LGPS2014 for Practitioners

Course 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 Local Government Association for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained herein.

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Foreword

At the time of compiling this version of the notes both the LGPS Regulations 2013 [SI 2013/2356] (the 2013 Regulations") and the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525] (the "2014 Transitional Regulations") had been made and laid before Parliament.

These notes have been prepared on the basis that certain technical amendments are made to the "2013 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Obviously, things may change or be clarified from this point forward and so this version of the notes may become out-of-date or even become technically incorrect in some areas.

Although the training events these notes were created for have now finished, the Secretariat has decided that these notes will continue to be updated as and when required. They will be located in the Administration Guides Section of www.lgpsregs.org under the Guides tab.

Finally, these notes do not purport to cover every aspect of the LGPS but instead mainly concentrate on those areas that changed on 1 April 2014. They do not cover the position of councillors. Councillors in England who were in the LGPS on 31 March 2014 will, in accordance with regulation 26 of the "2014 Transitional Regulations" remain eligible for membership of the councillor section of Scheme under the LGPS Regulations 1997 until the end of the term of office they were serving on 1 April 2014. Councillors in Wales remain eligible for membership of the councillor section of Scheme under the LGPS Regulations 1997.

These notes also do not apply to employees or councillors in Scotland.

We hope you find these notes of assistance.

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1) MEMBERSHIP

All types of Scheme employers are now listed in the 4 Parts of Schedule 2 to the regulations. There is no change to the range of employers given access, simply a matter of naming them all in the same schedule. These are:

Part 1	“Scheduled” bodies – those employers that must make the LGPS available to all eligible employees;
Part 2	“Designation” bodies – those employers that can make the LGPS available to all or some of their employees;
Part 3	“Admission Bodies” – those employers participating in the LGPS through an admission agreement which will specify which employees are eligible for membership; and
Part 4	“Deemed” Employers – a mixture of employers where another body (usually) is deemed to be the Scheme employer. Persons in the first column of the table in Part 4 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, and those eligible for membership of another public sector pension scheme (although there are some with “dual” eligibility for the LGPS and NHSPS or Civil Service Pension Scheme; 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 2014 to change although, obviously, documentation (letters, forms, leaflets, scheme guides and information on Fund websites) will alter on account of the 2014 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 amended to 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 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 2014 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 England or Wales (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 2014 LGPS (England and Wales) 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 <u>but opts out within 3 months</u> 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 2014, 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 2014 for members who ceased active membership after 31 March 2008 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 2014 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) could not elect for the 50/50 section before 1 April 2014 (i.e. before the 2014 Scheme had come 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 64 of the LGPS Regulations 2013 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 below. A sample 50/50 election form and notes for employers are available in the Forms section under the Guides tab 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 2014

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 2014 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.

It was hoped that the actual regulations would contain some exemptions from re-enrolment back into the main section from the employer's automatic re-enrolment date, such as not defaulting back into the main section anyone who had opted for the 50/50 section in the year leading up to the employer's automatic re-enrolment date (similar to the provision with optants-out and automatic re-enrolment under the Pensions Act 2008). Regrettably however, our suggestions were not taken forward.

Note that the initial "staging date" for those employers who meet their "staging date" after 31 March 2014 has no implication on existing 50/50 elections.

In addition, a person going on to no pay as a result of sickness or injury, or during ordinary maternity leave, ordinary adoption leave or paternity leave[1], 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). This is because 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.

If an employer has a policy of no pay for the first X days of sickness and the absence straddles two pay periods, this will see the person moved back into the main section effective from the first day of the second pay period. The employee contribution rate should therefore be increased to that appropriate to the main section unless the person makes another 50/50 election before the next payroll run.

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 2014

Those employees who are employed on 31 March 2014 and who are active members of the Scheme will, on 1 April 2014, automatically become active members of the main section of the 2014 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 2014 Scheme on 1 April 2014. In many cases the contribution rate from 1 April 2014 will be different to the rate that applied prior to that date because, from 1 April 2014, there are a larger number of bands, 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), pensionable pay will, from 1 April 2014, include non-contractual hours and excess hours 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

1 The reference to "or during ordinary maternity leave, ordinary adoption leave or paternity leave" was not introduced until 11 April 2015 by SI 2015/755 but had retrospective effect to 1 April 2014.

rate is payable (i.e. 1 April 2014). 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

As regulations have always provided, the 2014 Scheme contains a provision that as well as notifying the administering authority of all decisions it makes, each employer is bound to "give that authority [Author's note: the administering authority] such other information as it requires for discharging its Scheme functions".

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.

Each administering authority will have its own communications policy statement covering, amongst many other things, how it communicates with Scheme members. In the case of active members, many administering authorities communicate via their employers as this is most cost effective.

The LGPC prepared a communication plan setting out the resources which were being made available to help communicate the changes to employers and scheme members. This is available at www.local.gov.uk/web/lgaworkforcepensions/lgps2014comms

Centrally produced topic based communication leaflets and a Powerpoint presentation were also made available from the same website. A centrally maintained website for scheme members detailing the scheme changes is available at www.lgps2014.org and this includes videos explaining the new scheme.

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 Pension Fund unless they are disqualified from receiving a refund e.g. they already have, in an LGPS Fund in England and Wales, 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. Note that there are some transitional provisions and these are covered later in Section 2 under “Refund or deferred pension? – an extra element of choice”.

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 under the Pensions Act 2008 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 2014 Scheme section under the Guides tab at www.lgpsregs.org.

Membership before 1 April 2014

It is important to appreciate that all pensions built up before 1 April 2014 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 civil partner’s pensions for the survivor of a post leaving civil partnership, although there is a no worsening opt out provision – see the first footnote to the table in the section headed “Survivor Benefits” later in these notes; and a change to the lump sum death grant provisions if a member with a pre 1 April 2014 deferred pension or pre 1 April 2014 pension in payment dies as an active member of the scheme post 31 March 2014 – see “Death Grants – Active members” in section 8 later in these notes).

Those people who are currently a contributing scheme member will get their pre-1 April 2014 pension (and automatic lump sum, if any) based on their final pay at eventual retirement, calculated under the 2008 Scheme definition of final pay and pensionable pay. It should be noted that regulations 8 and 10 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 continue to apply to the final pay calculation for calculating the pre 1 April 2014 benefits regardless of whether a reduction or restriction in pay occurs before, on or after 1 April 2014. 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 2014, 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 2014, the employer will need to be able to calculate final pay under the old definition too.

The other strand to pre-1 April 2014 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 apart from a small number of members who have a protected earlier NPA. For example, this means that any actuarial reduction for early retirement would be based on how far short of their 2008 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 2014 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 2008 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 deferred pensioner member's account;
- a pension credit account; and
- a survivor member's account.

All have fairly self-explanatory titles but, for the avoidance of any doubt, a "deferred pensioner member's account" refers to a third tier ill-health pensioner whose benefits are currently suspended.

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 an 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 administering authorities 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

From 1 April 2014 we move back to the pre-2004 position of having a two year vesting period rather than a three month one. 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 England and Wales. As the Scottish and Northern Irish versions of the LGPS are separate schemes, membership of them would not debar a refund from the LGPS in England and Wales.

The 2014 Scheme contains the same additional exclusions from entitlement to a refund as the 2008 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.

Administering authorities will 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 England or Wales 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 England or Wales, and

- I do not already hold a deferred benefit in the LGPS in England or Wales, and

- I am not in receipt of a pension from the LGPS in England or Wales (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 England or Wales to an overseas pension scheme. "

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

An active member who moved into the 2014 scheme on 1 April 2014 can, if they subsequently leave with between 3 months and 2 years' membership in total, choose between:

- A refund of contributions
- A deferred pension
- An immediate pension provided they had reached their normal pension age (as defined in the 2008 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.

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.

A pre 1 April 2014 frozen refund or deferred member who rejoins the scheme on or after 1 April 2014 and aggregates (or, in the case of a frozen refund member, has compulsory aggregation of) their benefits can, if they subsequently leave with between 3 months and 2 years' membership in total, choose between:

- A refund of contributions
- A deferred pension

Once again, 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.

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 pension.

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.

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

The complications really start to arise when one looks at the possibility of these events occurring where a person has membership which is to be aggregated consisting of only post-14 rights, or only pre-14 rights, or a mix of pre-14 and post-14 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 2014 membership is adjusted by multiplying it by (the rates of pay are as defined in the 2008 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 2014 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.

Optants out[2]

It should be noted that where a member opts out of the LGPS in their new employment within 3 months of re-joining the scheme their benefits cannot be aggregated as they will have received a refund of contributions through their pay and are treated as not having been a member of the LGPS in the new employment.

Where a member opted out of the scheme in an employment (other than a concurrent employment) **prior to 11 April 2015** with an entitlement to a deferred benefit and they subsequently re-join the LGPS the provisions in this document currently apply.

However, where a member opts out of the scheme in an employment **on or after 11 April 2015** with an entitlement to a deferred benefit the provisions in this document **do not** apply. This is because, by virtue of the amendment made by SI 2015/775 to regulation 22(8) of the LGPS Regulations 2013, such members **do not** have the right to aggregate benefits upon re-joining the scheme. Thus, administering authorities will need to ascertain from the administering authority holding a deferred benefit for a member who ceased membership on or after 11 April 2015 whether or not that deferred benefit arose as a result of the member opting out of membership of the scheme.

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2 The ban on optants out being allowed to aggregate was not introduced until 11 April 2015 by SI 2015/755.

The anomaly in treatment between pre and post 11 April 2015 optants out who have deferred benefits has been reported to DCLG for consideration.

If a member opts out and only has an entitlement to a refund of contributions, or has a deferred benefit as a result of opting out of a concurrent employment and wishes to aggregate with membership in the ongoing employment, the provisions in this document still apply.

Scenario A – post-14 only

<u>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 2014 membership only.</u>

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).

<u>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 2014 membership only.</u>

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-14 and post-14 (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 2014 **and** post 31 March 2014 membership **and** the member was an active member on both 31 March 2014 and 1 April 2014 **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 2014 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 2014 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 2014 **and** post 31 March 2014 membership **and** the member was an active member on both 31 March 2014 and 1 April 2014 **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 2014 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 2014 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.

<u>If not aggregated</u>, the deferred benefit for the pre 1 April 2014 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-14 and post-14 (with 5 year break)

<u>C1: Active member who has a **deferred refund** from an earlier period of membership which is based on pre 1 April 2014 **and** post 31 March 2014 membership **and** the member was an active member on both 31 March 2014 and 1 April 2014 **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.</u>

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

<u>C2: Active member who has a **deferred benefit** from an earlier period of membership which is based on pre 1 April 2014 **and** post 31 March 2014 membership **and** the member was an active member on both 31 March 2014 and 1 April 2014 **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.</u>

Automatically aggregated with the new active pension account **and** the transfer value in respect of pre 1 April 2014 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-14 only

D1: Member left prior to 1 April 2014 with a **deferred refund** and rejoins the Scheme on or after 1 April 2014.

> The transfer value in respect of the pre 1 April 2014 membership is to be used to purchase an amount of earned pension* in the member's active pension account[3].
>
> *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.

D2: Member left prior to 1 April 2014 with a **deferred benefit** and rejoins the Scheme on or after 1 April 2014 **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 2014 and 1 April 2014.

Where the member does so:

> The pre 1 April 2014 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 elect for the transfer value in respect of the pre 1 April 2014 membership to be used to purchase an amount of earned pension* in the member's new active pension account[4], **else** the pre 1 April 2014 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.

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

4 See footnote above.

D3: Member left prior to 1 April 2014 with a deferred benefit **and** rejoins the Scheme on or after 1 April 2014 **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 elect for the transfer value in respect of the pre 1 April 2014 membership to be used to purchase an amount of earned pension* in the member's new active pension account, **else** the pre 1 April 2014 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.

Scenario E –re-joiners

E: Any member to whom scenarios A to D applied upon first re-joining the Scheme after 31 March 2014 and who left again post 1 April 2014 and subsequently re-joins again.

If, when scenario C2, D1, D2 or D3 was first applied, the pre 1 April 2014 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 2014 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 2014 and 1 April 2014. Unfortunately, regulation 5(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 merely refers to a member being able to make such an election within 12 months of becoming a member of the 2014 Scheme (it does not clarify whether or not this means 12 months of **first** becoming a member of the 2014 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 2014 Scheme section under the Guides 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 £8,000. 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 to the exclusions list is that non-contractual overtime has been removed so from 1 April 2014 non-contractual overtime becomes a pensionable item. This can have major financial implications for employers and Directors of Finance / budget holders will need to factor this additional cost into budgets.

