Post 5/4/88 membership plus RAM
Civil partner of post-leaving civil partnership***	Post 5/4/88 membership plus RAM	Post 5/4/88 membership plus RAM

Type	2009 Scheme	2015 Scheme and TP Regs
Female survivor of same sex pre-leaving marriage	Post 5/4/88 membership plus RAM*	All membership
Female survivor of same sex post-leaving marriage***	Post 5/4/88 membership plus RAM*	Post 5/4/88 membership plus RAM*
Male survivor of same sex pre-leaving marriage	Post 5/4/88 membership plus RAM*	All membership
Male survivor of same sex post-leaving marriage***	Post 5/4/88 membership plus RAM*	Post 5/4/88 membership plus RAM*
Cohabiting partner** – cohabitation commenced pre-leaving	Post 5/4/88 membership plus ASBCs	Post 5/4/88 membership plus RAM plus ASBCs
Cohabiting partner** – cohabitation commenced post-leaving***	Post 5/4/88 membership plus ASBCs	Post 5/4/88 membership plus RAM plus ASBCs

* Same as for civil partner.

** For deaths on or after 1 April 2015 of members who ceased active membership after 31 March 2009 there is no requirement for the survivor to have been nominated by the deceased member for a surviving cohabiting partner's pension.

*** It should be noted that in the case of any post-leaving spouse or partner's pension RAM only counts if the person was previously married to the **same** spouse/civil partner whilst in active membership sometime after 31 March 1972 or was cohabiting with the **same** eligible cohabitee sometime after 31 March 2009.

The items highlighted in grey in the preceding table indicate where there is a difference between the provisions that applied under the 2009 Scheme and

the provisions that now apply for deaths after 31 March 2015. Where a member retired pre-1 April 2015 and dies on or after that date, the survivor benefits are payable under the relevant Earlier Scheme where the survivor would have been entitled to a survivor benefit under that Earlier Scheme but, on account of the 2014 Transitional Regulations, the membership upon which the survivor benefit is calculated is as shown in the “2015 Scheme” column.

It is fair to say that the same applies to benefit entitlements under the 1987 and 1998 Schemes too (e.g. for deaths post 31 March 2015, post 5/4/78 membership rather than only post 5/4/78 contracted out membership, counts in the calculation of a pension for a widow of a post-retirement opposite sex marriage). For a more comprehensive listing of the effect of the 2015 Transitional Regulations on all the earlier schemes, please see the “Survivor Benefits” paper which can be found in the Administration Guides section under the Scotland – LGPS 2015 tab at www.lgpsregs.org.

Where the member has pre and post-15 benefits the pre-1 April 2015 survivor benefits (as modified by the Transitional Regulations) are added to the post-31 March 2015 survivor benefits.

For deaths that occurred prior to 1 April 2015 the provisions under the Earlier Schemes continued to apply (i.e. unmodified).

Finally, the references to same-sex marriage survivor benefits in the 2009 Scheme column of the table are made on the assumption that the necessary regulatory amendments are made by SPPA as a consequence of the Marriage and Civil Partnership (Scotland) Act 2014.

Amount of survivor’s pension

Following the death of a member, a survivor member’s pension account has to be opened for the surviving spouse, civil partner or cohabiting partner. Into that account has to be placed a proportion of the member’s pension. However, it is, for several reasons, not as simple as a straightforward proportion of the value in the member’s pension account immediately before death (e.g. the member might have been a member of the 50/50 Section at some time). If there is more than one surviving spouse, they jointly become entitled to equal shares of the spouse’s pension.

It is important to note that the following sub-sections refer to the CARE element of survivor pensions only and the pre-15 membership-based calculation is performed in addition.

Death in service

In the case of death in service, the value to be placed in the survivor member's pension account is calculated by taking:

- a) the member's accrued pension as if they had been entitled to draw a pension on the date of the member's death which was not subjected to actuarial adjustment relating to the age at which it was drawn, or adjustment following a Scheme pays election, but was subject to any pension debit applied on account of a pension sharing order, but ignoring
- b) any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension), and
- c) recalculating it as if it had accrued at a rate of $1/160^{\text{th}}$ of pensionable pay, and
- d) then adding any pension credited under regulation 99(1) (effect of acceptance of transfer value) but multiplied by $49/160^{\text{th}}$;
- e) then adding a sum equivalent to $1/160^{\text{th}}$ of the member's APP as at the date of death, for each year or fraction of a year between the date of the member's death and the member's NPA; and
- f) adding $60/160^{\text{th}}$ of any underpin amount the deceased would have been entitled to.

Note that, for the purposes of (e) above, where the deceased was covered by regulation 20(5) of the 2008 Benefit Regulations (minimum ill health enhancement for those who were active members before 1 April 2009), this will also apply to the calculation of the survivor's pension.

The survivor's pension is increased at the beginning of the Scheme year following death by the Treasury Order Revaluation, in accordance with actuarial guidance issued by Scottish Ministers.

Deferred members

In the case of the death of a deferred member the survivor member's pension account is calculated by taking (a) to (d) and (f) above but (e) is not applicable.

If the member died in the same Scheme year that they became a deferred member the survivor's pension is increased at the beginning of the next

Scheme year by the Treasury Order Revaluation in accordance with actuarial guidance issued by Scottish Ministers.

Pensioner members (other than pension credit pensioner members, as no survivor benefits attach to such members)

In the case of the death of a pensioner member, the survivor member's pension account is calculated by taking (a) to (d) above but (e) is not applicable.

Added to this is:

- f) 60/160th of any underpin amount the deceased was entitled to; and
- g) 49/160th of any pension purchased by the member using AVCs.

It should be noted that in addition, when calculating the sum under (a) any ill health enhancement is included and any commutation of pension for lump sum should be disregarded.

If, in the same Scheme year, the member ceased to be an active member, became a pensioner member and died, the survivor's pension is increased at the beginning of the next Scheme year by the Treasury Order Revaluation in accordance with actuarial guidance issued by Scottish Ministers.

