

Employer Discretions in the LGPS: Policies Required

The Regulations stated in this appendix are:

- R:** The Local Government Pension Scheme Regulations 2013 (as amended)
- TP:** The LGPS (Transitional Provisions, Savings and amendment) Regulations 2014
- A:** The Local Government Pension Scheme (**Administration**) Regulations 2008 (as amended)
- B:** The Local Government Pension Scheme (**Benefits, Membership and Contributions**) Regulations 2007 (as amended)
- T:** The Local Government Pension Scheme (**Transitional Provisions**) Regulations 2008
- L:** The Local Government Pension Scheme Regulations 1997 (as amended)

In the following tables, the prefix letters in front of the Regulation numbers denotes where the Regulation can be found.

To facilitate strong governance, we would recommend that a policy is maintained in all of the areas described herein. Some of the discretionary policies are mandatory, which means that you **must** formulate, publish and keep such policies under review. Where this is the case, the policy is **highlighted**.

Under these regulations, the employer must formulate, publish and keep under review a statement of their policy. A copy of the policy must be sent to the Clwyd Pension Fund. If the employer decides to amend the policy, they must send a copy to the Clwyd Pension Fund within one month of the date of the decision to amend the policy. In formulating and reviewing its policy an employer is required by the Regulations to have regard to the extent to which the exercise of their discretionary powers could lead to a serious loss of confidence in the public service. This is relevant for:

- Discretionary policies from 01/04/2014 in relation to post 31/03/2014 active members (excluding councillor members) and post 31/03/2014 leavers (excluding councillor members)
- Discretionary policies in relation to scheme members (excluding councillor members) who ceased active membership on or after 01/04/2008 and before 01/04/2014
- Discretionary policies in relation to active Welsh councillor members, councillor members who ceased active membership on or after 01/04/1998, and any other scheme members who ceased active membership on or after 01/04/1998 and before 01/04/2008
- Discretionary policies in relation to scheme members who ceased active membership before 01/04/1998

Discretionary policies from 01/04/2014 in relation to post 31/03/2014 active members (excluding councillor members) and post 31/03/2014 leavers (excluding councillor members)

Regulation	Discretion
R2(1B)(a) & RSch 2, Part 2	To whom to offer membership of the LGPS (designation bodies).
R2(1C),R3(1)(b) & R4(2)(b)	Which employees to designate for membership (admission bodies).
RSch 2, Part 3, para 12(c)	Whether, in respect of an admission body providing a service in respect of outsourced work, to set off against payments due to that body any sums due from that body to the Fund. (Transferor employer)
R9(1) & R9(3)	Determine rate of employees' contributions.
R16(2)(e) & R16(4)(d)	Mandatory written policy Whether, how much, and in what circumstances to contribute to a shared cost APC scheme.
R16(16)	Whether to extend 30 day deadline for member to elect for a shared cost APC upon return from a period of absence from work with permission with no pensionable pay (otherwise than because of illness or injury, relevant child-related leave or reserve forces service leave).
R17(1) & definition of SCAVC in RSch 1	Whether, how much, and in what circumstances to contribute to shared cost AVC arrangements.
TP15(2A)(b), L66(8) & former L66(9)(b)	Allow late application to convert scheme AVCs into membership credit i.e. allow application more than 30 days after cessation of active membership (where AVC arrangement was entered into before 13 November 2001).
R19(2)	No right to return of contributions where a member left their employment due to offence of a fraudulent character or grave misconduct in connection with that employment, unless employer directs a total or partial refund is to be made.
R20(1)(b)	Specify in an employee's contract what other payments or benefits, other than those specified in R20 (1) (a) and not otherwise precluded by R20(2), are to be pensionable.
R21(5)	In determining Assumed Pensionable Pay (APP), whether a lump sum payment made in the previous 12 months is a "regular lump sum".