Another change is that a payment in consideration of loss of future pensionable payments or benefits is, from 1 April 2014, 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 could, by defining 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, make the 'top-up' payment non-pensionable.

A third change is that, from 1 April 2014, any actual pay paid by the Scheme employer 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.

The 2014 Scheme 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) returning officer, or acting returning officer fees other than fees paid in respect of—
  (i) local government elections,
  (ii) elections for the National Assembly for Wales,
  (iii) Parliamentary elections, or
  (iv) European Parliamentary elections.

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 2014 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 2008 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 2008 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 2014 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 may allow), 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). Of course, under the second method, regulations 8 to 10 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 would apply if the member has membership prior to 1 April 2014 meaning that the final pay used to calculate the member's pre 1 April 2014 pension benefits would be the best one of the last 3 years pay or, if the pay reduction occurred in the 10 years preceding the date of leaving, the average of any 3 consecutive years ending on a 31 March in the last 13 years.

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 and having to apply regulations 8 to 10 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 if the member has membership prior to 1 April 2014.

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.

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 2014 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-2014 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 2014 which relates to a period prior to 1 April 2014 should not be included in LGPS2014 cumulatives, but rather be allocated back to the period for which it is due.

The pensionable pay for the pre-1 April 2014 element should be based on the 2008 Scheme definition of pensionable pay (e.g. excluding non-contractual overtime) and not the 2014 Scheme definition of pensionable pay (which would, for example, include non-contractual overtime) and the employee contribution rate should be that which applied pre-1 April 2014 also. It is permissible however to use the employer contribution rate applicable at the time of payment to both the pre- and post-1 April 2014 pensionable pay.

Also, it would seem logical that 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 LGPS2014 cumulatives. However, the LGPS Regulations 2013 are not clear on this point. An argument for including such pay in the LGPS2014 cumulatives is that regulation 20(1)(a) of the LGPS Regulations 2013 states that pensionable pay is "all the salary, wages, fees and other payments paid to the employee" and regulation 20(2) does not exclude payments made to a member of the Scheme that relate to a period prior to joining the Scheme. An alternative argument would be that regulation 9(1) of the LGPS Regulations 2013 says that where an employee commences membership part way through a Scheme year, pension contributions are payable on "the annual pensionable pay the member receives at the commencement of membership"; thus any payments made after commencement of membership that relate to a period prior to commencement of membership is not "pensionable pay" as it relates to pay due prior to commencement of membership. If the payment had been made at the correct time (before commencement of membership) it would not have been pensionable; so why should the payment become pensionable simply because payment is delayed (either by the employee or the employer) until after the employee has joined the Scheme? The regulations governing the 2008 Scheme were equally unclear on this point.

“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, 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 <u>unpaid</u> 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 weeks prior to the start of the relevant period after removing any “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. If the pensionable pay in the period has been reduced as a result of an absence due to a trade dispute or an absence authorised by the employer, the reduction is to be ignored when calculating the average pensionable pay for the 12 weeks.

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 2014 (i.e. where the 12 weeks / 3 months goes back beyond 1 April 2014). If so, it is pensionable pay as defined in the 2008 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 (regular) bonus
Month 3 £1,400

Annual rate of assumed pensionable pay is:

(£1,400 + £1,400 + £1,400) / 3 * 12) = £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:

(£1,400 + £2,400 + £1,400) / 3 * 12) = £20,800

“Lump Sums”

Assumed pensionable pay, however, may be increased <u>at the time of calculation</u> 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:

(£1,400 + £1,400 + £1,400) / 3 * 12) = £16,800 + £1,000 = £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 the member receives 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:

$$\frac{\text{Annual rate}}{365} \times 3$$

, or

$$\frac{\text{Annual rate}}{12} \times \frac{3}{31}$$, 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 / Shared Parental Leave in Touch days

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 sickness or no pay during ordinary maternity leave, ordinary adoption leave or paternity leave[5], 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).

5 The reference to "or during ordinary maternity leave, ordinary adoption leave or paternity leave" was not introduced until 11 April 2015 by SI 2015/755 but had retrospective effect to 1 April 2014.

So, for a monthly paid person dropping from half pay to no pay in the middle of August for example, 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 2008 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 2014 membership it will be necessary for the employer to provide a final pay calculation under the 2008 Scheme definition, for any person who has membership prior to 1 April 2014 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 2008 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 2008 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 2008 Scheme NPA it shall be deemed to be their 2008 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 2013 for example, one would be calculating whole-time equivalent pay in the year to 13 August 2013, year to 13 August 2012 and year to 13 August 2011 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 is the annual average in the last 3 years normally but the employer has discretion to use a different three year period ending on a 31 March in the last 10 years.

If a "Certificate of protection of pension benefits" had been issued under the 1997 Regulations, 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).

From 1 April 2008, any member having a pay cut or restriction in respect of prescribed circumstances has the right for 10 years to choose the best average of any consecutive three years in the last 13 years of membership. For simplicity, these 13 years all end on 31 March rather than anniversaries of the date of leaving. This right continues to apply even where the pay cut or restriction occurs after 31 March 2014.

Calculating final pay has always been onerous. Consideration was given to whether the final pay calculation required for members' pre 2014 final salary linked benefits (and the underpin) could be simplified. Various options were considered but, as each of these had its own difficulties, unfortunately none were taken forward.

4) EMPLOYEE CONTRIBUTIONS

Pensionable pay has been redefined for the 2014 Scheme and this is most important because:

- on 1 April 2014 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). Indeed, given a number of members might have seen their contribution rate increase on 1 April 2014, it was recommended that the change in their contribution rate should be notified to them before that date to avoid complaints that the employer had not forewarned the member of the increase (leading to a reduction in net pay and, potentially, difficulties for some members in meeting direct debit / standing order payments or leading to bank charges).

The bandings and rates for 2015/16 are as follows:

Actual Pensionable Pay	Gross Contribution
Up to £13,600	5.5%
£13,601 - £21,200	5.8%
£21,201 - £34,400	6.5%
£34,401 - £43,500	6.8%
£43,501 - £60,700	8.5%
£60,701 - £86,000	9.9%
£86,001 - £101,200	10.5%
£101,201 - £151,800	11.4%
£151,801 or more	12.5%

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.

If the employee has a reduction in pay they will continue to pay contributions on the amount of pensionable pay received (if any) except in the case of employees on reserve forces service leave, the special terms of which we will come to later in these notes.

Rate based on actual pay

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.

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.

This can be done in a number of ways for example:

- The annual rate of contractual pay
- The annual rate of contractual pay plus an estimation of the non-contractual overtime or hours worked in excess of the contractual hours which might be worked in a full year
- The hourly contractual rate multiplied by an estimate of the number of hours to be worked in a full year
- The weekly contractual rate multiplied by 52.143
- The weekly contractual rate multiplied by 52.143 plus an estimate of other pensionable payments to be made in a full year

Each employer should assess the appropriate rate in a reasonable and consistent manner.

Allocating employees to an appropriate band is relatively straight forward where the employee is not expected to undertake any additional hours or overtime. However, it is less straight forward where the number of hours an employee may work in a year is not known.

Where an employee with part-time contractual hours is likely to undertake a number of additional hours in excess of their contractual hours, the employer could:

a) use one of the methods in the first and fourth bullet points above i.e. place the employee in the band applicable to their contractual hours only and subsequently review the band allocation at an appropriate time, or

b) use one of the methods set out in the second, third or fifth bullet points above, perhaps taking account of the hours worked by the previous holder (if any) of the post, and subsequently review the band allocation at an appropriate time.

The advantage of option (a) is that it is less likely to lead to an appeal by the employee against the band to which they have been allocated and the employer can, in any case, review the band allocation at a later date and reallocate to a new band, as appropriate.

The disadvantage of option (a) is that it can initially result in a lesser contribution being collected from an employee's pay for a period of time than the actual hours eventually worked might have warranted. However, the size of this 'loss' to the Pension Fund (which, in turn, would become a cost to the employer) can be controlled by the employer undertaking a periodic review of the contribution banding.

Indeed, strictly speaking, there is nothing in the Regulations governing the LGPS 2014 that would prevent the employer retrospectively changing the contribution banding and recovering the underpaid contributions from the employee's pay (although this might, itself, lead to complaints and / or appeals from disgruntled employees).

The advantage of option (b) is that it results in a contribution rate that the employer deems reasonable based on the employer's expectation of the number of hours to be worked by the employee. It could result in a higher or lower contribution rate than the actual hours eventually worked might have warranted (depending on how many hours the employee actually works) and this could, respectively, result in an appeal by the employee against the band to which they have been allocated or result in a 'loss' to the Pension Fund (which, in turn, would become a cost to the employer). The employer could reallocate to the correct band following a successful appeal or, equally, could undertake a review of the contribution banding from time to time regardless of whether or not there had been an appeal.

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

a) make a reasonable initial assessment of the number of hours the person is likely to work on an annual basis, perhaps taking account of the hours worked by the previous holder (if any) of the post, and subsequently review the band allocation at an appropriate time, or

b) allocate the employee to the lowest band (5.5%) and subsequently review the band allocation at an appropriate time, or

c) allocate the employee to the 6.5% band (on the basis that this is the average contribution rate for Scheme members) and subsequently review the band allocation at an appropriate time.

The advantage of option (a) is that it results in a contribution rate that the employer deems reasonable based on the employer's expectation of the number of hours to be worked by the employee. It could result in a higher or lower contribution rate than the actual hours eventually worked might have warranted (depending on how many hours the employee actually works) and this could, respectively, result in an appeal by the employee against the band to which they have been allocated or result in a 'loss' to the Pension Fund (which, in turn, would become a cost to the employer). The employer could reallocate to the correct band following a successful appeal or, equally, could undertake a review of the contribution banding from time to time regardless of whether or not there had been an appeal.

The advantage of option (b) is that it is less likely to lead to an appeal by the employee against the band to which they have been allocated and the employer can, in any case, review the band allocation at a later date and reallocate to a new band, as appropriate. The disadvantage of option (b) is that it can initially result in a lesser contribution being collected from an employee's pay for a period of time than the actual hours eventually worked might have warranted. However, the size of this 'loss' to the Pension Fund (which, in turn, would become a cost to the employer) can be controlled by the employer undertaking a periodic review of the contribution banding.

Indeed, strictly speaking, there is nothing in the Regulations governing the LGPS 2014 that would prevent the employer retrospectively changing the contribution banding and recovering the underpaid contributions from the employee's pay (although this might, itself, lead to complaints and / or appeals from disgruntled employees).

The advantage of option (c) is that it delivers the expected average contribution rate for Scheme members (upon which the LGPS 2014 has been costed). The disadvantage is that it is perhaps more likely to lead to an appeal by the employee against the band to which they have been allocated if the member believes their pay falls within a lower band. Of course, the employer could retrospectively amend the band allocation following the appeal determination (if, in hindsight, it turns out that the employee should have been placed in a lower band).

Conversely, placing the member in the 6.5% band could initially result in a lesser contribution being collected from an employee's pay for a period of time than the actual hours eventually worked might have warranted (if the employee's pay turns out to fall within a higher band). In any case (regardless of whether or not there has been an appeal from the Scheme member), the employer can review the band allocation whenever the employer wishes and reallocate to a new band, as appropriate.

Movements between contribution bands

Once the initial pay band and contribution rate has been determined for an employee, the employer is required by the regulations to reassess the appropriate band and rate each April (in the pay period in which 1 April falls) and is permitted by the regulations to review the appropriate band and rate on any material change in pay.

In practice, the latter means that the employer can, for example, review the band and rate during a Scheme year should the employee have a material change in contractual pay (e.g. a change of job, a promotion / demotion, a regrading, a pay award or a change in 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.

However where the initial rate was set based on an estimated pay figure, the employer may wish to put in place a process to regularly review the actual pensionable pay being received in order to ensure the correct rate is being applied.

Such a review could take place:

a) each pay period.