Childrens' Pensions

Definition of an eligible child

Over the years, the definition of an eligible child has altered several times and in introducing the 2015 Scheme, the opportunity has been taken to redefine an eligible child as follows:

"eligible child", in relation to a deceased member, means—

- a) *a natural or adopted child of a member who meets any of conditions A to C and who was born before, on, or in the case of a natural child, within 12 months of the member's death; or*
- b) *a step-child or child accepted by the deceased as a member of the family (excluding a child sponsored by the member through a registered charity) who—*
 - (i) *meets any of conditions A to C; and*
 - (ii) *was dependent on the member at the date of death.*

Condition A is that the person is aged under 18.

Condition B is that the person is in full-time education or vocational training and has not reached the age of 23 (but the Administering Authority may continue to treat a person as fulfilling Condition B notwithstanding any break in a course of education or vocational training, although the person does not fulfil Condition B during such a break).

Condition C is that the person is unable to engage in gainful employment because of physical or mental impairment and either—

- (i) has not reached the age of 23; or*
- (ii) the impairment is in the opinion of an IRMP likely to be permanent and the person was dependent on the member at the date of the member's death because of that physical or mental impairment.*
- (iii) "employment" for the purposes of these Regulations only shall include holding an office, with necessary modifications to these Regulations, if any, in respect of a person holding an office;*
- (iv) "enactment" has the same meaning as in section 126(1) of the Scotland Act 1998(a);*

It is important to understand that this definition, by virtue of the 2014 Transitional Regulations, also applies to benefits under the Earlier Schemes **providing that** the death occurs on or after 1 April 2015.

Amount of Child's pension

Following the death of a member, a survivor member's pension account has to be opened for the eligible child or children. Into that account has to be placed a proportion of the member's pension. However, it is, for several reasons, not as simple as a straightforward proportion of the value in the member's pension account immediately before death (e.g. the member might have been a member of the 50/50 Section at some time).

It is important to note that the following sub-sections refer to the CARE element of a child's pension only and the pre-15 membership-based calculation is performed in addition.

Death in service

In the case of death in service, if there is a single eligible child and there is also a survivor's pension payable, the value to be placed in the childrens' pension account is calculated by taking:

- a) the member's accrued pension as if they had been entitled to draw a pension on the date of the member's death which was not subjected to actuarial adjustment relating to the age at which it was drawn, or

adjustment following a Scheme pays election or any pension debit applied on account of a pension sharing order, but ignoring

- b) any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension), and
- c) recalculating it as if it had accrued at a rate of $1/320^{\text{th}}$ of pensionable pay, and
- d) then adding any pension credited under regulation 99(1) (effect of acceptance of transfer value) but multiplied by $49/320^{\text{th}}$;
- e) then adding a sum equivalent to $1/320^{\text{th}}$ of the member's APP as at the date of death, for each year or fraction of a year between the date of the member's death and the member's NPA; and
- f) adding $60/320^{\text{th}}$ of any underpin amount the deceased would have been entitled to.

Note that, for the purposes of (e) above, where the deceased was covered by regulation 20(5) of the 2008 Benefit Regulations (minimum ill health enhancement for those who were active members before 1 April 2009), this will also apply to the calculation of the survivor's pension.

Where there are two or more eligible children, they share a pension calculated as above (and divided equally amongst them) but with the fraction $1/320^{\text{th}}$ replaced by $1/160^{\text{th}}$ and the fraction $49/320^{\text{th}}$ replaced by $49/160^{\text{th}}$ and the fraction $60/320^{\text{th}}$ replaced by $60/160^{\text{th}}$ wherever they appear. The regulations explicitly state that where there are two eligible children reducing to one the amount payable to the remaining eligible child is not altered.

Where there are no other survivor pensions in payment (other than a child's pension), the fractions of $1/160^{\text{th}}$ and $1/320^{\text{th}}$ are replaced by $1/120^{\text{th}}$ and $1/240^{\text{th}}$ respectively, and the fractions $49/160^{\text{th}}$ and $49/320^{\text{th}}$ are replaced by $49/120$ and $49/240$ respectively and the fractions $60/160^{\text{th}}$ and $60/320^{\text{th}}$ are replaced by $60/120^{\text{th}}$ and $60/240^{\text{th}}$ respectively. The regulations are also explicit in that, in the case of another survivor pension ceasing (leaving the child/children's pension the only survivor benefit payable) the child/children's benefits are enhanced accordingly.

The child's/childrens' pension is increased at the beginning of the Scheme year following death by the Treasury Order Revaluation, in accordance with actuarial guidance issued by Scottish Ministers.

Deferred members

In the case of the death of a deferred member the survivor member's pension account is calculated by taking (a) to (d) and (f) above, with the appropriate fractions as shown for a death in service, but (e) is not applicable.

If the member died in the same Scheme year that they became a deferred member the child's/childrens' pension is increased at the beginning of the next Scheme year by the Treasury Order Revaluation in accordance with actuarial guidance issued by Scottish Ministers.

Pensioner members (other than pension credit pensioner members)

In the case of the death of a pensioner member, the survivor member's pension account is calculated by taking (a) to (d) above but (e) is not applicable.

It should be noted that in addition, when calculating the sum under (a), any ill health enhancement is included and any commutation of pension for lump sum should be disregarded.

Added to this is:

- f) where there is another survivor pension payable (other than a child's pension) $60/320^{\text{th}}$ of any underpin amount the deceased was entitled to (if there is one eligible child) or $60/160^{\text{th}}$ of any underpin amount the deceased was entitled to (if there are two or more eligible children);
- g) where there is no other survivor pension payable (other than a child's pension) $60/240^{\text{th}}$ of any underpin amount the deceased was entitled to (if there is one eligible child) or $60/120^{\text{th}}$ of any underpin amount the deceased was entitled to (if there are two or more eligible children);
- h) where there is another survivor pension payable (other than a child's pension) $49/320^{\text{th}}$ (if there is one eligible child) or $49/160^{\text{th}}$ (if there are two or more eligible children) of any pension purchased by the member using AVCs;
- i) where there is no other survivor pension payable (other than a child's pension) $49/240^{\text{th}}$ (if there is one eligible child) or $49/120^{\text{th}}$ (if there are two or more eligible children) of any pension purchased by the member using AVCs.