R21(5A) R21(5B)	&	Where in the Employer's opinion, the pensionable pay received in relation to an employment (adjusted to reflect any lump sum payments) in the 3 months (or 12 weeks if not paid monthly) preceding the commencement of Assumed Pensionable Pay (APP), is materially lower than the level of pensionable pay the member would have normally received, decide whether to substitute a higher level of pensionable pay having had regard to the level of pensionable pay received by the member in the previous 12 months.
R22(8)(b)		Whether to extend the 12 month option period for a member to elect that post 31 March 2014 deferred benefits should not be aggregated with a new employment.
TP10(6)		Whether to extend the 12 month option period for a member (who did not become a member of the 2014 Scheme by virtue of TP5 (1)) to elect that pre 1 April 2014 deferred benefits should be aggregated with a new employment.
R22(7)(b)		Whether to extend the 12 month option period for a member to elect that post 31 March 2014 deferred benefits should not be aggregated with an ongoing concurrent employment.
R30(6) & TP11(2)		Mandatory written policy Whether all or some benefits can be paid if an employee reduces their hours or grade (flexible retirement).
R30(8)		Mandatory written policy Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement.
R30(8)		Mandatory written policy Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age other than on the grounds of flexible retirement (where the member only has post 31 March 2014 membership).
TPSch 2, para 1(2) & 1(1)(c)		Mandatory written policy Whether to "switch on" the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60 (other than on the grounds of flexible retirement).

TP3(1), TPSch 2, para 2(1), B30(5) & B30A(5)	<p>Mandatory written policy</p> <p>Whether to waive any actuarial reduction for a member voluntarily drawing benefits before normal pension age other than on the grounds of flexible retirement (where the member has both pre 1 April 2014 and post 31 March 2014 membership):</p> <p>a) on compassionate grounds (pre 1 April 2014 membership) and / or, in whole or in part on any grounds (post 31 March 2014 membership) if the member was not in the Scheme before 1 October 2006,</p> <p>b) on compassionate grounds (pre 1 April 2014 membership) and / or, in whole or in part on any grounds (post 31 March 2014 membership) if the member was in the Scheme before 1 October 2006, will not be 60 by 31 March 2016 and will not attain 60 between 1 April 2016 and 31 March 2020 inclusive,</p> <p>c) on compassionate grounds (pre 1 April 2016 membership) and / or, in whole or in part on any grounds (post 31 March 2016 membership) if the member was in the Scheme before 1 October 2006 and will be 60 by 31 March 2016,</p> <p>d) on compassionate grounds (pre 1 April 2020 membership) and / or, in whole or in part on any grounds (post 31 March 2020 membership) if the member was in the Scheme before 1 October 2006, will not be 60 by 31 March 2016 and will attain 60 between 1 April 2016 and 31 March 2020 inclusive.</p>
R31	<p>Mandatory written policy</p> <p>Whether to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency (by up to £6,500 p.a. on 1 April 2014 - this figure is inflation proofed annually).</p>
TP12(6)	Whether to use a certificate produced by an IRMP under the 2008 Scheme for the purposes of making an ill health determination under the 2014 Scheme.
R37(3) & (4)	Determine whether person in receipt of Tier 3 ill health pension has started gainful employment.
R37(3)	Whether to recover any overpaid Tier 3 pension following commencement of gainful employment.
R38(3)	Decide whether deferred beneficiary meets criteria of being permanently incapable of former job because of ill health and is unlikely to be capable of undertaking gainful employment before normal pension age or for at least three years, whichever is the sooner.
R38(6)	Decide whether a suspended ill health tier 3 member is unlikely to be capable of undertaking gainful employment before normal pension age because of ill health.
R91(1) & (8)	Whether to apply to Secretary of State for a forfeiture certificate where member is convicted of a relevant offence (a relevant offence is an offence committed in connection with an employment in which the person convicted is a member, and because of which the member left the employment).