   This could be done in a number of ways e.g.:

   - the pensionable pay to be paid in the pay period could be grossed up to an annual equivalent and the contribution rate for that pay period determined accordingly. However, any lump sums or retrospective payments covering more than one pay period, or any payments not paid every pay period (e.g. payments made twice a year for cutting verges) would need to be completely excluded from the calculation or, alternatively, excluded before the grossing up calculation and then added to the resultant grossed up annual rate as, otherwise, the derived annual pensionable pay figure would be overestimated. Such an approach can be software driven (i.e. automated on the payroll) and has the advantage of ensuring the annual rate of pay is assessed pay period by pay period but, ultimately, could still result in a member paying more or less in contributions than their actual pensionable pay over the Scheme year might have otherwise warranted. For example, a member whose pay, month by month is on the cusp of a pay bands 2 and 3 might pay a contribution rate of 5.8% some months and 6.5% other months and yet, over the course of the Scheme year, the member's aggregate pensionable pay falls within pay band 2 (meaning that the member could seek to argue that they will have paid too much in contributions in some months) or the aggregate pensionable pay falls within pay band 3 (meaning that it could be argued the member has paid too little in some months), or

- the cumulative pensionable pay for the Scheme year to date, including the pensionable pay to be paid in the pay period, could be grossed up to an annual equivalent (making an appropriate adjustment for any lump sum or retrospective payments paid in the Scheme year to date) and the contribution rate for that pay period determined accordingly. This option has the same issues as described above but, perhaps, to a lesser degree.

b) each quarter (or half yearly).

This could be done in a number of ways e.g.:

- the pensionable pay received in the previous quarter (or previous half year) could be grossed up to an annual equivalent, making an appropriate adjustment for any lump sum or retrospective payments paid during that quarter (or half year) and the contribution rate for the next quarter (or half year) set accordingly, or

- the cumulative pensionable pay for the Scheme year to date at the end of the previous quarter (or half year) could be grossed up to an annual equivalent (making an appropriate adjustment for any lump sum or retrospective payments made in the Scheme year to date) and the contribution rate for the next quarter (or half year) set accordingly.

Note: the issues identified in the options under (a) similarly apply to the options under (b).

c) at the end of, say, month 11 (or, say, week 48 for weekly paid employees). This could be done in a number of ways e.g.:

- the cumulative pensionable pay for the Scheme year to date at the end of month 11 (or week 48) could be grossed up to an annual equivalent (making an appropriate adjustment for any lump sum or retrospective payments made in the Scheme year to date). If this indicates that the incorrect employee contribution rate had been applied during the Scheme year to date, apply a new contribution rate from the contribution table for the remaining period of the Scheme year only which will, as near as is possible, recover any ‘underpaid’ employee contributions or refund any ‘overpaid’ employee contributions. A new employee contribution rate would, of course, still need to be assessed at the beginning of the new Scheme year.

d) each year with the rate for the next Scheme year being set by reference to:

   - the actual pensionable pay received in the previous Scheme year, or

   - the annual rate of pensionable pay at the beginning of the new Scheme year, or

   - the expected annual pensionable pay for the new Scheme year.

   Example – The rate set on commencement was based on contractual annual pay. However, when the rate is reviewed at the end of the year, it is clear that the employee worked a significant amount of non-contractual overtime which would have placed them in the next band up. The employer may choose to apply the rate applicable to that next band up for the following year.

In deciding the approach to take, **employers** will need to balance the wish to ensure the employee contributions deducted over a Scheme year fairly reflect the pay band appropriate to the pensionable pay received by the employee in the Scheme year against the need to adopt an approach that is simple both to administer and for employees to understand.

In other words employers will need to consider whether seeking to get income from employee contributions correct to the n^{th} degree (thereby reducing the impact on the employer’s contribution rate that might otherwise subsequently result from under or over collection of employee contributions) is more than outweighed by the cost of the additional complexity required to achieve this. Employers should ensure that whatever process they adopt is reasonable and consistent in its application.

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 for 2014/15 are therefore as follows:

Actual Pensionable Pay	Gross Contribution
Up to £13,600	2.75%
£13,601 - £21,200	2.90%
£21,201 - £34,400	3.25%
£34,401 - £43,500	3.40%
£43,501 - £60,700	4.25%
£60,701 - £86,000	4.95%
£86,001 - £101,200	5.25%
£101,201 - £151,800	5.70%
£151,801 or more	6.25%

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 5.8% and the other a rate of 6.5% 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 8.5%.

From an employer's payroll perspective, separate pensionable cumulatives have to be held for each job, and reported in to the administering authority periodically. Of course, if there is a single employment relationship then, assuming the member had not changed from the main to the 50/50 section, or vice versa, during the Scheme year, 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 (as at April 2014), 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 2008 Scheme and will be increased each April (starting April 2015) by Pensions Increase (assuming a PI date of 1 April 2013). The maximum as at April 2015 is £6,675. 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 may allow) 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, adoption or paternity leave, 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.

In practice it is envisaged that members will utilise a self-service modeller and application process available on http://lgps2014.org/ or on the Pension Fund administering authority's own website.

An administering authority can determine that payments cannot be made over a period of time where it would be impracticable. Additionally, an 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 (as at April 2014) up to £6,500 (less any amount of additional annual pension the employer has already contributed towards or is contributing towards under a shared cost APC). This is an increase from the maximum of £5,000 that applied under the 2008 scheme and will be increased each April (starting April 2015) by Pensions Increase (assuming a PI date of 1 April 2013). The maximum as at April 2015 is £6,675. 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.

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 after 31 March 2014

From 1 April 2014, the 50% contribution limit on AVCs no longer applies where the AVC contract is entered into after 31 March 2014. This means AVCs up to 100% of pensionable pay, allowing for the statutory deductions (LGPS contributions, NI contributions etc.), are now 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, adoption or paternity 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 2014 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 2014.

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 2014

From 1 April 2014, the 50% limit on AVCs still applies where the AVC contract is entered into before 1 April 2014. This means AVCs up to 50% of pensionable pay are permissible only. The 50% limit applies to the 2008 Scheme definition of pensionable pay i.e. excluding any pay that is pensionable in the 2014 Scheme but which was not pensionable in the 2008 Scheme – such as non-contractual overtime.

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, adoption or paternity 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 2014 (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.

Tax-fee cash position

For a pre 1 April 2014 AVC contract, the 2014 Transitional Regulations provide that the provisions in the 2008 Scheme shall continue to apply. This means that an AVC arrangement in existence at 31 March 2014 will be dealt with thereafter in the same manner it previously was i.e. providing the AVC pot is crystallised at the same time as the main scheme benefits the person can take 100% of the AVC pot as tax-free cash subject to the overriding HMRC limits.

For a post 31 March 2014 AVC contract, the 2013 Regulations are worded in such a fashion that it is permissible for a person to take 25% of the value of their main scheme benefits as tax-free cash AND 100% of their AVC pot. If a person did both these things they would, of course, exceed the maximum tax-free cash allowed under HMRC rules, causing an unauthorised payment. It is expected, therefore, that the 2013 Regulations will be amended at the earliest opportunity. HM Treasury had indicated that it was their policy position that a member with a post 31 March 2014 AVC contract should be restricted to being able to take only 25% of the AVC fund as tax free cash (and 25% of the main scheme benefits as tax free cash). This was the policy line that administering authorities were recommended to follow up until March 2015. However, given that:

i) despite the HM Treasury policy position, the current LGPS Regulations 2013 allow all AVC payers (including those with post 31 March 2014 AVC contracts) to take up to 100% of the AVC fund as a tax free lump sum,
ii) no amendments were included in the LGPS (Amendment) Regulations 2015 to deliver the HM Treasury policy position of restricting the maximum tax free lump sum from a post 31 March 2014 AVC contract to 25% of the value of the AVC fund (and there are no such amendments on the horizon), and
iii) the LGPS in Scotland and in Northern Ireland will not be implementing the HM Treasury policy position

administering authorities in England and Wales should (from April 2015), allow members with post 31 March 2014 AVC contracts to take up to 100% of the AVC fund as a tax free lump sum at the same time as drawing the main LGPS pension provided, when added to the LGPS lump sum, it does not exceed 25% of the overall value of the LGPS benefits (including the AVC fund). This also means that members who are TUPE transferred to another employer will no longer be disadvantaged.

Regulation 33(2) of the LGPS Regulations 2013 in England and Wales which currently says:

(2) But the total amount of the member's commuted sum shall not exceed 25% of the capital value of the member's accrued rights under all local government pension provision in relation to that benefit crystallisation event excluding those under regulation 17(7)(a) (additional voluntary contributions).

will need to be amended to read:

(2) But the total amount of the member's commuted sum shall not exceed 25% of the capital value of the member's accrued rights under all local government pension provision in relation to that benefit crystallisation event including those under regulation 17(7)(a) (additional voluntary contributions).

Until any future amendments to the LGPS Regulations are made the above effectively places members with post 31 March 2014 AVC contracts in a better position that those with pre 1 April 2014 AVC contracts (in that, under post 31 March 2014 contracts, members can contribute up to 100% of pay into an AVC and take up to 100% out as a tax free lump sum, whereas under a pre 1 April 2014 AVC contract members can only contribute up to 50% of pay into an AVC and take up to 100% out as a tax free lump sum).

This leaves us with the thorny question of what constitutes an “AVC arrangement entered into by a member before 1 April 2014”?

Transfer position (inter-funds)

Under the 2008 Scheme a member transferring from one LGPS Fund in England or Wales to another Fund in England or Wales could leave their AVC pot with the former Fund (as ‘orphan’ AVC funds), even if they aggregated their main scheme benefits.

Under the 2014 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 2014 and 1 April 2014 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. There were initially two reasons for this ‘concession’. Firstly 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 and, secondly, because if the member transferred the AVC funds to an AVC provider with a different administering authority the AVC arrangement with that new administering authority would be a new arrangement and so the member might lose the ability to take up to 100% of those transferred AVC funds as a tax free lump sum. Leaving the AVC funds behind as ‘orphan’ AVC funds would avoid these issues. However, due to the change in stance regarding the tax free lump sum (see above), the second issue fell away as from April 2015. 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 a post 31 March 2014 AVC/SCAVC arrangement dies 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.

However, because the 2014 Transitional Regulations provide that all the provisions under the 2008 Scheme continue to apply where the arrangement was entered into before 1 April 2014 this 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

For AVC arrangements entered into after 31 March 2014, the AVC benefits must be drawn at the same time as the main scheme benefits in most cases. There are only 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.

Other additional contributions

Additional Regular Contributions (ARCs)

Contributions under existing ARC contracts entered into before 1 April 2014 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, adoption or paternity 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 2008 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 (2008 Scheme definition of pensionable pay).

The contributions should only be deducted on the 2008 Scheme definition of pensionable pay i.e. excluding any pay that is pensionable in the 2014 Scheme but which was not pensionable in the 2008 Scheme – such as non-contractual overtime.

It should be noted that during any period of:

- relevant child related leave (ordinary maternity, adoption or paternity 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, adoption or paternity 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 cohabiting partner's pension will not be able to enter into a contract to achieve this after 31 March 2014.

Payments under existing ASBC contracts at 31 March 2014 are expressed as a percentage of the member's full time equivalent pensionable pay (2008 Scheme definition of pensionable pay). <u>The contributions should only be deducted on the 2008 Scheme definition of pensionable pay</u> i.e. excluding any pay that is pensionable in the 2014 Scheme but which was not pensionable in the 2008 Scheme – such as non-contractual overtime).

It should be noted that during any period of:

- relevant child related leave (ordinary maternity, adoption or paternity 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 2014 (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).

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 2008 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 2008 Scheme on the first 30 days of unpaid additional maternity, paternity or adoption leave.

Under the 2008 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 the2014 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 Pension Fund 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 2/3rds 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 employee.

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 2008 Scheme, there are no longer any special rules governing jury service. In the 2014 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 2008 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 2014 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 Pension Fund 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 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 2008 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 2014 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 2008 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-14 protections

If the employee has pre 1 April 2014 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 2014 membership (and for their benefits for their post 31 March 2014 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 2008 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 2014 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 2014 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. <u>This means that from 1 April 2014 employers contributions will be payable "in full" on APP in cases of long-term sickness absence.</u>

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, 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 relevant LGPS Fund.

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	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. *NB: we need actuarial guidance from the Secretary of State on exactly how / when Pension Debits and Annual Allowance Scheme Pays deductions are to be made from accounts.*
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[6] (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. *NB: We may need actuarial guidance from the Secretary of State on exactly how / when Pension Debits and Annual Allowance Scheme Pays deductions are to be made from accounts.*
Closing Balance (Second Year onwards)	The total of the opening balance and any pension deduction

[6] 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 <u>is not</u> 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

Although we need actuarial guidance from the Secretary of State 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 covered in the Revaluation guide which is available in the Administration Guides to the 2014 Scheme section under the Guides tab at www.lgpsregs.org.