If, in the same Scheme year, the member ceased to be an active member, became a pensioner member and died, the child's / childrens' pension is increased at the beginning of the next Scheme year by the Treasury Order Revaluation in accordance with actuarial guidance issued by Scottish Ministers.

9) ANNUAL BENEFIT STATEMENTS

The following is a flavour of the information to be provided on annual benefit statements being issued in 2015 and then in 2016 and beyond. More comprehensive information, including a series of notes to the bullet points below, can be found in the “Annual Benefit Statements” paper which is available in the Administration Guides to the 2015 Scheme section under the Scotland – LGPS 2015 tab at www.lgpsregs.org

Annual Benefit Statement - 2014/15

The LGPC Secretariat believes that, in respect of defined benefits, the 2014/15 Annual Benefit Statements for active members (which must be issued by the time limit shown in 2008 Administration Regulation 62(2)):

- i) must show the current value of the member’s final salary benefits (pension and any 3/80ths lump sum) accrued at 31 March 2015 (payable from the member’s Normal Pension Age under the 2009 Scheme) and the member’s prospective survivor benefits based on membership accrued to 31 March 2015.
- ii) must show the pensionable pay figure upon which the member’s benefits, and the prospective survivor benefits, shown in (i) have been calculated.
- iii) should **not** include any projection of the member’s or prospective survivor’s benefits i.e. for prospective membership beyond 31 March 2015.
- iv) should include an explanation of why there is no projection of the member’s benefits for prospective membership beyond 31 March 2015 (as the benefits post 31 March 2015 will be CARE benefits and we don’t know in advance what they might be – as they are based on pensionable pay in the 2015 scheme).
- v) must show the current value of death in service survivor benefits accrued at 31 March 2015 together with the death in service lump sum at 31 March 2015, and how they are calculated.
- vi) may show the date on which the member’s pensionable service started in that employment.
- vii) may show a summary of the method for calculating the member’s benefits and any survivors’ benefits.
- viii) must show how any deduction from benefits is calculated.

With regard to pension sharing debits and annual allowance scheme debits, it is assumed these should be based on an assumption that the member will draw their benefits at NPA and the statement should give an explanation as to how the debits would alter if benefits were drawn earlier or later.

Annual Benefit Statement - 2015/16 onwards

The LGPC Secretariat believes that, in respect of defined benefits, the Annual Benefit Statements for active members for 2015/16 onwards (to be issued by **no later than 31 August**⁵ each year):

- i) must show the current value of the member's final salary benefits (pension and any 3/80ths lump sum), if any, based on membership accrued to 31 March 2015 (payable from the member's new Normal Pension Age under the 2015 Scheme) and the member's prospective final salary survivor benefits, if any, based on membership accrued to 31 March 2015 and any membership purchased under an added years contract as at the relevant 31 March (e.g. at 31 March 2016 for the 2015/16 Annual Benefits Statement). These should be based on the Full-Time equivalent (FTE) final pay figure supplied to the Administering Authority by the employer as at the relevant 31 March. The ABS should not assume any future pay inflation for any pre-1 April 2015 final salary benefits.
- ii) must show the full-time equivalent (FTE) final pay figure upon which the member's final salary benefits and the prospective final salary survivor benefits shown in (i) have been calculated.
- iii) must show the total accrued CARE pension (payable from the member's new Normal Pension Age under the 2015 Scheme) at the relevant 31 March and the member's prospective CARE survivor benefits based on membership accrued after 31 March 2015.

The CARE pension at the relevant 31 March must only include revaluation up to the previous 1 April to tie in with Annual Allowance Statements. The CARE pension at the relevant 31 March should not include the amount of any underpin that would have been added into the CARE account if active membership had ceased at that 31 March (and this should also not be included in the Annual Allowance Statements).

The Annual Benefit Statement should show the amount of additional CARE pension accrued during the year to which the Statement relates and the amount of the CARE pension accrued up to the year prior to that (as revalued).

⁵ Although regulation 87(2) of the 2014 Regulations require the statement to be issued by 30 September each year this is overridden by section 14 of the Public Service Pensions Act 2013 which requires the statement to be issued by 31 August each year. An amendment to regulation 87(2) is expected.

- iv) should show a projection of the member's and prospective survivor's CARE pension if the member remains an active member until the member's new Normal Pension Age under the 2015 Scheme and on the assumption that the member remains in the CARE section they are in on the relevant 31 March through to their new NPA.

The projection to the member's new NPA should be shown in today's money terms. If the member is in the 50/50 section there is no legal requirement to also provide a projection of the CARE benefits that could be achieved if the member moved to the main section from 1 April. The projected CARE benefits should not include the amount of any underpin that would be added into the CARE account if active membership were to cease at the member's new NPA (but with the underpin amount calculated at the member's old NPA under the 2009 Scheme).

- v) must show the pensionable pay figure upon which the amount of additional CARE pension accrued during the year to which the Statement relates has been calculated and upon which the projection of the member's and prospective survivor's CARE pension under (iv) above has been calculated.
- vi) must show the current value of death in service survivor benefits accrued at the 31 March together with the death in service lump sum at that 31 March, and how they are calculated.

The survivor benefits will be calculated based on the final salary survivor benefits accrued to 31 March 2015 (if any), and from any added years being purchased by the member, and from any ARC contract that includes a survivor's pension plus the survivor benefits due under the CARE scheme (including the CARE enhancement). The death in service lump sum should be shown as 3 x APP but with a caveat to the effect that if the member has a deferred pension or pension in payment from the LGPS in Scotland, the death grant payable would be the greater of 3 x APP or the death grant payable in respect of that deferred pension and / or pension in payment.

