



North East Scotland Pension Fund

nespf



EMPLOYER GUIDE TO

Certificate of Protection

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What does a certificate of protection do?

As the LGPS (Scotland) is a defined benefit scheme, benefits due are calculated on the member's salary. For Pre 2015 benefits, the benefits will be calculated on the best salary for the last three years before retirement/leaving. For post 2015 benefits, pensions are calculated on the earnings for each year up until date of leaving.

If a member's salary is reduced or restricted it will have a detrimental effect on the benefits that they have accumulated for their past service, particularly in relation to the final salary element of the scheme (pre 2015 benefits.) Where a member's pay has been reduced through no fault or decision of their own, in order to ensure that the benefits that the member has already paid for are not affected they can be issued with a Certificate of Protection.

Application of the certificate ensures that the highest, inflation proofed, salary is used for the calculation of the benefits for up to 10 years from the issue of the certificate and for three years before the certificate is issued.

[See Appendix 1](#) – Regulation 93 of the LGPS (Scotland) Regulations 2014 – Certificate of Protection.

When should a certificate of protection be issued?

It is the decision of the scheme employer as to whether or not a Certificate of Protection should be issued.

Employers should automatically issue a Certificate of Protection where a member has suffered a **compulsory** and **permanent** reduction in or restriction to, a member's rate of contractual pensionable pay (see [Appendix 2](#) for full guidance.)

For the HR Guidance notes examples of where a certificate applies are:

- I. because the employer has compulsorily changed the member's employment to employment at a lower grade;
- II. as a result of a job evaluation exercise;
- III. for the purposes of achieving equal pay in relation to other employees of the employer;
- IV. as a result of the member's ill-health;
- V. because the employer has made a compulsory change to the member's contract of employment resulting in the cessation of, reduction in, or restriction of payments or benefits specified in the member's contract of employment as being pensionable emoluments; or
- VI. because the employer has compulsorily restricted the rate at which the member's rate of pay may be increased in such a way that it is likely the pay used in the calculation of the member's pension benefits will be adversely affected.

NESPF Interpretation

The examples set out in the HR guidance are quite clear. However some of the examples are subject to interpretation. The NESPF have laid out below a couple of examples to help guide employers:

- I. Where a member has suffered a reduction in pay following being matched directly to a post in a restructure or having secured a lower paid position following a restructure, assuming that the current post is no longer available, then a certificate of protection will apply. This is because for both of these circumstances the member would consider this to be a continuation of their current position.
- II. Where the reduction or restriction of salary is as a result of a new job (e.g. is redeployed to a different service/ department) a certificate of protection would **not** normally apply. This is because the member has made a **choice** to go onto the re-deployment list rather than be made redundant. In these circumstances a members benefits can be protected by deferring their benefits under their previous job and not electing to join them to the benefits held for the new, lower grade, post.
- III. However, where a member has suffered a pay reduction following a compulsory, change of job, and where redundancy was not offered as an alternative to re-deployment it is clear that the member had no choice but to accept the lower paid or restricted position, therefore a certificate of protection may be applied.
- IV. any reduction or restriction to pay grade following a job evaluation would require a certificate of protection to be issued automatically.
- V. any reduction or restriction to pay grade following an equal pay evaluation would require a certificate of protection to be issued automatically.
- VI. if a members pay is reduced as a result of restrictions put on their job due to ill health a Certificate of Protection should be issued. For example if a member was no longer to stay overnight due to ill health their 'sleep in' allowances may be affected.
- VII. any reduction or restriction of allowances paid following a compulsory change to a contract of employment should have a certificate of protection. If the member's days of work or hours have changed and therefore earns less allowances a certificate does not apply.
- VIII. if a members pay has been capped and or increments are not to be applied to the rate of pay a certificate of protection should be applied.