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 2015 dos not counts towards the amount of pension that a member retiring on 31 March 2015 can commute.

This can be evidenced by the following. Consider a member who retires on 30 March 2015 and the administering authority just happens to have all the paperwork from the employer and scheme member on 30 March 2015 to allow them to process and pay the benefit on 31 March 2015. The administering authority would not offer commutation of the revaluation amount applied at one second after midnight on 31 March 2015 – 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 2014. That member will get a part year's Treasury Order Revaluation at one second after midnight on 31 March 2015 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 31) 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 31 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 the Secretary of State.

The foregoing and the following examples represent a summary of the revaluation provisions. A full guide to the revaluation provisions is available in the Administration Guides to the 2014 Scheme section under the Guides tab at www.lgpsregs.org.

Example 1 – revaluation of active account

A member:
- commences on 1 July 2014
- receives a transfer in during 2016/17 which purchases additional pension of £200
- purchases £50 additional pension by a lump sum Additional Pension Contribution (APC) in May 2019, and
- leaves on 15 December 2021.

Treasury Revaluation Orders are 3% for the scheme years ending 31 March 2015 through to 31 March 2021.

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 2014	£0.00	£405.18	£0.00	£0.00	31 March 2015	£405.18	£405.18 x 3%** = £12.16	£0.00	£0.00	£417.34
1 April 2015	£417.34	£413.27	£0.00	£0.00	31 March 2016	£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 2015 is not pro-rated even though the member only has 9 complete months of service in 2014/15.

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 2016	£855.53	£418.37	£200.00	£0.00	31 March 2017	£1,473.90	£1,273.90 x 3% = £38.22	£200.00 x 3% = £6.00	£0.00	£1,518.12
1 April 2017	£1,518.12	£423.47	£0.00	£0.00	31 March 2018	£1,941.59	£1,735.59 x 3% = £52.07	£206.00 x 3% = £6.18	£0.00	£1,999.84
1 April 2018	£1,999.84	£428.57	£0.00	£0.00	31 March 2019	£2,428.41	£2,216.23 x 3% = £66.49	£212.18 x 3% = £6.36	£0.00	£2,501.26
1 April 2019	£2,501.26	£433.67	£0.00	£50.00	31 March 2020	£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 2020	£3,074.48	£438.78	£0.00	£0.00	31 March 2021	£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 2021	£3,618.66	£332.91	£0.00	£0.00	15 Dec 2021	£3,951.57				

When the member leaves on 15 December 2021 the active account is closed and the amount to be transferred to the deferred or retirement account on 16 December 2021 is £3,951.57 which includes revaluation up to 31 March 2021. 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 2021 (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 11 April 2022 is 4% for a full year (and 1.333% proportioned for the period from 16 December 2021). 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 2021	£3,951.57	£3,666.67	£231.85	£53.05	N/A	31 Mar 2022	£3,951.57	£104.00*	£4,055.57
1 Apr 2022	£4,055.57	£3,763.18	£237.95	£54.44	£4,055.57 x 4% x 4/12 = £54.06	31 Mar 2023	£4,109.63	N/A	£4,109.63

***Note:**

Step 1: £3,951.57 x 104% = £4,109.63
Step 2: £4,109.63/101.333 x 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 x 104% = £3,813.34/101.333 x 100 = £3,763.18 - £3,666.67 = £96.51
TV in: £231.85 x 104% = £241.12/101.333 x 100 = £237.95 - £231.85 = £6.10
AP: £53.05 x 104% = £55.17/101.333 x 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 2023	£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 2024	£4,274.02	N/A	£4,274.02
1 Apr 2024	£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 2025	£4,444.98	N/A	£4,444.98
1 Apr 2025	£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 2026	£4,622.78	N/A	£4,622.78
1 Apr 2026	£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 2027	£4,807.69	N/A	£4,807.69
1 Apr 2027	£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 2028	£5,000.00	N/A	£5,000.00
1 Apr 2028	£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 2028	£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 2028 and opts to draw pension (with no commutation) but, as the pension is paid 6 years before NPA (which, currently, is reached on 16 December 2035), 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 2028 (to which an actuarial reduction is to be applied). PI from April 2029 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 2028	£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 2029	£3,588.00
1 April 2029	£3,588.00	2,596.59	164.19	37.56	789.66	£3,588.00 x 4% = £143.52	31 Mar 2010	£3,731.52
1 April 2030	£3,731.52.00	2,596.59	164.19	37.56	£933.18	£3,731.52 x 4% = £149.26	31 Mar 2011	£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 draft revaluation paper on-line does give examples of cases where there is a GMP.

7) RETIREMENT BENEFITS

The retirement benefit provisions in the 2014 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 2014 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 2014 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. Administering authorities will therefore no longer be able to quote a specific NPA payable date in deferred benefit notifications for post 31 March 2014 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 2014 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 2014 Scheme in respect of membership prior to 1 April 2014 – see the sub-section entitled "Membership before 1 April 2014" 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 2014 Scheme NPA. Where retirement occurs at NPA there is no actuarial reduction to post 31 March 2014 benefits and no actuarial increase either. Of course, where 2008 Scheme NPA was earlier, pre 1 April 2014 benefits will see an actuarial increase (see next paragraph).

Late retirement

Members who wish to work beyond their 2014 Scheme NPA will see their pension enhanced for payment after NPA. That enhancement will be calculated in accordance with the actuarial guidance from the Secretary of State which currently provides for an increase to pension of 0.014% a day for each day payment is delayed beyond NPA (roughly 5.1% per annum).

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 2014 Additional Regular Contribution contract). In the case of redundancy/efficiency, any additional pension bought via regulation 31 is NOT subject to actuarial deduction. As the vesting period increased on 1 April 2014 from 3 months to 2 years, employers will need to be aware that those to whom they have given a redundancy / efficiency retirement notice before 1 April 2014 who, at the date of termination, will have less than 2 years membership will not have a right to immediate payment of unreduced pension benefits where retirement occurs after 31 March 2014.

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

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-2014 members).

Members would have to draw:

- all of their pre 1 April 2008 benefits, plus
- all, some or none of their 1 April 2008 to 31 March 2014 benefits, plus
- all, some or none of their post 31 March 2014 benefits, plus
- any "additional benefits" in accordance with the actuarial guidance issued by the Secretary of State.

“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

Although the basic structure of three-tier ill-health is retained, the conditions have been reworded. Under the regulations, to qualify for ill-health benefits two conditions must be satisfied as follows:

- 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, and

- The member, as a result of ill-health or infirmity of mind or body, is not immediately capable of undertaking any gainful employment.

If those conditions are 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 NPA.

- A member is entitled to Tier 2 benefits if that member (a) is not entitled to Tier 1 benefits; (b) is unlikely to be capable of undertaking any gainful employment within three years of leaving the employment; but (c) is likely to be able to undertake gainful employment before reaching normal pension age.

- A member is entitled to Tier 3 benefits if they are likely to be capable of undertaking gainful employment within three years of leaving the employment, or before NPA if earlier.

The enhancement of membership in respect of future membership “lost” to NPA is replaced with pension in respect of “assumed pensionable pay” from ill-health retirement to NPA 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 the member’s NPA under the 2014 Scheme, 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.

NB: no enhancement can be added if the member has previously received a Tier 1 ill health pension under the 2014 or 2008 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 2014 or 2008 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 2014 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 member’s 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 England or Wales 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 England or Wales from another, earlier, employment.

Members covered by regulation 20(13) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 (minimum ill health enhancement for those who were active members before 1 April 2008, were aged 45 or over at that time, have been in continuous membership since then, and have not already received any benefits in respect of that membership) 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, or where a Tier 3 ill health pension is awarded which is subsequently changed to a Tier 1 or Tier 2 ill health pension.

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. If the pensionable pay in the period has been reduced as a result of an absence due to a trade dispute or an absence authorised by the employer, the reduction is to be ignored when calculating the average pensionable pay for the 12 weeks / 3 months[7].

Where the Independent Registered Medical Practitioner certifies that the member was working reduced **contractual hours** during the relevant 12 (weekly) or 3 (monthly) pay periods wholly or partly as a result of the condition that caused or contributed to the ill health retirement, the APP figure is to be calculated on the pay the member would have received during the relevant pay periods if they had not been working reduced contractual hours[8].
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.

Tier 3 benefits, bar some technical amendments, retain the structure of the 2008 Scheme, e.g. no enhancement to benefits, pension ceases if gainful employment is obtained, reviewed at the 18 month stage, paid for a maximum of three years, can be uplifted to Tier 2 on review etc. No Tier 3 benefits can be awarded if the member has previously been awarded a Tier 3 pension under the 2008 or 2014 Schemes.

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 2014. 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 2014 where the retirement occurs on or after that date.

As the vesting period increased on 1 April 2014 from 3 months to 2 years, employers will need to be aware that in cases where the process of ill health retirement is started before 1 April 2014, the member will not be entitled to immediate payment of ill health pension benefits if ill health retirement occurs after 31 March 2014 and, at the date of termination, the member has less than 2 years membership.

Tier 3 ill health retirement benefits awarded under the 2008 Scheme continue to be subject to the 2008 Scheme regulations.

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 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. Present actuarial reductions to benefits are as follows:

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7 The requirement to ignore any reduction due to a trade dispute or authorised leave of absence was not introduced until 11 April 2015 by SI 2015/755 but had retrospective effect to 1 April 2014.

8 Note that until 11 April 2015 there was no equivalent of this adjustment to APP where the person died in service rather than being retired on health grounds. However, the position was corrected by SI 2015/755 which had retrospective effect to 1 April 2014.

Years Early	Pension Male	Pension Female	3/80ths Lump Sum Unisex
0	0%	0%	0%
1	6%	5%	3%
2	11%	11%	6%
3	16%	15%	8%
4	20%	20%	11%
5	25%	24%	14%
6	29%	27%	16%
7	32%	31%	19%
8	36%	34%	21%
9	39%	37%	23%
10	42%	40%	26%
11	45%	44%	N/A
12	48%	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.

In the 2008 Scheme, employer's consent was required if a person was under the age of 60 and wished to voluntarily draw their pension benefits. This is no longer the case but it important to understand that, as retirement at the member's own choice between 55 and 59 inclusive is a new scheme facility, the Rule of 85 protection will not automatically apply in full to such cases.

"Employer consent" before age 60

The 2014 Transitional Regulations provide that whilst the 85 year rule does not automatically apply in full if the employee decides to voluntarily draw benefits on or after age 55 and before age 60, 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 2008 Scheme where an employer agreed to payment of benefits on or after 55 and before age 60 i.e.

a) the scheme member would suffer an actuarial reduction on

  - the benefits relating to their fully protected 85 year rule membership (see 85 year rule paper which can be found in the Administration Guides to the 2014 Scheme section under the Guides tab at www.lgpsregs.org) 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 related to any 1 April 2008 to 31 March 2020 tapered 85 year rule membership (see 85 year rule paper which can be found in the Administration Guides to the 2014 Scheme section under the Guides tab at www.lgpsregs.org) calculated by reference to the period between the date the benefits are drawn and age 65, and

- the benefits relating to their non-protected membership calculated by reference to the period from the date the benefits are drawn to NPA (2008 Scheme definition) for the pre 1 April 2014 membership and Part D2 membership; and SPA, with a minimum of age 65, for the post 31 March 2014 membership (excluding Part D2 membership)

b) 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 the actuarial guidance issued by the Secretary of State, on:

- the benefits relating to their fully protected 85 year rule membership (see 85 year rule paper which can be found in the Administration Guides to the 2014 Scheme section under the Guides tab at www.lgpsregs.org) 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 related to any 1 April 2008 to 31 March 2020 tapered 85 year rule membership (see 85 year rule paper which can be found in the Administration Guides to the 2014 Scheme section under the Guides tab at www.lgpsregs.org) calculated by reference to the period between the date the benefits are drawn and age 65, and
- the benefits relating to their non-protected membership calculated by reference to the period from the date the benefits are drawn to NPA (2008 Scheme definition) for the pre 1 April 2014 membership and Part D2 membership; and SPA, with a minimum of age 65, for the post 31 March 2014 membership (excluding Part D2 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 2008 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.

Administering authorities 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).