- vii) must show the date on which the member's pensionable service started in that employment.
- viii) must show a summary of the method for calculating the member's benefits and any survivors' benefits.
- ix) must show how any deduction from benefits is calculated.

A general caveat should be added to the Annual Benefit Statement to say that the member's Normal Pension Age under the 2015 Scheme is currently [ddmmyyyy] but that this may change in the future as and when the Government changes State Pension Ages.

With regard to pension sharing debits and annual allowance scheme debits, it is assumed these should be based on an assumption that the member will draw their benefits at NPA and the statement should give an explanation as to how the debits would alter if benefits were drawn earlier or later.

Statutory Money Purchase Illustrations for AVCs/SCAVCs

Statutory Money Purchase Illustrations have to be produced for AVCs. The 2015 Scheme makes it clear that if the member has not provided an acceptable date to be used for the SMPI benefit projection, the projection should be to NPA or, if the member has already passed their NPA, to age 75.

Annual benefit statements for deferred benefits

There are a number of complications that the Administering Authority needs to be aware of in relation to annual benefit statements issued to members with deferred benefits.

Firstly, it will not be possible to quote a specific NPA payable date on annual benefit statements issued to members leaving with deferred benefits post-31 March 2015. Such statements will have to state that the normal payable age for the post 31 March 2015 benefits will be whatever the member's State Pension Age is at the time they draw their benefits, that their State Pension Age is currently [ddmmyyy] but that this may change in the future as and when the Government changes State Pension Ages.

Secondly, based on the author's understanding of the policy position (which is not yet fully reflected in the 2014 Regulations) any death grant shown should be provided with a caveat to the effect that if the member is back in active membership of the LGPS in Scotland at the date of death, the death grant payable would be the greater of 5 times the deferred pension or 3 times their pay (Assumed Pensionable Pay) in the new job.

10) TRANSFERS

Transfers out

In principle, little should alter with the calculation of transfers out in that they are based on the value of deferred pension, deferred lump sum (if any) and contingent survivor benefits (excluding child's pensions). The calculations of these components will alter with the introduction of the 2015 Scheme of course and the actual actuarial guidance from Scottish Ministers on transfer values will also have to reflect the redefinition of NPA (as some people in the LGPS will, from 1 April 2015, have a different normal pension age in respect of their CARE benefits).

However, since 6 April 2015 the provisions in the Pension Schemes Act 1993 that govern transfers out from the LGPS were changed (as a result of the Government's Freedom and Choice policy).

A member only has the right to the payment of a CETV under the Pension Schemes Act 1993 in respect of AVC benefits if the member:

- is no longer accruing rights to AVC benefits (i.e. has ceased payment of AVCs), and
- has not had a Crystallisation Event in respect of AVCs (other than Pension Credit rights derived from AVCs or a survivor's pension derived from AVCs) .

A member only has the right to the payment of a CETV under the Pension Schemes Act 1993 in respect of non-AVC benefits:

- a) if the member
 - has an entitlement to a deferred benefit (Condition 1),
 - ceased active membership at least 12 months before Normal Pension Age (Condition 3a),
 - has not had a Crystallisation Event in respect of accrued benefits (other than Pension Credit rights or a survivor's pension) in the same category (Condition 2),
 - is not an active member in an ongoing employment (Condition 3b), and
 - has elected for a CETV at least 12 months prior to Normal Pension Age, or

- b) if the member
 - has 3 or more months' but less than 2 years' membership⁶),
 - has ceased active membership before Normal Pension Age, and
 - has elected for a CETV prior to the latest election date specified by the administering authority, or

⁶ Members with less than 3 months' membership are not entitled to a CETV.

- c) if the member
 - is a deferred Pension Credit member,
 - has not had a Crystallisation Event in respect of other Pension Credit rights in the LGPS, and
 - elects for a CETV in respect of their Pension Credit rights at least 12 months prior to Normal Benefit Age.

It should be noted that:

- i) a member in receipt of a bare GMP, or who is receiving benefits in respect of a flexible retirement, will not be able to take a CETV in respect of the remainder of their benefits as they will have had a Crystallisation Event in relation to benefits in the defined benefit category.; and
- ii) apart from members retiring with immediate benefits on the grounds of redundancy, business efficiency or ill health, members retiring with an immediate entitlement to benefits under the LGPS who are at least a year away from Normal Pension Age will have a right to a CETV as an alternative to a pension from the LGPS; and
- iii) subject to meeting the requirements of the Pension Schemes Act 1993 (as set out above), members can transfer out their AVC fund and not their main LGPS benefits, or vice versa.

The Pension Schemes Act 2015 requires members (with an entitlement to a deferred benefit or Pension Credit) who are transferring their 'safeguarded benefits' to flexible benefits to take appropriate independent advice (where the CETV of the member's 'safeguarded benefits' in the scheme, other than any survivor's pension which the member is in receipt of is more than £30,000). 'Safeguarded benefits' are defined as those which are not money purchase or cash balance benefits (i.e. LGPS benefits other than AVCs will be 'safeguarded benefits') and flexible benefits are those benefits which are part of a DC scheme which are flexible. Note, however, that there has been a great deal of industry debate around the interpretation of 'safeguarded benefits' and whether or not With-Profits AVC policies are 'safeguarded benefits'. The LGPS Secretariat understands that the Prudential have concluded that Prudential With-Profits policies are not 'safeguarded benefits' as they do not offer guaranteed annuity rates under the AVC product. However, other providers may offer guaranteed annuity rates (GARs) or other features / benefits which may be considered 'safeguarded benefits'. Whilst the FCA has stated in PS 15/12 that GARs offered through an insurance contract and which are not written into scheme rules are not 'safeguarded benefits', the DWP position is not clear. In view of the lack of certainty it would be worthwhile for administering authorities to ask their AVC provider to confirm that their AVC product does not fall within the definition of 'safeguarded benefits' in section 48(8) of the Pension Schemes Act 2015 before any AVC transfers are made.

