

## LGPS England & Wales

# Discretionary policies for Scheme employers from 1 April 2014 as at 14 May 2018

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## Introduction

The Local Government Pension Scheme (LGPS) in England and Wales was amended from 1 April 2014 so that benefits for service after 31 March 2014, build-up on a defined benefit career average revalued earnings (CARE) basis, rather than on a defined benefit final salary basis.

The provisions of the CARE scheme, together with the protections for members' pre 1 April 2014 final salary rights, are contained in the Local Government Pension Scheme Regulations 2013 [SI 2013/2356] and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525].

Scheme employers participating in the LGPS in England or Wales must formulate, publish and keep under review a statement of policy on all mandatory discretions (or where the discretion is non-mandatory, are recommended to) which they have the power to exercise in relation to members of the CARE Scheme and earlier schemes.

Scheme employers are also required to formulate, publish and keep under review a statement of policy on all other mandatory discretions (or where the discretion is non-mandatory, are recommended to) they may exercise in relation to members of the LGPS.

Overall, Scheme employers participating in the LGPS in England or Wales:

- 1) Must formulate, publish and keep under review a statement of policy on all mandatory discretions (or where the discretion is non-mandatory, are recommended to) in accordance with:
  - regulation 60 of the LGPS Regulations 2013 [SI 2013/2356],
  - paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2015/525],
  - regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008 (in respect of leavers between 1 April 2008 and 31 March 2014) [SI 2008/239],
  - regulation 106 of the Local Government Pension Scheme Regulations 1997 (in respect of leavers between 1 April 1998 and 31 March 2008) [SI 1997/1612], and
  - by virtue of regulation 4 of the LGPS (Transitional Provisions) Regulations 1997 [SI 1997/1613], regulation 106 of the Local Government Pension Scheme Regulations 1997 [SI 1997/1612] (in respect of leavers prior to 1 April 1998) [SI 1997/1612].
- 2) Must (other than admission bodies<sup>1</sup>) formulate, publish and keep under review a statement of policy on all mandatory discretions in accordance with regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 [SI 2006/2914], operative from 1 October 2006.

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<sup>1</sup> Admission bodies can use the 2006 Compensation Regulations by analogy and, if they do so, they might wish to have a written policy.

- 3) Must (other than admission bodies<sup>2</sup>) formulate, publish and keep under review a statement of policy on all mandatory discretions (or where the discretion is non-mandatory, are recommended to) in accordance with regulation 26 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 [SI 2000/1410] (operative from 1 October 2000 up to and including 30 September 2006).
- 4) Must (other than admission bodies<sup>3</sup>) formulate, publish and keep under review a statement of policy on all discretions relating to injury allowances in accordance with regulation 14 of the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 [SI 2011/2954].
- 5) Are recommended to formulate, publish and keep under review a Statement of Policy on the non-mandatory discretions under the Local Government (Discretionary Payments) Regulations 1996 [SI 1996/1680] which relate to: injury allowances in respect of leavers, deaths and reduction in pay that occurred before 16 January 2012; and which relate to gratuities in respect of leavers and deaths that occurred before 16 January 2012.

The following sections set out the key discretions that apply under the above legislation. A full list of all discretions can be viewed in the [guides and sample documents pages](http://www.lgpsregs.org) of [www.lgpsregs.org](http://www.lgpsregs.org)

Appendix A provides information on how the discretions apply in relation to employees in Maintained Schools with a delegated budget.

Appendix B, together with the footnotes throughout this paper, provides information on variations for certain protected members.

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### **Prepare, publish and keep under review a written statement of policy under the LGPS Regulations**

Under:

- The 2014 Scheme Regulations – regulation 60 of the LGPS Regulations 2013 and paragraph 2(2) of Schedule 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014,
- The 2008 Scheme Regulations – regulation 66 of the LGPS (Administration) Regulations, and
- LGPS Regulations 1997 – regulation 106

the Scheme employer must formulate, publish and keep under review a statement of their policy concerning all mandatory discretions under these regulations. A copy of the policy must be sent to the relevant administering authority.

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<sup>2</sup> Admission bodies who made awards of Compensatory Added Years under the regulations might nevertheless wish to have a written policy.

<sup>3</sup> Admission bodies can use the 2011 Injury Regulations by analogy and, if they do so, they might wish to have a written policy.