However, for leavers after 31 March 2014 the position has, effectively, been standardised across all retirement types by virtue of Schedule 2 of the 2014 Transitional Regulation and particularly paragraph 2(2)(1) of that Schedule.

The employer can exercise its discretion to waive actuarial reductions but the situation differs according to the group of member the person is classified as for 85 Year Rule purposes, as follows:

a) Group 1 member, employer can waive

- **all** of the actuarial reduction in respect of pre-1 April 2016 benefits (on compassionate grounds only).
- **all or some** of the actuarial reduction in respect of post-31 March 2016 benefits (on any grounds).

b) Group 2 member, employer can waive

- **all** of the actuarial reduction in respect of pre-1 April 2020 benefits (on compassionate grounds only).
- **all or some** of the actuarial reduction in respect of post-31 March 2020 benefits (on any grounds).

c) Group 3 or 4 member, employer can waive

- **all** of the actuarial reduction in respect of pre-1 April 2014 benefits (on compassionate grounds only).

- **all or some** of the actuarial reduction in respect of post-31 March 2014 benefits (on any grounds).

The discretions in (a) to (c) above apply equally to post 31 March 2104 deferred members and suspended tier 3 ill health pensioners who are granted early release of their benefits (other than on ill-health grounds as no actuarial reduction would apply). For pre 1 April 2014 deferred members and suspended tier 3 ill health pensioners 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.

Note: Entries (a) to (c) do not apply to flexible retirement cases. In the case of flexible retirements, the employer has the ability to waive all or part of the reduction (on any grounds). This is reflected in the Discretions Policies paper which can be found in the Administration Guides to the 2014 Scheme section under the Guides tab at www.lgpsregs.org.

This sub-section is a relatively simple explanation of the new provisions. For full details, including the relevant regulatory references, please refer to the 85 year rule paper and the Discretions Policies paper which can be found in the Administration Guides to the 2014 Scheme section under the Guides tab at www.lgpsregs.org.

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 2014 Scheme are payable when the member attains Normal Pension Age under the 2014 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. 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 the Secretary of State. 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 Sharing Order with an effective date prior to 1 April 2014 will result in a Pension Credit under the 1997 Regulations.

A Pension Sharing Order with an effective date on or after 1 April 2014 will result in a Pension Credit under the 1997 Regulations if the debited member has no post 31 March 2014 membership.

A Pension Sharing Order with an effective date on or after 1 April 2014 will result in a Pension Credit under the 2013 Regulations if the debited member has some post 31 March 2014 membership.

A pension credit awarded under the 1998 Scheme is still subject to the provisions of regulations 146 to 161 of the LGPS Regulations 1997 (other than regulations 152 and 156).

A pension credit awarded under the 2014 Scheme is payable when the credit member attains Normal Pension Age under the 2014 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 the Secretary of State).

A pension credit member can commute pension for a tax free lump sum (but not if:

a) the debited member had already made an election to commute or received an automatic lump sum before the valuation date used when implementing the Pension Sharing Order, or
b) the Pension Credit was awarded under the 1997 Regulations (i.e. where the effective date of the Order was before 1 April 2014 or where the effective date is after 31 March 2014 but the debited member has no post-31 March 2014 rights).

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 2008 Scheme had continued in respect of the member's benefits that accrued from 1 April 2014 to the underpin date i.e. to Normal Pension Age (2008 Scheme definition) or to the date active membership ceases, if earlier.

The following process represents our understanding of 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 2008 Scheme on 31 March 2012 and was, on 1 April 2012, 10 years or less from their normal retirement age under the 2008 Scheme;

(b) was an active member immediately before the underpin date and receives payment of benefits under the 2014 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 2013 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 2008 Scheme, or
(ii) the date the member ceased to be an active member of the 2014 Scheme with an immediate entitlement to a pension.

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 LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 provides that regulation 4 only applies to a member at the point they <u>receive</u> 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 2008 Scheme or, for a member ceasing to be an active member before their normal retirement age under the 2008 Scheme, whether the member ceased to be "an active member of the 2014 Scheme with an immediate entitlement to a pension" and "would have had an immediate entitlement to payment under the 2008 Scheme".

Nearly all members who were active members on 31 March 2012 and who were, on 1 April 2012, 10 years or less from their normal retirement age under the 2008 Scheme will be 55 or over on 1 April 2014 and so have an immediate entitlement to a pension under the 2014 Scheme (as a member can elect under regulation 30(5) of the LGPS Regulations 2013 for payment from that age). However, some members with a protected normal retirement age of 60 under the 2008 Scheme (e.g. Meat Hygiene Service members covered by regulation 144B of the LGPS Regulations 1997 and LSC members covered by regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007) might have been, say, aged 50 on 1 April 2012 and so would not be 55 until 2017. Thus, to be covered by the underpin, such members would have to cease to be an active member on or after age 55 or have a protected right under regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 to draw benefits from an earlier age (e.g. LSC members covered by regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 have a protected right to draw benefits from as early as age 50 on flexible retirement or voluntary retirement, but not on retirement on redundancy or business efficiency grounds, so if they left on or after 1 April 2014 and before 55 on redundancy or business efficiency grounds they would not be covered by the underpin). Meat Hygiene Service members do not have a right to immediate payment of benefits before age 55.

It should be noted that a member who opts out of membership prior to attaining their normal retirement age under the 2008 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 2008 Scheme, calculate the underpin amount in accordance with regulations 4(4) to (6) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

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 2014 Scheme between 1 April 2014 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 LGPS Regulations 2013)
- 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 2014, 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) the transfer would have purchased an amount of pension in the member's post-14 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(3) and (4) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

If the relevant date for a non-Club transfer in was pre 1st April 2014 the transfer would have purchased pre 1st April 2014 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 2014 membership.

If a transfer has purchased an amount of pension in the member's post-14 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 2014 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 2014 membership only (and the transfer had bought pre 1st April 2014 membership).

The second stage is to calculate the final salary pension the member would have accrued and had an immediate entitlement to under the 2008 Scheme (see notes in Step 5 below) if the member had stayed in the 2008 Scheme between 1 April 2014 and the underpin date, based on the following assumptions:

- the membership to be used in the calculation is the period between 1 April 2014 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 LGPS (Benefits, Membership and Contributions) Regulations 2007)

- 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 2008 Scheme, hold the accrued post 2014 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 2014 CARE pension calculated under regulation 4(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 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 2008 Scheme [as required by regulation 4(5)(e) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014], and
- the post 2014 notional final salary pension calculated under regulation 4(6) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 will be based on the final pay under regulations 8 to 11 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 (or, where appropriate, regulation 23 of the LGPS Regulations 1997 where a Certificate of Protection of pension benefits was issued in respect of a reduction or restriction in pay that occurred prior to 1 April 2008) 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 2008 Scheme. Although PI is technically not a “benefit the member would have been entitled to under the 2008 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 2008 Scheme specifically allowed an earlier year’s pay to be used in the benefit calculation which meant it became an intrinsic part of the 2008 Scheme and the purpose of the underpin is to compare the member’s post 2014 CARE pension (which does include revaluation) with the post 2014 pension the member would have received had they remained in the 2008 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-14 pension account accrued prior to the member's 2008 NPA, but excluding any element of that post-14 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 2008 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-14 pension account accrued after the member's 2008 NPA, and
d) any element of the member's post-14 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 2014 Scheme for the purposes of determining the actuarial reduction or actuarial increase due on them (related to the member's NPA in the 2014 Scheme).

The rationale for (c) is that the underpin guarantee only applies for benefits accrued up to the member's NPA under the 2008 Scheme. The rationale for (d) is twofold. Firstly, regulations 4(5)(b)(i), 4(5)(c) and 4(5)(d) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 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 2014 Scheme.

Paragraph 2.18 of the actuarial guidance issued by the Secretary of State on "Early Payment of Pension" (dated 28 March 2014) will need to be updated to reflect the above.

Step 4: If, on or before attaining their normal retirement age under the 2008 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 2014 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, other than on flexible retirement, the member voluntarily draws benefits at an age when the member would have required employer consent to draw benefits under the 2008 Scheme (i.e. where consent under regulation 30 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 would have been required), the underpin “guarantee amount” is **not** payable.

Notes:

- most scheme members would have required employer consent under the 2008 Scheme to voluntarily draw benefits before age 60. However, a person to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies (civil servants transferred from the learning and Skills Council for England), a person to whom regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997 apply (former members of the Metropolitan Civil Staffs Superannuation Scheme), or a person to whom regulation 23 of the LGPS (Transitional Provisions) Regulations 1997 applies (former NHS scheme members) can voluntarily draw benefits on or after age 50 without the need for employer consent.
- it has been suggested that if a member who did not have the right to voluntarily draw benefits before age 60 could demonstrate that their employer would have consented under regulation 30(2) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 to payment before age 60, then an underpin amount could be applied. This is a difficult area and much will depend on what the employer’s written policy on this discretion under the 2008 Scheme said.

Step 6: If the member

(a) draws benefits on or after the earliest age the member could have drawn the benefits under the 2008 Scheme without the need for employer consent, or
(b) draws benefits upon flexible retirement under regulation 30(6) of the LGPS Regulations 2013, and
(c) this is before the member’s CRA / NRA under the 2008 Scheme

the underpin “guarantee amount” **and** the accrued post 2014 CARE pension (excluding any element of the member’s post-14 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 2008 Scheme (in accordance with the Secretary of State guidance on early payment of benefits). 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-14 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 2014 Scheme (in accordance with the Secretary of State guidance on early payment of benefits). 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.

Step 7: If the member

(a) draws benefits on or after the earliest age the member could have drawn the benefits under the 2008 Scheme without the need for employer consent, or
(b) draws benefits upon flexible retirement under regulation 30(6) of the LGPS Regulations 2013, and
(c) this is on or after the member's CRA but before the member's NRA under the 2008 Scheme

the underpin "guarantee amount" **and** the accrued post 2014 CARE pension (excluding any element of the member's post-14 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, <u>**if any**</u>, by reference to the member's CRA / NRA under the 2008 Scheme (in accordance with the Secretary of State guidance on early payment of benefits). The PI date attaching to that <u>**total**</u> 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-14 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 2014 Scheme (in accordance with the Secretary of State guidance on early payment of benefits). 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.

Step 8: If the member

(a) draws benefits on or after the earliest age the member could have drawn the benefits under the 2008 Scheme without the need for employer consent, or
(b) draws benefits upon flexible retirement under regulation 30(6) of the LGPS Regulations 2013, and
(c) this is on the member's NRA under the 2008 Scheme

the underpin “guarantee amount” **and** the accrued post 2014 CARE pension (excluding any element of the member’s post-14 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-14 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 2014 Scheme (in accordance with the Secretary of State guidance on early payment of benefits). 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 30(6) of the LGPS Regulations 2013 on the member’s NRA under the 2008 Scheme then the underpin calculation will be performed and applied at the member’s NRA under the 2008 Scheme [regulations 4(1)(b) and 4(2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014]. An underpin does not apply to the benefits from the ongoing employment.

Step 9: If the member

(a) ceases membership before or on attaining the member’s normal retirement age under the 2008 Scheme, and
(b) draws benefits after that age

the underpin “guarantee amount” **and** the accrued post 2014 CARE pension (excluding any element of the member’s post-14 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 2008 Scheme (in accordance with the Secretary of State guidance on late payment of benefits). 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-14 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 2014 Scheme (in accordance with the Secretary of State guidance on early payment of benefits) if drawn before the member's NRA under the 2014 Scheme, or

(ii) is subject to an actuarial increase (in accordance with the Secretary of State guidance on late payment of benefits) if drawn after the member's NRA under the 2014 Scheme.

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

Step 10: If the member

(a) ceases active membership after attaining the member's normal retirement age under the 2008 Scheme and draws benefits, or

(b) draws benefits upon flexible retirement under regulation 30(6) of the LGPS Regulations 2013 after attaining the member's normal retirement age under the 2008 Scheme

the underpin "guarantee amount" **and** the post 2014 CARE pension accrued to the member's normal retirement age under the 2008 Scheme (excluding any element of the member's post-14 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 2008 Scheme (in accordance with the Secretary of State guidance on late payment of benefits). The PI date attaching to that total pension (accrued to the member's normal retirement age under the 2008 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 2014 CARE pension accrued after the member's normal retirement age under the 2008 Scheme and any element of the member's post-14 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 2014 Scheme (in accordance with the Secretary of State guidance on early payment of benefits) if drawn before the member's NRA under the 2014 Scheme, or

(ii) is subject to an actuarial increase (in accordance with the Secretary of State guidance on late payment of benefits) if drawn after the member's NRA under the 2014 Scheme.