R91(4)	Where forfeiture certificate is issued, whether to direct that benefits are to be forfeited (other than rights to GMP – but see R95 below).
R92(1) & (2)	Where forfeiture certificate is issued, whether to direct interim payments out of Pension Fund until decision is taken to either apply the certificate or to pay benefits.
R93(2)	Whether to recover from Fund any monetary obligation or, if less, the value of the member's benefits (other than benefits from transferred in pension rights or APCs or AVCs or, subject to R95 below, in respect of any GMP) where the obligation was incurred as a result of a grave misconduct or a criminal, negligent or fraudulent act or omission in connection with the employment and as a result of which the person has left employment.
R95	Whether, if the member has committed treason or been imprisoned for at least 10 years for one or more offences under the Official Secrets Acts, forfeiture under R91 or recovery of a monetary obligation under R93 should deprive the member or the member's surviving spouse or civil partner of any GMP entitlement.
R100(6)	Extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS.
TP3(6),P4(6)(c), TP8(4), TP10(2)(a), TP17(2)(b)& B11(2)	Whether to allow a member to select final pay period for fees to be any 3 consecutive years ending 31 March in the 10 years prior to leaving.
TP3(1)(a), TSch 1, L23(4)	Issue a certificate of protection of pension benefits where member fails to apply for one (pay cuts / restrictions occurring pre 1 April 2008).

Discretionary policies in relation to scheme members (excluding councillor members) who ceased active membership on or after 01/04/2008 and before 01/04/2014

Regulation	Discretion
TSch1, L66(8) & former L66(9)(b)	Allow late application to convert scheme AVCs into membership credit i.e. allow application more than 30 days after cessation of active membership.
A47(2)	No right to return of contributions where member left their employment due to offence of a fraudulent character or grave misconduct in connection with that employment, unless employer directs a total or partial refund is to be made.
A49(1) & (2)	Contribution Equivalent Premium (CEP) in excess of the Certified Amount (CA) recovered from a refund of contributions can be recovered from the Pension Fund. Under revoked regulation 52(1) of the OPS (Contracting-out) Regulations 1996 [SI 1996/1172] and regulation 12 of the OPS (Schemes that were Contracted-out) (No.2) Regulations a CEP must have been paid to the commissioner within 6 months after the date of termination of contracted-out employment, or one month after the Commissioner's notifies the administering authority that a CEP is payable. Following the end of the contracted-out reconciliation exercise, this discretionary policy should be spent entirely as all premiums will have been paid and no further notifications will be issued by the commissioners.
A72(1) & (6)	Whether to apply to Secretary of State for a forfeiture certificate where member is convicted of a relevant offence (a relevant offence is an offence committed in connection with an employment in which the person convicted is a member, and because of which the member left the employment).
A72(3)	Where forfeiture certificate is issued, whether to direct that benefits are to be forfeited.
A73(1) & (2)	Where forfeiture certificate is issued, whether to direct interim payments out of Pension Fund until decision is taken to either apply the certificate or to pay benefits.
A74(2)	Whether to recover from Fund any monetary obligation or, if less, the value of the member's benefits (other than transferred in pension rights or AVCs/SCAVCs) where the obligation was incurred as a result of a criminal, negligent or fraudulent act or omission in connection with the employment and as a result of which the person has left employment.
A76(2) & (3)	Whether to recover from Fund any financial loss caused by fraudulent offence or grave misconduct of employee (who has left employment because of that fraudulent offence or grave misconduct), or amount of refund if less.
TPSch 2, para 1(2) & 1(1)(c)	Mandatory written policy Whether to "switch on" the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.