The key words when considering whether or not a certificate of protection applies are compulsory and permanent. Therefore:

- Where a member makes a choice at any point in their career to take a lower grade position or a demoted post a certificate should not be issued.
- Where a member has returned to a lower paid post following a temporary increase in salary, a certificate of protection does not apply.
- Where an employer has not issued a certificate a member can request one. A members request must be made within 12 months of the event. However, it is important that the

member be made aware of the effect a reduction in pay can have on their pension to allow them to make the application. Employers should consider this guidance when deciding to meet the request of the member.

When is the Certificate of Protection applied?

The Certificate of Protection is valid for 10 years from the date of issue. If the member leaves service, retires or dies within this time any calculation of pension benefits due will be carried out with the certificate being applied.

When a member retires under their employers flexible retirement policy the certificate will only be applied to the first retirement and not the subsequent retirement when the member physically leaves employment.

It is possible for a member to hold more than one certificate of protection at any time if they have suffered more than one event where their pay have been reduced or restricted.

A certificate of protection cannot be issued to a Councillor.

When does a Certificate of Protection lapse?

If a member has not left, retired or died within 10 years of the date of issue a Certificate of Protection will no longer be valid.

If a member changes job after the Certificate of Protection is issued, even if the job is with the same scheme employer, the certificate is no longer valid. (If a member has transferred under TUPE they are deemed to have remained in the same job and therefore any certificates issued prior to transfer will still be valid.)

A certificate can only be applied to the calculation of any benefits once (flexible retirement.)

How do I issue a certificate of protection?

Issuing of a Certificate of Protection is the decision of the employer. When a Certificate of Protection situation is identified an employer needs to download and complete a Certificate of protection from www.nespf.org.uk and send a copy to the North East Scotland Pension Fund at the pensions@nespf.org.uk

If an employee makes a request for a Certificate of Protection within 12 months of suffering a reduction or restriction to pay then the employer must consider whether the certificate should be issued.

The employer must be aware that following the issue of a certificate, pay records must be kept for that member for up to 10 years after the certificate has been issued and for 3 years before the date of issue. This is to allow for calculation of the members benefits when they retire/leave.

If a certificate of protection was issued due to a restriction in pay then records must also be kept of the pay that the member would have received had the restriction not been applied.

Appendix 1

Local Government Pension Scheme (Scotland) Regulations 2014

Regulation 93

Certificate of protection

93.—(1) Where, otherwise than by virtue of a member's own circumstances—

(a) the member's rate of pay is permanently reduced; or

(b) the rate at which it may be increased is restricted in such a way that it is likely that the rate of the member's pension will be adversely affected,

the member is entitled to be issued with a certificate to that effect by the Scheme employer (but see paragraph (3)).

(2) A certificate of protection issued by a Scheme employer after the coming into force of these Regulations shall have effect for ten years from the date the member's pay is reduced, and the member's pay for the purposes of calculating the member's pension (and other benefits under these Regulations) shall be the member's pay but as if the reduction or other restriction specified in the certificate had not come into effect.

(3) A member is not entitled to be issued with a certificate under this regulation if the reduction in the member's rate of pay—

(a) is temporary; or

(b) consists of the termination of, or a reduction in, a temporary increase in the rate of pay.

(4) A certificate issued under this regulation must specify the date of the reduction or restriction.

(5) The Scheme employer must send a copy of the certificate to the member's appropriate administering authority.

(6) The Scheme employer must keep a record of the certificate including such information as would be necessary for applying paragraph (2) for the period of 10 years beginning with the date of reduction or restriction specified in it.

(7) If the member ceases to be an active member with the Scheme employer that issued the certificate, the certificate does not carry forward in relation to any further period of membership with another Scheme employer except where the member transfers employment from the Scheme employer that issued the certificate to employment with another Scheme employer as a result of a transfer—

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

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

Appendix 2

LGPS (Scotland) 2014 - HR Guide issued by SPPA

Certificates of Protection (version 2.0)

This document sets out how a Certificate of Protection (COP) will operate in situations where;

- a) on or after 1 April 2015, there is an enforced and permanent reduction, or restriction, in a member's rate of pensionable pay (new certificates) and
- b) a COP has been issued with a date of reduction of pay, or restriction, before 1 April 2015 (existing certificates).