This element of the CARE pension accruing after the member's normal retirement age under the 2008 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 30(6) of the LGPS Regulations 2013 after the member's NRA under the 2008 Scheme then the underpin calculation will be performed at the member's NRA under the 2008 Scheme [regulations 4(1)(b) and 4(2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014]. 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 B2, Part C and Part D2 as appropriate in order that the correct actuarial reduction can be applied (if drawn before the member's NPA under the 2008 Scheme). For example, if the member has membership from 1 April 2014 to 31 March 2021 (7 years), has final pay (2008 Scheme definition) of £40,000 and has an underpin "guarantee amount" of £91.67 the underpin amount would be allocated as follows:

	B2		C				D2
	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
CARE accrued (revalued)	£850.00	£650.00	£600.00	£650.00	£625.00	£650.00	£550.00
Total CARE	£1,500.00		£2,525.00				£550.00
2008 Scheme comparison	2/60 x £40,000 = £1,333.33		4/60 x £40,000 = £2,666.67				1/60 x £40,000 = £666.67
Difference	-£166.67		+£141.67				+£116.67
Total	£1,333.33		£2,666.67				£666.67

This method of allocation ensures that where a member is subject to the 85 year rule the actuarial reduction applicable to Part B2, Part C and Part D2 membership is applied to the amount of pension the member would actually have earned as Part B2, Part C or Part D2 membership had they remained in the 2008 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 DCLG 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). This is because, by virtue of regulation 4(1)(b) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, the underpin is only due when a member actually receives payment of their pension. At the relevant 31 March to which the Annual Benefit Statement relates the member is an active member and so no underpin amount would actually be payable on that date. Similarly, if a member has not commenced drawing their benefits prior to the end of the Pension Input Period to which the Annual Allowance Statement relates, no underpin payment will have been paid and so should not be included in the Statement.

The LGPC Secretariat is seeking clarification over whether / how any underpin amount awarded to a member is to be taken into account in calculating any survivor’s pension. More information on this matter can be found in the Underpin paper which is available in the Administration Guides to the 2014 Scheme section under the Guides 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 2014, a member continues in active membership beyond the 2008 Scheme NPA?
- If, after 31 March 2014, a member continues in active membership beyond the 2008 Scheme NPA and Benefits regulation 10 applies, should the member be required to make two elections under Benefits

regulation 10, one for the Underpin guarantee and another for the determination of benefits as at date of leaving?

Protection - Rule of 85

Rule of 85 protections carry forward into the 2014 Scheme which means that Critical Retirement Age (CRA) under the 2008 Scheme is cast in stone. In the guidance for the 2008 Scheme on actuarial reductions, GAD gave the following table:

	Group 1	Group 2	Group 3	Group 4
Part A	CRA	CRA	CRA	65
Part B	CRA	Taper	65	65
Part C	65	Taper	65	65
Part D	65	65	65	65

CRA, Taper or 65 refer to the rule that applies in calculating any actuarial reduction i.e. will it be based on how much earlier the member has retired than their CRA or their 65th birthday or will they receive a partial or tapered reduction, somewhere between the two. Parts, Groups and CRA are further explained below.

Parts

Part A: membership to 31 March 2008
Part B: membership 1 April 2008 to 31 March 2016
Part C: membership 1 April 2016 to 31 March 2020
Part D: membership 1 April 2020 onwards

Groups

Group 1 member: a member who was an active member prior to 1 October 2006 and who was born on 31 March 1956 or earlier

Group 2 member: a member who was an active member prior to 1 October 2006, was born between 1 April 1956 and 31 March 1960 inclusive, and who would reach their CRA by 31 March 2020

Group 3 member: a member who was an active member prior to 1 October 2006 and who is not a Group 1 or Group 2 member

Group 4 member: a member who was not a member prior to 1 October 2006.

CRA

CRA is the earlier of

a) the member's pre 1 October 2006 'protected' Normal Retirement Date which some members who joined the Scheme before 1 April 1998 had under regulation 25(3A) of the LGPS Regulations 1997 before its deletion by SI 2006/966;

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 3 of Schedule 2 to the LGPS (Transitional Provisions) Regulations 2008, and

c) age 65.

BUT CRA cannot be earlier than 60 for voluntary early retirements under Regulation 30(5) of the LGPS Regulations 2013 unless the employer has agreed, under paragraph 1(1)(c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, that it should be.

2014 Scheme

These protections were difficult enough to explain under the 2008 Scheme but with the advent of the 2014 Scheme it has been necessary to expand the table even further in order for the protections to be delivered. This is because the 2014 Scheme links Normal Pension Age (NPA) to State Pension Age (SPA) from 1 April 2014 but Group 1 members have rule of 85 protection until 31 March 2016 and Group 2 members have a tapered protection until 31 March 2020. Those protections are based on age 65 and not NPA.

For example, a member retiring at 66 who would meet the 85 year rule at 65½ will still have a protected CRA of 65. Thus, if that member retires at age 60 they will, on their protected membership, have an actuarial reduction for retiring 5 years earlier than their CRA and not an actuarial reduction for retiring 5½ years early.

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 31 March 2008
Part B1:	membership 1 April 2008 to 31 March 2014
Part B2:	membership 1 April 2014 to 31 March 2016
Part C:	membership 1 April 2016 to 31 March 2020

Part D1	membership 1 April 2020 onwards (including Part D1 benefits as defined in the notes following the table)
Part D2	membership defined as D2 membership in the notes.

	Group 1	Group 2	Group 3	Group 4
Part A	CRA (can't be later than 65)	CRA (can't be later than 65)	CRA (can't be later than 65)	65
Part B1	CRA (can't be later than 65)	Taper (proportion of normal % reduction to 65)	65	65
Part B2	CRA (can't be later than 65)	Taper (proportion of normal % reduction to 65)	SPA (min 65)	SPA (min 65)
Part C	SPA (min 65)	Taper (proportion of normal % reduction to 65)	SPA (min 65)	SPA (min 65)
Part D1	SPA	SPA	SPA	SPA
Part D2	65	65	65	65

Notes:

1. Membership credited under Regulation 84 of the Local Government Pension Scheme (Administration) Regulations 2008 (the "Administration Regulations") or equivalent previous Regulations, or under regulation 9 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 (transferred-in membership) in respect of Group 1, 2 or 3 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 84 of the Administration Regulations on or after 1 April 2008 and before 2 October 2012, the Membership should reflect the basis used to calculate the credit (CRA or age 65 or, for a leaver between 1 April 1998 and 30 September 2006 who joined prior to 1 April 1998, CRA or protected NRD[9])
    c) if the member was **not** an active member immediately before 1 April 2008 and the Membership was credited under Regulation 84 of the Administration Regulations on or after 1 April 2008 and before 2 October 2012, the Membership should be treated as Part

9 The protected NRD is
- age 60 if, by that age, the member would have had 25 or more years membership of the scheme, or
- the date the member would have achieved 25 years membership, if that date would fall after age 60 and before age 65, or
- age 65 if, by that age, the member would not have had 25 years membership of the scheme.

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 84 of the Administration Regulations after 1 October 2012 and before 1 April 2014 or under regulation 9 of the 2014 Transitional Regulations where the relevant date was before 1 April 2014, the Membership should be treated as Part D2 Membership but note that such credited membership does **not** drag forward the 85 year rule for any pre-existing membership

2. Pension purchased by a transfer in under the LGPS Regulations 2013 (other than from the LGPS) and credited in to the member's post 31 March 2014 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).

3. Membership purchased under regulations 55 and 83 of the 1997 Regulations or equivalent previous Regulations (added years) should be treated as Part A Membership if the election was before 1st October 2006. Other Membership under Regulation 55 of the 1997 Regulations (where the contract was taken out between 1 October 2006 and 31 March 2008) should be treated as Part D2 Membership.

4. Membership credited under Regulation 40 of the Administration Regulations or the equivalent in previous Regulations e.g. regulation 52 of the 1997 Regulations (Employer Augmented Membership) in respect of Group 1, 2 or 3 members should be treated as Part A Membership if it was credited before 1 April 2008. Other Membership under Regulation 40 of the Administration Regulations or the equivalent in previous Regulations should be treated as Part D2 Membership.

5. Membership granted by the employer under regulation 53 of the 1997 Regulations will count as Part A Membership.

6. Pension awarded under Regulation 23 of the Administration Regulations (pension purchased by an ARC), as continued in effect by regulation 15 (1)(d) of the 2014 Transitional Regulations, should be treated as if it is payable unreduced from age 65.

7. Pension awarded under regulation 16 or 31 of the LGPS Regulations 2013 (pension purchased by an APC or SCAPC) is treated as payable from Normal Pension Age under the 2014 Scheme i.e. Part D1.

8. A transfer credit awarded under protected regulation 66(8) of the 1997 Regulations 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 after 1 September 2011 (including transfer credits awarded after 1 April 2014) 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.

9. 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 2014, 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 2014 , and
   (iv) the membership is aggregated

   OR

   (i) the member left with a deferred refund pre 1 April 2014, and
   (ii) regulation 5(1) of the 2014 Transitional Regulations does not apply, and
   (iii) the member rejoins the LGPS after 31 March 2014, 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 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 2014 CARE pension accruing after rejoining if the member is a Group 1 member and rejoins before 1 April 2016, or is a Group 2 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, 1986, 1995, 1998 and 2008 Schemes) which counts as membership in relation to the employment, including membership granted by the employer under regulations 52 or 53 of the 1997 Regulations including any aggregated membership [but see note 8 above]

- the total period for which the member has paid, or is treated as having paid, contributions under regulations 9 or 10 of the LGPS Regulations 2013 in relation to the employment, including any period of absence due to sickness or injury, child related leave (ordinary maternity, paternity and adoption leave, paid shared parental leave and paid additional maternity or adoption leave) or reserve forces service leave

- any period after 31 March 2014 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) <u>provided</u> contributions have been paid under regulation 16 of the LGPS Regulations 2013 (APCs and SCAPCs) to cover the whole of that period of absence

- any membership purchased under an added years contract in accordance with regulations 55 and 83 of the 1997 Regulations 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 October 2012 under Regulation 84 of the Administration Regulations 2008 or equivalent Earlier Regulations (transferred-in membership)

- any membership from a transfer credit awarded under protected regulation 66(8) of the 1997 Regulations 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 32(4) of the LGPS Regulations 2013, regulations 18 or 18A of the Benefits Regulations 2007, or regulation 35(1A) of the 1997 Regulations (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 1997 Regulations (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 1995 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 2008 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 9 above).

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 Benefits Regulations 2007 (power of employing authority to increase total membership of active members)

- any membership credited under regulation 12B of the Benefits Regulations 2007 (power of employing authority to convert periods awarded under Discretionary Compensation Regulations into periods of membership)

- any membership credited under regulation 40A of the Administration Regulations 2008 (power of The Environment Agency to award employing authority to grant additional membership)

- any membership credited after 1 October 2012 under Regulation 84 of the Administration Regulations 2008 or under regulation 9 of the 2014 Transitional Regulations (transferred-in membership)

- membership after taking flexible retirement under regulation 32(4) of the LGPS Regulations 2013, regulations 18 or 18A of the Benefits Regulations 2007, or regulation 35(1A) of the 1997 Regulations (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

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 2014 Scheme section under the Guides 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 an LGPS Fund in England or Wales, a deferred pension or a suspended Tier 3 ill health pension or a pension in payment, the lump sum death grant that would be payable from the Scheme if the member dies in service is 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, the death in service lump sum in respect of the current period of membership should be equal to the aggregate lump sum death grants from those earlier benefits. It should be noted, however, that up until 11 April 2015 the 2013 Regulations and the 2014 Transitional Regulations did not deliver this.

As originally worded, they provided that if a member died in service between 1 April 2014 and 10 April 2015 and also had a deferred pension or a suspended Tier 3 ill health pension or a pension in payment that related to membership that ceased **after 31 March 2014**, both the death in service lump sum and the 10 or 5 year pension guarantee from the deferred pension or suspended Tier 3 ill health pension or pension in payment would have been payable.

It was only where a member died in service and also had a deferred pension or a suspended Tier 3 ill health pension or a pension in payment that related to membership that ceased **prior to 1 April 2014** that the death grant was limited to the greater of the death in service death grant or the pension guarantee from the deferred pension or suspended Tier 3 ill health pension or pension in payment.