It should be noted that there is no requirement for a member who has 3 or more months' membership but who is not entitled to a deferred benefit to take appropriate independent advice (in the unlikely event that the CETV of the member's deferred refund in the scheme is more than £30,000). This is because section 48 (Independent Advice) of the Pension Schemes Act 2015 only covers members with 'subsisting rights' in respect of 'safeguarded benefits'. 'Subsisting rights' are defined as:

- (i) any right which has accrued to or in respect of the member to future benefits under the scheme, or
- (ii) any entitlement to benefits under the scheme.

A deferred refund member does not have 'subsisting rights' as they have no right to future benefits from the LGPS.

Non-Club transfers in

An active member can make a request to the Administering Authority to transfer in accrued rights from another registered pension scheme or from a European pensions institution.

The request must be made in writing to the Administering Authority within 12 months of first becoming an active member of the LGPS in an employment or such longer period as the Scheme Employer may allow. It would be appropriate for Scheme employers to have a written policy on the exercise of this discretion.

Even if a transfer request is made by a person within 12 months of first becoming an active member of the LGPS in an employment, the Administering Authority may still decline to accept the request.

Where the 'relevant date' for the transfer in is before 1 April 2015 the transfer will purchase pre-1 April 2015 membership. Where the 'relevant date' is on or after 1 April 2015 the Administering Authority must credit the member's pension account with an amount of earned pension in accordance with actuarial guidance issued by Scottish Ministers.

The 'relevant date' is the date on which the person first became an active member in the employment, or the date the transfer payment is received if more than 12 months later.

Club transfers

The Cabinet Office have issued a revised [Public Sector Transfer Club Memorandum](#) (dated March 2015 but effective from 1 April 2015) which covers voluntary transfers between Public Service Pension Schemes together with information on valuing Club transfers for the purposes of the Annual Allowance. The new memorandum includes an extension of the arrangements

to protected members (those older members in the other public service pension schemes who retain a right to membership of the open final salary scheme) and those with service in the new CARE schemes.

The LGPS will face additional costs in meeting these new arrangements in the following ways:

- a) as the LGPS does not have an open final salary scheme it would have to offer 'underpin arrangements' to those who would have met the underpin criteria if they had been in the LGPS on 31 March 2012 and who were in another public service pension scheme on that date and would have been within 10 years of Normal Pension Age in that scheme on that date. Note, however, that the LGPS Secretariat is seeking to resist this.
- b) CARE members would, whilst an active member, have their transferred CARE pension amount continually revalued at the rate applicable to the scheme they left. For example, teachers who transfer to LGPS would, during the period of active membership in the LGPS, continue to have the transferred CARE pension revalued at CPI plus 1.6% rather than the CPI rate applying to the LGPS. As the LGPS has the lowest revaluation rate of all the public service schemes (apart from Civil Service) this arrangement always represents a potential cost to the LGPS.
- c) administration systems and processes will have to be adapted to cope with calculating underpins for members without qualifying LGPS service and multiple pension accounts each with its own revaluation rate.

The LGPS wrote to the Chief Secretary to the Treasury on 19 December 2014 asking that the LGPS in England, Wales, Scotland and Northern Ireland should be allowed to move to a position whereby it would continue to provide club transfers in respect of final salary benefits only (and would therefore remain part of the transfer CLUB for that purpose only). Transfers of CARE benefits would be treated as non-Club transfers in.

A follow up letter was sent along with a letter from the Shadow Scheme Advisory Board for England and Wales requesting that CLUB membership in respect of both final salary and CARE be on the table in future discussions on controlling the cost of the LGPS.

On 27 March 2015 the Chief Secretary to the Treasury responded, saying:

“Your letter sets out your concerns that LGPS participation in the Transfer Club could lead to increased costs for the scheme and your view that participation of the LGPS in the Club should be included in any future considerations of changes to be made as a result of the cost management process being triggered.

As I have set out in response to the concerns of the Local Government Association I am not persuaded at this time that it would be in the interests of

LGPS members of the public sector as a whole if the LGPS did not participate fully in the Transfer Club. However, I do recognise that there may be a case to review this position in future, should increased costs to the scheme become material in the context of the scheme cost cap.

I am therefore happy to agree that LGPS participation in the Transfer Club could form part of any future cost management discussions.”

Thus, the LGPS will be required to remain in the Club, at least in the short-term.

The final salary element of a transfer in from an Outer Club scheme will purchase pre 1 April 2015 membership and retain a final salary link⁷ even though the member had never actually been in the LGPS pre 1 April 2015. That means that, for such members, the administering authority will have to obtain a final pay calculation from Scheme employers every 31 March (and at date of leaving) for both annual benefit statement and annual allowance calculations (even though the person had never been in the LGPS pre 1 April 2015).

Where there is not a break of more than 5 years between leaving the sending Club scheme and joining the LGPS the transfer will be dealt with as a Club transfer.

Where there is a break of more than 5 years between leaving the sending Club scheme and joining the LGPS and:

- a) the sending scheme is a non-public service pension scheme, or
- b) the sending scheme is a public service pension scheme but there has been a break in active membership of public service pension schemes of more than 5 years

⁷ It should be noted that it appears that a final salary transfer from **any** Club scheme, not just a public service pension scheme, will have to purchase final salary membership under the terms of the Outer Club (provided there isn't a break of more than 5 years between leaving the sending scheme and joining the LGPS). This has been confirmed by the Cabinet Office (who are responsible for the Club). Regulation 9 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 only currently allows for a pre-15 final salary service credit to be provided if the transfer is from a public service pension scheme and there has been no break in active membership of public service pension schemes of more than 5 years (as per section 20 and paragraph 2 of Schedule 7 to the Public Service Pensions Act 2013). As the Cabinet Office has confirmed that the LGPS Secretariat's understanding is correct, an amendment to regulation 9 of the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 to cater for other Outer Club transfers is required. It should also be noted that this can lead to what appear to be bizarre results in some cases. Take, for example, a member who has a deferred LGPS benefit in respect of membership ending 31st March 2007. The member joins USS on 1st April 2007 (a Club Scheme) but does not transfer his accrued LGPS rights. The member leaves USS on 31st July 2015 and re-joins the LGPS on 1st August 2015. He elects to transfer his accrued USS final salary rights to the LGPS. Those final salary (Outer Club) USS rights purchase pre-15 final salary membership in the LGPS but the earlier LGPS deferred benefit, if aggregated, will purchase an amount of CARE pension (because there had been a break of more than 5 years in active membership of a public service pension scheme).

the transfer will be dealt with as a non-Club transfer (see the section above which covers non-Club transfers).