For the avoidance of doubt, the date of reduction or restriction should be taken as the relevant date for the purposes of the above.

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1. Overview

- 1.1 A COP should be issued where there is a compulsory and permanent reduction in or restriction to, a member's rate of contractual pensionable pay (but not hours worked)
- 1.2 Whether a member is in the main or 50/50 section of the scheme is immaterial to the issue of a COP or during the term of the COP - however while a member is in the 50/50 section benefits will only accrue at 50%
- 1.3 A COP is valid for 10 years from the date of reduction or restriction
- 1.4 A COP will usually lapse where the member leaves the same employment it was issued under
- 1.5 A COP will apply where a member dies or becomes entitled to immediate or deferred benefits within 10 years of the date of reduction or restriction (including on opting out of membership)
- 1.6 Where a COP is to apply 'final pay' should be calculated in line with the 2009 scheme in respect of pre 1 April 2015 (final salary) benefits and 'pensionable pay' will be increased for the calculation of post 31 March 2015 (CA) benefits
- 1.7 For benefits accruing post 31 March 2015, pay from the date of a reduction in pay will be increased by the multiplier calculated at the date of reduction
- 1.8 For benefits accruing post 31 March 2015 pay from the date of a restriction in pay will be increased by reference to the pay the member would have received had the restriction not occurred
- 1.9 A COP will only take effect where benefits in total (pre and post 2015) would be greater
- 1.10 Where benefits would be greater in total members will be given an election whether to use the COP
- 1.11 Councillor members cannot be issued a COP

- 1.12 Where a member with a COP takes flexible retirement the COP is applied to that first retirement only
- 1.13 Employee and employer contributions are based on actual pay during the term of a COP
- 1.14 More than one COP may be held by a member

2. New Certificates

2.1 Reduction or restriction in rate of pensionable pay

A Certificate of Protection should be issued by the employer if a member suffers a compulsory and permanent reduction in or restriction to, his or her rate of contractual pensionable pay. This may occur for example:

- I. because the employer has compulsorily changed the member's employment to employment at a lower grade;
- II. as a result of a job evaluation exercise;
- III. for the purposes of achieving equal pay in relation to other employees of the employer;
- IV. as a result of the member's ill-health;
- V. because the employer has made a compulsory change to the member's contract of employment resulting in the cessation of, reduction in, or restriction of payments or benefits specified in the member's contract of employment as being pensionable emoluments; or
- VI. because the employer has compulsorily restricted the rate at which the member's rate of pay may be increased in such a way that it is likely the pay used in the calculation of the member's pension benefits will be adversely affected.

A Certificate of Protection may not be issued if the member's employment on a reduced rate of contractual pensionable pay immediately follows a period in which the member was in receipt of a higher rate of contractual pensionable pay on a temporary basis (either in the same or another post) or where there is an enforced reduction in hours worked where the rate of pay is not also reduced at the same time as the reduction in hours.

Note: where an employee's pay is reduced but the employer continues to pay the pre reduced rate of pay for a fixed period of time, the difference between the reduced rate and the pay being paid for the fixed period of time (a marked time payment) should be paid as a non-pensionable pay element. A Certificate of Protection would be issued because the base pensionable pay rate had been reduced.

2.2 Issue of a Certificate of Protection

In any of the situations outlined above a certificate may be issued either:

- a) by the employer at any time, or
- b) by the employer at the request of the member within 12 months of the relevant reduction or restriction in pensionable pay

If there is more than one occurrence of a compulsory and permanent reduction or restriction in pensionable pay a separate certificate can be issued in respect of each reduction or restriction.

2.3 Information to be provided on a Certificate of Protection

In the case of a compulsory and permanent reduction in the rate of contractual pensionable pay, or a restriction to increases in pensionable pay, the certificate must show:

- a) the date the reduction or restriction in the rate of pensionable pay had effect,
- b) the multiplier by which pensionable pay accrued after the date of reduction (but not restriction) should be increased if the COP is applied on ceasing active membership, and
- c) the pensionable pay earned in the scheme year (in which the reduction or restriction occurs) up to the day prior to the date of the reduction or restriction in pensionable pay.