B30(5), TPSch 2, para 2(1)	<p>Mandatory written policy</p> <p>Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30 (member).</p>
TPSch 2, para 1(2) & 1(1)(c)	<p>Mandatory written policy</p> <p>Whether to “switch on” the 85 year rule for a pensioner member with deferred benefits voluntarily drawing benefits on or after age 55 and before age 60.</p>
B30A(5), TPSch 2, para 2(1)	<p>Mandatory written policy</p> <p>Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early under B30A (pensioner member with deferred benefits).</p>
B31(4)	<p>Decide whether deferred beneficiary meets permanent ill health and reduced likelihood of gainful employment criteria.</p>
B31(7)	<p>Decide whether a suspended ill health tier 3 member is permanently incapable of undertaking any gainful employment.</p>

Discretionary policies in relation to active Welsh councillor members, councillor members who ceased active membership on or after 01/04/1998, and any other scheme members who ceased active membership on or after 01/04/1998 and before 01/04/2008

Regulation	Discretion
7(9)(a)	Allow a councillor who has opted out more than once to re-join.
18(6) & (7)	Allow a late application by a councillor member to pay optional contributions for a period of absence.
31(2)	Mandatory written policy Grant application for early payment of deferred benefits on or after age 50 and before age 55.
TPSch 2, para 1(2) & 1(1)(f) & R60	Mandatory written policy Whether to “switch on” the 85 year rule for a member with deferred benefits voluntarily drawing benefits on or after age 55 and before age 60.
31(5) & TPSch 2, para 2(1)	Mandatory written policy Waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early.
32(8A)	Whether to extend 12 month period for aggregation of deferred benefits (where deferred councillor member wishes to aggregate with current councillor membership in the same Fund).
34(1)(b)	Decide, in the absence of an election from the member within 3 months of being able to elect, which benefit is to be paid where the member would be entitled to a pension or retirement grant under 2 or more regulations in respect of the same period of Scheme membership.
71(7)(a)	Consent to a member’s former employer assigning to the new employer rights under any SCAVC life assurance policy.
88(2)	No right to return of contributions where a member left their employment due to offence of a fraudulent character or grave misconduct in connection with that employment, unless employer directs a total or partial refund is to be made.
89(1) & (2)	Employer may deduct contributions from a councillor’s pay or reserve forces pay.

92	Contribution Equivalent Premium (CEP) in excess of the Certified Amount (CA) recovered from a refund of contributions can be recovered from the Pension Fund. Under revoked regulation 52(1) of the OPS (Contracting-out) Regulations 1996 [SI 1996/1172] and regulation 12 of the OPS (Schemes that were Contracted-out) (No.2) Regulations a CEP must have been paid to the commissioner within 6 months after the date of termination of contracted-out employment, or one month after the Commissioner's notifies the administering authority that a CEP is payable. Following the end of the contracted-out reconciliation exercise, this discretionary policy should be spent entirely as all premiums will have been paid and no further notifications will be issued by the commissioners.
111(2) & (5)	Forfeiture of pension rights on issue of Secretary of State's certificate following a relevant offence (a relevant offence is an offence committed in connection with an employment in which the person convicted is a member, and because of which the member left the employment).
112(1)	Where forfeiture certificate is issued, direct interim payments out of Pension Fund until decision is taken to either apply the certificate or to pay benefits.
113(2)	Recovery from Fund of monetary obligation owed by former employee or, if less, the value of the member's benefits (other than transferred in pension rights).
115(2) & (3)	Recovery from Fund of financial loss caused by employee, or amount of refund if less.

Discretionary policies in relation to scheme members who ceased active membership before 01/04/1998

Regulation	Discretion
TP3(5A)(vi), TL4, L106(1) & D11(2)(c)	Mandatory written policy Grant application for early payment of deferred benefits on or after age 50 on compassionate grounds. Although the common provisions of the 1997 Transitional provisions regulations do not specify regulation D11 (2) (c), there intention was that it should apply to this regulation.
D10	Decide, in the absence of an election from the member within 3 months of being able to elect, which benefit is to be paid where the member would be entitled to a pension or retirement grant under 2 or more regulations in respect of the same period of Scheme membership.