However, if the transfer is from a public service pension scheme and the member:

- i) moves from Scheme A to Scheme B and then to Scheme C (all of which are public service pension schemes),
- ii) transfers from Scheme A to Scheme C
- iii) the break between Scheme A and Scheme C was more than 5 years but there has been no break in active membership of public service pension schemes of more than 5 years (because the person was in Scheme B in the intervening period)

the transfer from Scheme A to Scheme C will be a **non-Club** transfer. If the transfer includes final salary benefits, that part of the transfer will still buy pre-15 membership but on a **non-Club** basis and, if any such cases arise, administering authorities should refer the case to SPPA for onward transmission to GAD. A transfer from Scheme B to Scheme C would be a **Club** transfer. Conversely, if the member had transferred the pension rights from Scheme A to Scheme B and then to Scheme C, each would have been treated as a **Club** transfer.

As now, where a service credit giving final salary membership is granted, the receiving Scheme will 'pay' for the impact of any increase in salary (i.e. between the salary on leaving the former Scheme and the salary on joining the LGPS). So, in effect, Outer Club transfers in of final salary benefits would continue on the basis of current Club rules.

The existing Club rule that members must elect to proceed with a Club transfer within 12 months of joining the LGPS will continue to apply. However, elections should not be accepted where an individual resigns from employment or opts out of membership of the scheme and re-joins the same scheme within 6 months, except during any period after re-joining which falls within 12 months of first becoming eligible to join the scheme.

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Employer Contributions

Employer contributions, as assessed during the normal triennial valuation process, will be payable on:

- the actual pensionable pay received by the employee in the pay period or part pay period (except where either of the two bullet points below apply, in which case the employer contributions are payable on the assumed pensionable pay figure and not on any actual pay received whilst assumed pensionable pay is in operation), and
- the assumed pensionable pay figure for the pay period (or part pay period) during which the member is on “relevant” child related leave (i.e. ordinary maternity, paternity or adoption leave or paid shared parental leave or paid additional maternity or adoption leave) other than for any day(s) where the actual pensionable pay received for the day is greater than the assumed pensionable pay, and
- the assumed pensionable pay figure for the pay period (or part pay period) whilst on sick leave on reduced contractual or no pay.

In the case of Reserve Forces Service Leave, no contributions on either actual pay or assumed pensionable pay are necessary whilst on such leave because the employer contribution due will be paid to the Administering Authority directly from the Ministry of Defence.

50/50 Section

It should be noted that the employer will pay the same employer contribution rate whilst a member is in the 50/50 section as the employer would pay if the member had been in the main section i.e. the employer will pay its contribution based on actual pensionable pay / assumed pensionable pay.

This would mean, effectively, that the insurances/guarantees built into the scheme for ill-health and death would be funded in advance. Of course, it is possible that, in any particular case, those events would not lead to an increased liability (e.g. no survivor benefits payable) and therefore the benefits would have been overfunded.

Any saving because of the reduced liability on the Fund of a period of 50/50 membership will be taken into account in the next triennial actuarial valuation.

Other employer contributions

The only other employer contributions due are possibly:

- The employer payment for an additional pension contribution (APC) where the cost is to be met in full by the employer;
- The employer's share of a shared cost additional pension contribution (SCAPC) – these employer contributions are mandatory⁸ when a person opts within 30 days of returning to work (or such longer period as the employer allows) to pay optional contributions during or following a period of authorised unpaid leave (excluding absence due to trades' disputes);
- The employer's share of a shared cost additional voluntary contribution scheme (SCAVC) where an employer has voluntarily set up such a scheme.

Employers can also be required to pay:

- Any extra charge on the fund resulting from flexible retirement, redundancy or business efficiency retirement, ill health retirement or early payment of a deferred pension or the waiving of actuarial reductions,
- A contribution towards the cost of administration of the fund, and
- Any additional costs incurred by the Administering Authority caused by the employer's level of performance in carrying out the employer's functions under the 2014 Regulations.

⁸ It should be noted that whilst the LGPS (Scotland) Regulations 2014 do not currently require a 2/3rds employer contribution an amendment to the regulations is expected which will make it a requirement for employers to meet, for any individual period of absence up to 36 months, 2/3rds of the cost (where the member makes the SCAPC election within 30 days of returning from the absence, or such longer period as the employer allows).

Employer Discretions

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 2015 Scheme regulations stipulate this requirement in five main areas, namely:

- Voluntary funding of additional pension via a Shared Cost Additional Pension Contributions (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);
- Awarding additional pension (via an APC) at whole cost to the employer;
- Switching on the 85 year rule for members drawing benefits with employer consent on or after age 55 and before age 60 (other than in cases of flexible retirement);
- Flexible retirement; and
- Waiving of actuarial reductions.

Where relevant, employers will already have a discretions policy under the 1998 Scheme for pre-1 April 2009 leavers and will already have a discretions policy under the 2009 Scheme (governed by the 2008 Benefit and Administration Regulations). Many of the discretions under the 2009 Scheme will fall away but there will be discretions to be exercised in respect of post-31 March 2009 / pre-1 April 2015 leavers for which a policy will be required and will have to be published.

A full list of discretions together with more information on the key discretions upon which employers should have a published policy is available in the Administration Guides to the 2015 Scheme section under the Scotland – LGPS 2015 tab at www.lgpsregs.org.