A further complication was where a member died in service and also had a deferred pension or a suspended Tier 3 ill health pension or a pension in payment that related to membership that **ceased after** 31 March 2014 **and** a deferred pension or a suspended Tier 3 ill health pension or a pension in payment that related to membership that **ceased prior** to 1 April 2014. In this instance, the 10 or 5 year pension guarantee from the deferred pension or suspended Tier 3 ill health pension or pension in payment that related to membership that **ceased after** 31 March 2014 was payable together with the greater of the death in service lump sum death grant and the pension guarantee from the deferred pension or suspended Tier 3 ill health pension or pension in payment that related to membership that **ceased before** 1 April 2014.

However, these anomalies were resolved by the LGPS (Amendment) Regulations 2105 for death occurring on or after 11 April 2015 albeit that it still appears to be anomalous that it is always the Fund in which the member dies in service that has to pay the death grant even where the amount to be paid is equal to the amount of the aggregate of any deferred and pensioner death grants (all or some or which may be held in other Funds).

Deferreds

The death grant calculation for a deferred member is the same as under the 2008 Scheme i.e. it is 5 times the deferred pension (including any part of the deferred pension that relates to pre 1 April 2014 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 2008 Scheme i.e. it is 3 times the credited pension (including any part of the deferred pension credit that relates to pre 1 April 2014 membership).

Deferred pensioner members

The death grant for a deferred pensioner member (i.e. a suspended Tier 3 ill health pension) is the same as under the 2008 Scheme i.e. it is 5 times the pension (including any part of the pension that relates to pre 1 April 2014 membership) less both the amount of pension paid and any lump sum paid.

Pensioners

Under the 2008 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 2014 Scheme, HMT insisted that the death grant for a pensioner should, for the post 2014 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	

All pre-14	=	(£10,800 x 10) – (£10,800 x 5)
	=	£108,000 - £54,000
	=	£54,000 (plus Pensions Increase)
All post-14	=	(£12,000 x 10) – (10,800 x 5) - £14,400
	=	£120,000 - £54,000 - £14,400
	=	£51,600 (plus Pensions Increase)
Mixed	=	a little trickier – see below.

Basically, the pre-14 part is calculated the “old” way and the post-14 the “new”. Let’s say of the £12,000 total pre-commutation pension, £9,000 was pre-14 and £3,000 was post-14. For the purposes of the death grant, the pension commuted is split proportionately between the pre-14 and post-14 pension amounts.

So in our case, the member has pre-commutation pension of £12,000 of which £9,000 (75%) is pre-14 and £3,000 (25%) is post-14.

The member commuted £1,200 and for the purposes of the death grant calculation £900 (i.e. 75%) relates to pre-14 and £300 (i.e. 25%) relates to post-14.

So, at retirement, the pre-14 pension is:

£9,000 – (£1,200 x 75%) = £8,100

And the post-14 pension is:

£3,000 – (£1,200 x 25%) = £2,700

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

£1,200 x 12 = £14,400

Using the same proportioning, £10,800 is pre-14 and £3,600 is post-14.

The death grant payable is calculated as:

Pre-14:	(£8,100 x 10) – (£8,100 x 5)	= £40,500
Post-14:	(£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 except the pension guarantee period is 5 years and not 10 years.

Declaration

As mentioned earlier, if a member dies in service and also has, from membership of an LGPS Fund in England or Wales, a deferred pension or a suspended Tier 3 ill health 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 England or Wales (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 England or Wales (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 2014 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 2008 Scheme and what membership counts under the 2014 Scheme and the Transitional Regulations for deaths occurring after 31 March 2014 can now be summarised in the table below.

Type	2008 Scheme	2014 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	All membership	All membership
Civil partner of post-leaving civil partnership***	All membership	Post 5/4/88 membership plus RAM*
Female survivor of same sex pre-leaving marriage	All membership	All membership
Female survivor of same sex post-leaving marriage***	All membership	Post 5/4/88 membership plus RAM
Male survivor of same sex pre-leaving marriage	All membership	All membership
Male survivor of same sex post-leaving marriage***	All membership	Post 5/4/88 membership plus RAM
Cohabiting partner** – cohabitation commenced pre-leaving Cohabiting partner** – cohabitation commenced post-leaving***	Post 5/4/88 membership Post 5/4/88 membership plus pre 6/4/88 bought by ASBCs	Post 5/4/88 membership plus RAM plus ASBCs Post 5/4/88 membership plus RAM plus pre 6/4/88 bought by ASBCs

* There is an option for pre 1/4/14 leavers or their civil partner to elect before 1/4/15 for the 2008 Scheme provision to apply (i.e. All membership).

** For deaths on or after 1 April 2014 of members who ceased active membership after 31 March 2008 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 2008.

The items highlighted in grey in the preceding table indicate where there is a difference between the provisions that applied under the 2008 Scheme and the provisions that now apply for deaths after 31 March 2014. Where a member retired pre 1 April 2014 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 "2014 Scheme" column.

It is fair to say that the same applies to benefit entitlements under the 1995 and 1997 Schemes too (e.g. for deaths post 31 March 2014, 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 2014 Transitional Regulations on all the earlier schemes, go to www.lgpsregs.org and look for the Survivors' paper within the Administration Guides to the 2014 Scheme section under the Guides tab.

Where the member has pre and post-14 benefits the pre 1 April 2014 survivor benefits (as modified by the Transitional Regulations) are added to the post 31 March 2014 survivor benefits.

For deaths that occurred prior to 1 April 2014 the provisions under the Earlier Schemes continued to apply (i.e. unmodified).

Amount of survivor's pension

Following the death of a member, a survivor member's pension account has to be opened for the surving 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-14 membership-based calculation is performed in addition. What is not clear is whether / how any underpin amount awarded to the deceased member is to be taken into account in calculating any survivor's pension. The LGPC Secretariat is seeking clarification on this point.

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 31 (award of additional pension), and

c) recalculating it as if it had accrued at a rate of 1/160th of pensionable pay, and

d) then adding any pension credited under regulation 101(1) (effect of acceptance of transfer value) but multiplied by 49/160; and

e) then adding a sum equivalent to 1/160th 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. As in the case of ill health retirement, where the member was working reduced contractual hours during the relevant 12 (weekly) or 3 (monthly) pay periods used to calculate APP as a consequence of ill health, the APP figure is to be calculated on the pay the member would have received during the relevant pay periods if they had not been working reduced contractual hours[10].

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 the Secretary of State.

Deferred members and deferred pensioner members

In the case of the death of a deferred member or a deferred 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) 30.625% of any pension purchased by the member using AVCs. *(NB: 30.625 is simply 49/160 expressed as a percentage.)*

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 the Secretary of State.

When calculating the sum under (a) for a deferred pensioner member, any commutation of pension for lump sum is disregarded[11].

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) and (f) above.

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 the Secretary of State.

10 The requirement to ignore such a reduction in hours was not introduced until 11 April 2015 by SI 2015/755 but had retrospective effect to 1 April 2014.
11 The requirement to ignore commutation was not introduced until 11 April 2015 by SI 2015/755 but had retrospective effect to 1 April 2014.

Childrens' Pensions

Definition of an eligible child

Over the years, the definition of an eligible child has altered several times and, following the introduction of the 2008 Scheme and retrospective amendments to the 1998 Scheme but not the 1995 Scheme, has resulted in inconsistency and also non-compliance with the Finance Act 2004 in some cases.

In introducing the 2014 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 whowas 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 an 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.

It is important to understand that this definition, by virtue of the 2014 Transitional Regulations, also applies to benefits under the 1995, 1998 or 2008 Schemes **providing that** the death occurs on or after 1 April 2014.

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-14 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 31 (award of additional pension), and

c) recalculating it as if it had accrued at a rate of 1/320th of pensionable pay, and

d) then adding any pension credited under regulation 101(1) (effect of acceptance of transfer value) but multiplied by 49/320; and

e) then adding a sum equivalent to 1/320th 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. As in the case of ill health retirement, where the member was working reduced contractual hours during the relevant 12 (weekly) or 3 (monthly) pay periods used to calculate APP as a consequence of ill health, the APP figure is to be calculated on the pay the member would have received during the relevant pay periods if they had not been working reduced contractual hours[12].

Where there are two or more eligible children, they share a pension calculated as above (and divided equally amongst them) but with the fraction 1/320th replaced by 1/160th and the fraction 49/320 replaced by 49/160 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 1/160th and 1/320th are replaced by 1/120th and 1/240th respectively, and the fractions 49/160 and 49/320 are replaced by 49/120 and 49/240 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 the Secretary of State.

Deferred members and deferred pensioner members

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

f) where there is another survivor pension payable (other than a child's pension) 15.3125% (if there is one eligible child) or 30.625% (if there are two or more eligible children) of any pension purchased by the member using AVCs. *(NB: 30.625 is simply 49/160 expressed as a percentage – 15.3125 is 49/320 expressed as a percentage); or*

g) where there is no other survivor pension payable (other than a child's pension) 20.41667% (if there is one eligible child) or 40.8333% (if there are two or more eligible children) of any pension purchased by the member using AVCs. *(NB: 40.8333 is simply 49/120 expressed as a percentage – 20.41667 is 49/240 expressed as a percentage.)*

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 the Secretary of State.

12 The requirement to ignore such a reduction in hours was not introduced until 11 April 2015 by SI 2015/755 but had retrospective effect to 1 April 2014.

When calculating the sum under (a) for a deferred pensioner member, any commutation of pension for lump sum is disregarded[13].

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) and, as appropriate, (f) or (g) above. 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 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 the Secretary of State.

13 The requirement to ignore commutation was not introduced until 11 April 2015 by SI 2015/755 but had retrospective effect to 1 April 2014.

9) ANNUAL BENEFIT STATEMENTS

Annual Benefit Statement - 2013/14

The LGPC Secretariat believes that, in respect of defined benefits, the 2013/14 Annual Benefit Statements for active members (which must be issued by 5 October 2014):

i) must show the current value of the member's final salary benefits (pension and any 3/80ths lump sum) accrued at 31 March 2014 (payable from the member's Normal Pension Age under the 2008 Scheme) and the member's prospective survivor benefits based on membership accrued to 31 March 2014.

   Note that if the statement assumes the member is married or in a civil partnership as at the 31 March 2014, the statement should include
   - a statement to that effect,
   - a caveat to say that whereas the survivor benefit payable to a surviving spouse or civil partner is based on all the member's period of membership of the scheme, the survivor benefit payable to:
     - a cohabiting partner will not include any pre 6 April 1988 membership (unless the member had elected to pay for some or all of that membership to count)
     - a widow of a post leaving marriage will not include any pre 6 April 1978 membership
     - a widower of a post leaving marriage, a survivor of a same sex post leaving marriage, or a civil partner of a post leaving civil partnership will not include any pre 6 April 1988 membership.

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 2014. There is, technically, one exception to this; namely that where a member is still in the process of purchasing added years, the extra member's and prospective survivor's benefits (i.e. over and above those already included in (i) above) which would be due if the member completes the added years contract should be shown.

iv) should include an explanation of why there is no projection of the member's benefits for prospective membership beyond 31 March 2014 (as the benefits post 31 March 2014 will be CARE benefits and we don't know in advance what they might be – as they are based on pensionable pay in the 2014 scheme).

v) must show the current value of death in service survivor benefits accrued at 31 March 2014 together with the death in service lump sum at 31 March 2014, and how they are calculated.

   Note that as the statement will have to assume, for a survivor benefit, that the member is married or in a civil partnership as at the 31 March 2014, the statement should include
   - a statement to that effect,
   - a caveat to say that whereas the survivor benefit payable to a surviving spouse or civil partner is based on all the member's period of membership of the scheme, the survivor benefit payable to a cohabiting partner will not include any pre 6 April 1988 membership (unless the member had elected to pay for some or all of that membership to count).

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 - 2014/15 onwards

The LGPC Secretariat believes that, in respect of defined benefits, the Annual Benefit Statements for active members for 2014/15 onwards (to be issued by no later than 31 August 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 2014 (payable from the member's new Normal Pension Age under the 2014 Scheme) and the member's prospective final salary survivor benefits, if any, based on membership accrued to 31 March 2014 and any membership purchased under an added years contract as at the relevant 31 March (e.g. at 31 March 2015 for the 2014/15 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.