Notes:

Item (b) above is needed so that an equitable increase is made to the member's future pension account in the event of the member changing their hours of work. The multiplier should be calculated as follows:

pre-reduced rate of pay / reduced rate of pay = multiplier

[rate of pay may be per hour, annual salary, or any other appropriate rate but it is recommended that the hourly rate should be used unless a member only receives a fixed annual salary]. Example: pre reduction hourly rate = £10 and post reduction hourly rate = £9. The multiplier is $10 / 9 = 1.1111$

There may be cases where a member has a reduction to the rate of pay but also receives an allowance that is not reduced. For example, a full-time employee working in a care home may have an annual salary of £20,000 and receives sleeping in allowances. Following a job evaluation exercise the salary is reduced to £19,500 from, say, 1 June but the sleeping in allowances continue to be paid at the same rate per sleep-in. In this case, the multiplier should be calculated as follows:

*Salary 1 April to 31 May: $£20,000 \times 2/12 + \text{sleep-in payments 1 April to 31 May of } £120 = £3,453.33$
divided by $£19,500 \times 2/12 + £120 [£3,370] = 1.0247$.*

Item (c) above is required so that, in the Scheme year in which the reduction or restriction occurred, the multiplier (in the case of a reduction in pay) or the increase (in the case of a restriction in pay) is only applied to the pensionable pay that accrues after the reduction or restriction in pay occurred.

The employer must send a copy of the certificate to the scheme member and to the administering authority.

2.4 Lapsing of a Certificate of Protection

The certificate lapses at the end of 10 years or, if earlier:

- a) upon the member ceasing to hold the [job] employment¹ in respect of which the certificate was issued without becoming entitled to immediate payment of retirement pension in relation to that [job] employment or to deferred benefits, or
- b) upon the certificate being applied to benefits drawn on flexible retirement.

2.5 Applying a Certificate of Protection

A COP is applied where, within 10 years of the date of reduction or restriction, scheme benefits are required to be determined, that is where the member:

- a) ceases active membership,
- b) dies, or
- c) opts-out.

This includes where a member who has 3 months or more but less than two years membership elects for a CETV rather than a refund of contributions.

2.6 Effect of Certificate of Protection

When a COP is applied because of a reduction in pay, the pay used to calculate the CA pension accrued in the period between the date of reduction and the date of leaving is increased by the multiplier. Note that the effect of this is the same as increasing the accrued pension by the same multiplier (as shown in the example in section 2.7 below).

When a COP is applied because of a restriction in pay, the pay used to calculate the CA pension accrued in the period between the date of restriction and the date of leaving is increased by reference to the pay the member would have received but for the restriction. For example, if the pay restriction is due to a restriction in a pay award, then in determining the pay the member would have received but for the restriction the employer should normally use the pay awards applied during the period to other members in similar employment.

Where the member has pre 1 April 2015 membership, pay and final pay used to calculate the benefits in respect of that membership will be as defined in the 2009 scheme.

In essence, benefits can be based on, after allowing for inflation, the best year's pay in the last 5 years, or the average of the best consecutive 3 years' pay in the last 13 years beginning, in either case, with a day no earlier than three years prior to the date of the reduction or restriction and ending with the anniversary of the date of ceasing active membership of the scheme.

Employers should provide administering authorities with all pay information required to enable the administering authority to calculate protected benefits and provide the member with a statement showing the effect of using a certificate.

Members must be given the choice to elect to not have the certificate applied when a statement is issued. Such an election would provide members with additional flexibility in managing their personal taxation position.

In situations where a member holds a Certificate of Protection and APP is to be used in the calculation of Tier 1 or Tier 2 ill health enhancement or in the calculation of a death grant for a death in service then the APP would be increased by the multiplier that the member's pension benefits are protected by.