Employers are advised to consider their policy statements in advance of 1 April 2015 with a view to having them in place (and copied to the Administering Authority) by 30 June 2015 as this is a requirement under 2014 Regulation 58(2).

Employers' obligations to provide information

2014 Regulation 78 opens with:

(1) A Scheme employer must—

(a) inform the appropriate administering authority of all decisions made by the employer under regulation 70 (first instance decisions) or given under regulation 73 (notice of decisions on disagreements) by a person appointed by the Scheme employer under regulation 71(5)(c) (notification of first instance decisions) concerning members; and

(b) give that authority such other information as it requires for discharging its Scheme functions.

2014 Regulation 68 deals with the recovery of costs from an employer where the Administering Authority, purely in its own opinion, has incurred additional costs as a result of that employer's level of performance. In addition, 2014 Transitional Regulation 22 states:

(1) Scheme employers must provide administering authorities with such information as administering authorities reasonably require to enable them to discharge their functions under these Regulations and any outstanding functions under the Earlier Regulations.

(2) An administering authority may give a written notice under regulation 68 of the 2014 Regulations (additional costs arising from Scheme employer's level of performance) where the additional costs incurred were as a result of the employer's level of performance in carrying out functions under the Administration or Benefits Regulations.

The upshot of these regulations is that it is a legal requirement for each employer to supply necessary information at the appropriate time to the Administering Authority. This includes end of year information (as detailed in 2014 Regulation 78(3) and 78(4)).

In order to assist employers in this task, the LGPC Secretariat has produced guides for both employer payroll and human resource professionals. All the data requirements at year end can be found in the Payroll Guide.

The HR and Payroll guides can be found in the HR and Payroll Guide Section of the Scottish part of the site.

Changes in Contractual Part Time Hours and / or Contractual Weeks/Contractual Days per year

For employees with LGPS membership prior to 1 April 2015 employers will still be required to notify the Administering Authority of:

- a) changes in contractual hours for part-time employees (or the average hours for the Scheme year for employees who have no contractual hours), and
- b) changes in contractual weeks / contractual days per year (if the Administering Authority prorates the membership of employees whose contractual weeks / contractual days per year are less than 52 per annum / 365 per year)

but only in respect of:

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

For all such members, employers will need to provide, at each 31 March, the relevant changes that have occurred during the Scheme year (as the information is required by the 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.

Breaks in membership

Employers will still be responsible for providing details to the Administering Authority of breaks in “membership” that occur prior to Normal Pension Age (NPA) (2009 Scheme definition) due to:

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

but only for those members:

- to whom the underpin calculation applies, or
- 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 (up to a maximum period of 36 months) or period of unpaid additional maternity, paternity or adoption 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 these breaks are required in order that the Administering Authority can determine:

- whether the final salary benefit underpin for members subject to the underpin exceeds their post 31 March 2015 CARE pension, and
- 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).

Payover of Contributions

Employers participating in the Scheme are required to pay over to the Administering Authority all contributions paid by **employees** (both basic contributions and employee contributions to an APC or SCAPC). The amount must be paid over as shown below:

- a) if the employee is automatically enrolled (or re-enrolled) into the LGPS under the provisions of the Pensions Act 2008, the employee contributions deducted from pay in the first three months have to be paid over
 - o where the payment is by means of an electronic communication, by no later than 22 days from the end of the month falling three months from the date the employee became a member of the Scheme, or
 - o if payment is made by any other means, by no later than 19 days from the end of the month falling three months from the date the employee became a member of the Scheme

OR

- b) if in any other case (e.g. where the employee is contractually enrolled into the LGPS, or for contributions deducted from pay more than three months after being automatically enrolled or re-enrolled under the provisions of the Pensions Act 2008), the employee contributions deducted from pay have had to be paid over
 - o where the payment is by means of an electronic communication, by no later than 22 days after the end of the month in which the contributions were deducted from pay; or
 - o in any other case, by no later than 19 days after the end of the month in which the contributions were deducted from pay

OR

- c) any such earlier time as the Administering Authority may stipulate.

The payment must be accompanied by a statement, in such form as the Administering Authority specifies, showing:

- (a) the total pensionable pay received by members whilst they were in the main section of the Scheme during the period covered by the statement (including the assumed pensionable pay members were treated as receiving during that period)
- (b) the total employee contributions deducted from the pensionable pay referred to in (a)
- (c) the total pensionable pay received by members whilst they were in the 50/50 section of the Scheme during the period covered by the statement (including the assumed pensionable pay members were treated as receiving during that period),
- (d) the total employee contributions deducted from the pensionable pay referred to in (c)
- (e) the total employer contributions in respect of the pensionable pay referred to in (a) and (c)
- (f) the total Additional Pension Contributions paid by members during the period covered by the statement, and
- (g) the total Additional Pension Contributions paid by the employer during the period covered by the statement.

It should be noted that the Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014 (SI No.3138) provide that, from April 2015, the current exemption for reporting to the Pensions Regulator the late payover of member contributions by participating employers where it is believed the failure is likely to be of 'material significance' will be removed.

Employers participating in the Scheme are required to pay over to the Administering Authority all contributions paid by **employers** (both basic contributions and the employer contributions to a SCAPC). The employer contributions must be paid over on or before such dates falling at intervals of not more than 12 months as the Administering Authority may specify. It is common practice for the employer contributions to be paid over to at the same time as the employee contributions.

It should be noted that:

- (i) employee and employer pension contributions and AVCs / SCAVCs collected on pay paid after 31st March 2015 which was due in respect of a period prior to 1st April 2015, and
- (ii) contributions for added years, Preston part-time buy-back, ARCs and ASBCs, must also be paid over to the Administering Authority within the timescales mentioned above.

The payments in respect of (i) must be accompanied by a statement, in such form as the Administering Authority specifies, showing:

- (a) the name, pay and contribution band of each employee from whose pay such employee pension contributions or contributions to an AVC or SCAVC have been deducted,
- (b) which of those employees have paid AVCs or SCAVCs,
- (c) the amounts of pension contributions deducted from each employee per pay band and the period covered by the deductions, and
- (d) the amount of employee contributions to an AVC or SCAVC, per employee, and the period covered by the deductions.