Note that if the statement assumes the member is married or in a civil partnership as at the relevant 31 March 2014, the statement should include

- a statement to that effect,
- a caveat to say that whereas the survivor benefit payable to a surviving spouse or civil partner is based on all the member's period of membership of the scheme, the survivor benefit payable to:
  - a cohabiting partner will not include any pre 6 April 1988 membership (unless the member had elected prior to 1 April 2014 to pay for some or all of that membership to count)
  - a widow of a post leaving marriage will not include any pre 6 April 1978 membership
  - a widower of a post leaving marriage, a survivor of a same sex post leaving marriage, or a civil partner of a post leaving civil partnership will not include any pre 6 April 1988 membership.

Note also that the Annual Benefit Statement should not assume any future pay inflation for any pre 1 April 2014 final salary benefits.

Although the Annual Benefit Statement for 31 March 2014 would have shown the value of the member's final salary benefits (pension and any 3/80ths lump sum), if any, based on membership accrued to 31 March 2014 as being payable from the member's Normal Pension Age under the 2008 Scheme, the Statements for 31 March 2015 onwards should show those benefits as being payable from the member's new Normal Pension Age under the 2014 Scheme. This is for consistency with the information shown on the Statements relating to the member's CARE benefits in (iii) below which will be shown as being payable from the member's new Normal Pension Age under the 2014 Scheme.

A caveat should be added to say that the pre 1 April 2014 benefits include an actuarial increase for the period between member's Normal Pension Age under the 2008 Scheme and the member's Normal Pension Age under the 2014 Scheme but that this increase is based on current actuarial increase factors which might change in the future.

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 2014 Scheme) at the relevant 31 March and the member's prospective CARE survivor benefits based on membership accrued after 31 March 2014.

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 must 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).

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 2014 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 and should include the amount of any underpin. 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 2008 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 2014 (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). Based on the Secretariat's understanding of the HM Treasury policy position (which is not yet fully reflected in the LGPS Regulations 2013), 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 England or Wales, 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.

Note that as the statement will have to assume, for a survivor benefit, that the member is married or in a civil partnership as at the 31 March 2014, the statement should include

- a statement to that effect,
- a caveat to say that whereas the survivor benefit payable to a surviving spouse or civil partner is based on all the member's period of membership of the scheme, the survivor benefit payable to a cohabiting partner will not include any pre 6 April 1988 membership (unless the member had elected prior to 1 April 2014 to pay for some or all of that membership to count).

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 2014 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 2014 Scheme makes it clear that, for AVC arrangements entered into after 31 March 2014, 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 administering authorities need 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 2014. Such statements will have to state that the normal payable age for the post 31 March 2014 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 [ddmmyyyy] but that this may change in the future as and when the Government changes State Pension Ages.

Secondly, based on the Secretariat's understanding of the HM Treasury policy position (which is not yet fully reflected in the LGPS Regulations 2013) 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 England or Wales 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 altered with the introduction of the 2014 Scheme of course and the actual actuarial guidance from the Secretary of State on transfer values has also had to reflect the redefinition of NPA (as some people in the LGPS will, from 1 April 2014, 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' membership[14]),
   - 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

14 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. Similarly, a deferred pensioner member (i.e. a suspended Tier 3 ill health pensioner) is not entitled to a CETV as they will already 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 LGPC 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 appropriate administering authority to transfer in accrued rights from another registered pension scheme or from a European pensions institution.

The request must been made in writing to the appropriate administering authority and to the Scheme employer within 12 months of first becoming an active member of the LGPS in an employment or such longer period as the Scheme employer **and the appropriate administering authority** may allow.

It would be appropriate for Scheme employers and administering authorities to have written policies on the exercise of this discretion. If either (or both) the Scheme employer and / or the appropriate administering authority do not agree to the extension of the 12 month time limit, the transfer request cannot be accepted.

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 appropriate administering authority may still decline to accept the request.

Where the ‘relevant date’ for the transfer in was before 1 April 2014 the transfer purchased pre 1 April 2014 membership. Where the ‘relevant date’ is on or after 1 April 2014 the appropriate administering authority must credit the member’s pension account with an amount of earned pension in accordance with actuarial guidance issued by the Secretary of State.

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 agreement between employers and unions for LGPS 2014 made no provision for the continuation of Club arrangements in its costing of 19.5%.

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 LGPC 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 LGPC 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 (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 2014 membership and retain a final salary link[15] even though the member had never actually been in the LGPS pre 1 April 2014. 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 2014).

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.

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15 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). Regulation 9 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2013 only currently allows for a pre-14 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). An amendment to regulation 9 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2013 to cater for other Outer Club transfers appears to be 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 2014 and re-joins the LGPS on 1st August 2014. He elects to transfer his accrued USS final salary rights to the LGPS. Those final salary (Outer Club) USS rights purchase pre-14 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).

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

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-14 membership but on a **non-Club** basis and, if any such cases arise, administering authorities should refer the case to DCLG 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.

11) MISCELLANY

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 (note that this is as a result of a line being taken by HM Treasury).

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 mandatory when a person opts within 30 days of returning to work (or such longer period as the employer may allow) 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 of a suspended Tier 3 pension on ill health grounds, 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 LGPS Regulations 2013.

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 2014 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);
- Awarding additional pension (via an APC) at whole cost to the employer
- Switching on the 85 year rule for members voluntarily drawing benefits 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 (governed by the 1997 Regulations) for pre 1 April 1998 leavers and for Councillor members and will already have a discretions policy under the 2008 Scheme (governed by the 2007 Regulations). Many of the discretions under the 2008 Scheme will fall away but there will be discretions to be exercised in respect of post 31 March 2008 / pre 1 April 2014 leavers for which a policy will be required and will have to be published.

For a full list of discretions together with more information on the key discretions upon which employers should have a published policy, go to www.lgpsregs.org and look for the 'Discretions List' and 'Discretions Policies' papers within the Administration Guides to the 2014 Scheme section under Guides.

Employers are advised to consider their policy statements in advance of 1 April 2014 with a view to having them in place (and copied to the administering authority) by 30 June 2014 as this is a requirement of the 2014 Scheme.

Scheme employers' obligations to provide information

2013 Regulation 80 opens with:

(1) A Scheme employer must—

> *(a) inform the appropriate administering authority of all decisions made by the employer under regulation 72 (first instance decisions) or by an adjudicator appointed by the Scheme employer under regulation 74 (applications for adjudication of disagreements) concerning members; and*
>
> *(b) give that authority such other information as it requires for discharging its Scheme functions.*

2013 Regulation 70 deals with the recovery of costs from an employer where an administering authority, purely in its own opinion, has incurred additional costs as a result of that employer's level of performance. In addition, 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 70 of the 2013 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 2013 Regulation 80(3) and 80(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 Sections 1 and 6 of the Payroll Guide. The HR and Payroll guides can be found under the Guides tab at www.lgpsregs.org.

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

For employees with LGPS membership prior to 1 April 2014 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:

- members to whom the underpin calculation applies where the change occurs prior to NPA (2008 Scheme definition – normally age 65) so that the underpin calculation can be accurately performed,

- members who have an added years contract (as the added years contract has to be adjusted upon a change in contractual hours), and

- members covered by regulation 20(13) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 (minimum ill health enhancement for those who were active members before 1 April 2008, were aged 45 or over at that time, have been in continuous membership since then, and have not already received any benefits in respect of that membership) 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 Pension Fund administering authority to calculate the member's benefits for the purposes of the Annual Benefits Statement and the annual allowance) and provide, at the date of leaving, the changes that have occurred during the Scheme year in which the date of leaving falls.

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) (2008 Scheme definition) due to:

- a trade dispute, or
- authorised unpaid leave of absence,
- unpaid additional maternity, paternity or adoption leave, or unpaid shared parental 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 or unpaid shared parental leave. Note that unauthorised unpaid absences will always constitute a break as there is no facility to pay an APC specifically to cover the whole of the pension that would have accrued during such a period of absence.

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

- whether the final salary benefit underpin for members subject to the underpin exceeds their post 31 March 2014 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 appropriate Pension Fund 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

  - 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

  - 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

  - 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

  - 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 Pension Fund administering authority may stipulate.

The payment must be accompanied by a statement, in such form as the appropriate Pension Fund 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 2014/3138) 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 appropriate Pension Fund all contributions paid by **employers** (both basic contributions and the employer contributions to a SCAPC). The employer contributions must be paid over to the appropriate Pension Fund on or before such dates falling at intervals of not more than 12 months as the Pension Fund administering authority may specify. It is common practice for the employer contributions to be paid over to the appropriate Pension Fund 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 2014 which was due in respect of a period prior to 1st April 2014, and

(ii) contributions for added years, Preston part-time buy-back, ARCs and ASBCs

must also be paid over to the Pension Fund within the timescales mentioned above.

The payments in respect of (i) must be accompanied by a statement, in such form as the appropriate Pension Fund 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 appropriate Pension Fund administering authority specifies.

Employers are required to pay over to the appropriate Pension Fund on or before such dates falling at intervals of not more than 12 months as the Pension Fund administering authority may specify:

- any amount notified by the administering authority during the interval to cover any extra charge for payment of ill health pensions or early payment of deferred benefits or deferred pensioner 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 £6,500) 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);

- any amount specified in a notice given to the employer by the Pension Fund administering authority in consequence of additional costs that have arisen as a result of the employer's level of performance; and

- any employee and employer contributions received from the Ministry of Defence in respect of a scheme member on reserve forces service leave.

Abatement

Anyone who retired before 1 April 2014 is not subject to the 2014 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 of these Regulations, the regulations listed in Schedule 1 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 2014, 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 2014, 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 2014 pensioner’s benefits continue under the old scheme rules. Therefore, whether they are reemployed before 1 April 2014 or after 31 March 2014, 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 2013 Regulations, anyone who leaves after 31 March 2014, 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(13) of the 2014 Transitional Regulations states:

Regulations 70 and 71 of the Administration Regulations (abatement) 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(13) of the 2014 Transitional Regulations can only be read to mean that pre-14 rights are still subject to the abatement provisions going forward.

<u>In plain language, this simply means that abatement provisions continue as-is but only in respect of membership to 31 March 2014.</u>

The rules governing abatement and claw-back of compensatory added years under regulations 16 to 19 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 – as required by Regulation 11 of, and Schedule 2 to, the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 - will need to be considered by DCLG. This is because, given that pensionable pay in the 2014

Scheme includes pay in respect of additional hours worked in excess of contractual hours, it will not be known what the level of annual pensionable pay will be during the period of re-employment. Furthermore, should the claw-back be based on the level of pension the person would have achieved during re-employment had the 2008 Scheme continued, or on the level of pension the person actually achieves from the period of re-employment? This has been raised with the DCLG.

Admission Agreements

The separate provisions in the 2008 Administration Regulations for Community Admission Bodies and for Transferee Admission Bodies are consolidated in the 2013 Regulations as Part 3 of Schedule 2.

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

Changes to the admission agreement provisions are expected as a result of New Fair Deal and it is anticipated that a consultation paper will be issued by DCLG during 2014.

Special cases

Any special protected provisions applying to members immediately before 1 April 2014 continue to apply to them post 31 March 2014, except that any reference to an NPA of age 60 shall cease to have effect in relation to membership accrued post 31 March 2014.

The provisions of regulation 23 of the 1997 Transitional Regulations (actuarial reductions applying to former NHS Scheme members), and regulations 129 (miscellaneous transport employees) and 130 (miscellaneous airport employees) of the 1997 Regulations have been resurrected (as they had previously inadvertently been revoked).

Pension sharing

Pension credits awarded under a Pension Sharing Order with an effective date before 1 April 2014 (or with an effective date after 31 March 2014 but the debited member has no post-31 March 2014 rights) will be awarded a credit in the 1997 Scheme.

If the effective date of the Order is on or after 1 April 2014 and the debited member has post-31 March 2014 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-14 benefits, the pre 1 April 2014 benefits and the post 31 March 2014 benefits are both to be debited by that percentage (unless the PSO specifies otherwise).

Where a PSO species 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 2014 and post 31 March 2014 benefits (unless the PSO specifies otherwise).

Mis-sold personal pensions

The 2014 Transitional Regulations are self-explanatory and read:

"Regulations 108A (provision of information, charging and prescribed persons) and 122A of the 1997 Regulations (credited periods for transferring members with mis-sold pension rights) are preserved 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 2008 Scheme in relation to a restitution payment."

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

Lynda Jones