The payments in respect of (ii) should be accompanied by a statement, in such form as the Administering Authority specifies.

Employers are required to pay over to the Administering Authority on or before such dates falling at intervals of not more than 12 months as the Administering Authority may specify:

- any amount notified by the 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 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 a scheme member on reserve forces service leave.

Abatement

Anyone who retired before 1 April 2015 is not subject to the 2015 Scheme so their benefits continue to be payable in accordance with the “Earlier Schemes”. Regulation 3(1) of the 2014 Transitional Regulations states:

Notwithstanding the revocations effected by regulation 2 and subject to this regulation, the regulations listed in Schedule 1 (other than regulation 3(4) of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008) continue to have effect so far as is necessary—

- (a) *so that membership accrued in the Earlier Schemes in respect of service before 1st April 2015, the pension rights accrued at that date, and any rights and obligations imposed on any person under those Schemes in relation to service before 1st April 2015, are preserved; and*
- (b) *so that benefits are payable in accordance with these Regulations.*

In the context of abatement therefore, this means that a pre-1 April 2015 pensioner’s benefits continue under the old scheme rules. Therefore, whether they are reemployed before 1 April 2015 or after 31 March 2015, they will still be subject to the abatement rules. Also, of course, abatement is discretionary and subject to the declaration of a policy by the Administering Authority.

As there are no abatement provisions in the 2014 Regulations, anyone who leaves after 31 March 2015, draws benefits and is subsequently reemployed will not suffer abatement. However, this is only in respect of the CARE pension. This is because regulation 3(11) of the 2014 Transitional Regulations states:

Regulations 64 and 65 (abatement) of the Administration Regulations continue to have effect in relation to pensions in payment deriving from the earlier Schemes regardless of when payment of those pensions commenced.

The existence of regulation 3(11) of the 2014 Transitional Regulations can only be read to mean that pre-14 rights are still subject to the abatement provisions going forward.

In plain language, this simply means that abatement provisions continue as-is but only in respect of membership to 31 March 2015.

The rules governing abatement and claw-back of compensatory added years will need to be considered by SPPA. This is because, given that pensionable pay in the 2015 Scheme includes pay in respect of additional hours worked in excess of contractual hours (up to the full time hours for the job), it will not be known what the level of annual pensionable pay will be during the period of re-employment. Furthermore, for CAY awarded to pre-1 April 2015 leavers, should the claw-back be based on the level of pension the person would have achieved during re-employment had the 2009 Scheme continued, or on the level of pension the person actually achieves from the period of re-employment? This has been raised with the SPPA.

Admission Agreements

The separate provisions in the 2008 Administration Regulations for Community Admission Bodies and for Transferee Admission Bodies are consolidated in the 2014 Regulations as Part 2 of Schedule 2.

Existing admission agreements which are already in place before 1 April 2015 will continue to have effect after 31 March 2015 by virtue of regulation 6 of the 2014 Transitional Regulations.

Pension sharing

Pension credits awarded under a Pension Sharing Order with an effective date before 1 April 2015 (or with an effective date after 31 March 2015 but the debited member has no post-31 March 2015 rights) will be awarded a credit in the 2009 Scheme

If the effective date of the Order is on or after 1 April 2015 and the debited member has post-31 March 2015 rights, the credit member will be credited with an amount of pension in a pension credit member account.

Where the PSO specifies a percentage of the member's benefits to be debited and the member has pre and post-15 benefits, the pre-1 April 2015 benefits and the post-31 March 2015 benefits are both to be debited by that percentage (unless the PSO specifies otherwise).

Where a PSO specifies an amount to be debited (not a percentage), the debit is to apply in proportion to the cash equivalent value of the pre-1 April 2015 and post-31 March 2015 benefits (unless the PSO specifies otherwise).

Special cases

Any special protected provisions applying to members immediately before 1 April 2015 continue to apply to them post 31 March 2015, except that any reference to an NPA of age 60 shall cease to have effect in relation to membership accrued post 31 March 2015.

The special cases include those covered by regulation 22 of the 1998 Transitional Regulations (former NHS Scheme members)⁹.

The 2014 Transitional Regulations continue to provide an age 50 protection for a member who is made redundant or retired on business efficiency grounds and who was in the Scheme on 5 April 2006 but clarifies that this protection is lost if there is a break in membership after that date.

Mis-sold personal pensions

The 2014 Transitional Regulations are self-explanatory and read:

“Provisions in the same terms as regulations 108 (provision of information and calculation of restitution payment) and 124 of the 1998 Regulations (credited periods for transferring members with mis-sold pension rights) apply so far as is necessary to ensure that administering authorities are under a duty to provide information requested to a prescribed person as to the restitution payment applicable to an individual, but no membership may be granted under the 1998 Scheme or the 2009 Scheme in relation to a restitution payment.”

⁹ See regulation 14 of the LGPS (Transitional Provisions) (Scotland) Regulations 2008



Department for
Communities and
Local Government

Annex 1

22 January 2015

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

Dear Terry

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

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

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

If the subsequent period of membership happens to be in the 2014 Scheme the position is no different. At the point that the calculation is made as to what benefits the person is to be entitled to, the issue is whether under the earlier regulations there would have been any calculation of the member's benefits based on the member's subsequent period of service. If there would not, then it would be reasonable to say that nothing in Schedule 7 imposes any requirement for such a calculation to be made. Schedule 7 seems to me to be designed in such a way that if the old regulations *did* require there to be a calculation of pensionable earnings based on what the member was receiving at the date of retirement in order to calculate the benefits payable in respect of an earlier unaggregated period of membership, that such a calculation could

be carried out based on the member's pensionable earnings under the 2014 Scheme.

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

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

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lynda Jones', is centered on the page. The signature is written in a cursive style.

Lynda Jones