If the Scheme employer decides to amend the policy, they must send a copy to the relevant administering authority ***within one month*** of the date of the decision to amend the policy.

In formulating and reviewing its policy a Scheme 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.

A Scheme employer should always ensure that their discretionary policies are kept up to date.

There are a number of non-mandatory discretions which Scheme employers may exercise under these regulations (see full list in [guides and sample documents pages](#) of [www.lgpsregs.org](http://www.lgpsregs.org)). There is, however, no requirement to have a written policy in respect of these but there are some where it would be appropriate for Scheme employers to have a written policy in order that both members and the Pension Fund administering authority can be clear on the Scheme employer's policy on these matters. These are described herein under the heading of 'non-mandatory discretion'.

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### **Prepare, publish and keep under review a written statement of policy under the Discretionary Compensation and Injury Allowance Regulations**

Under:

- The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 – Regulation 7,
- The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 – Regulation 26, and
- The Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 – Regulation 14.

each employing authority (other than an Admitted Body) must formulate, publish and keep under review a statement of their policy concerning all mandatory discretions under these regulations.

If the employer decides to amend the policy, no change can come into effect ***until one month has passed*** since the date the amended policy statement was published.

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, unless properly limited, could lead to a serious loss of confidence in the public service, and be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.

Each employer should always ensure that their discretionary policies are kept up to date.

There are a number of non-mandatory discretions which employers may exercise under these regulations and the Local Government (Discretionary Payments) Regulations 1996 (see full list in [guides and sample documents pages](#) of [www.lgpsregs.org](http://www.lgpsregs.org)). There is, however, no requirement to have a written policy in respect of these but there are some

where it would be appropriate for employers to have a written policy in order that both members and the Pension Fund administering authority can be clear on the employer's policy on these matters. These are described herein under the heading of 'non-mandatory discretion'.

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## **Summary of the key discretions to be exercised on and after 1 April 2014 (as at 14 May 2018) in relation to active members (excluding councillor members) and members (excluding councillor members) who cease active membership after 31 March 2014**

### **Mandatory discretions**

By virtue of regulation 60 of the LGPS Regulations 2013 and paragraph 2(2) of schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 Scheme employers must prepare and publish a written policy in relation to five specific mandatory discretions. These are:

#### **Mandatory discretion - whether to grant extra annual pension?**

- 1) Whether, at full cost to the Scheme employer, to grant extra annual pension of up to £6,822 (figure at 1 April 2018<sup>4</sup>) to an active member or within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency [regulation 31 of the LGPS Regulations 2013].

**Tip:**

*Scheme employers considering granting 'straight' extra annual pension of up to £6,822 (figure at April 2018) to employees in the 2014 Scheme will need to take a view on whether doing so could leave them open to challenge on age or gender discrimination grounds (as those not in the pension scheme tend to be younger employees and part-time female workers).*

*An implication of the Equality Act 2010 and the Equality Act (Age Exceptions for Pension Schemes) Order 2010 is that all staff should be treated equally regardless of their age, unless different treatment can be objectively justified.*

*A Scheme employer could grant the member additional pension actuarially equivalent to the value of any lump sum termination payment (in excess of the redundancy payment) the Scheme employer would otherwise have awarded under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 i.e. 'additional pension by conversion'. 'Additional pension by conversion' would be justifiable on actuarial grounds, as permitted by paragraph 2 of Schedule 1 to the Equality Act (Age Exceptions for Pension Schemes) Order 2010 [SI 2010/2133 as amended].*

*It should be noted that any extra annual pension granted by the Scheme employer would be subject to an actuarial reduction for early payment where, other than in a case of ill*

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<sup>4</sup> The figure of £6,500 at 1 April 2014 is revalued each April (starting April 2015) under the Pension (Increase) Act 1971 (as if it were a pension with a PI date of 1 April 2013). The uprated figure as at April 2018 is £6,822.

health retirement or retirement on redundancy or business efficiency grounds, that extra pension is drawn before the member's Normal Pension Age.

It should also be noted that the limit of £6,822 (figure at April 2018) includes the amount of extra annual pension purchased (or being purchased) by the employer under a Shared Cost Additional Pension Contributions (SCAPC) arrangement (see [2](#) below) and the policy intention is that it should include any amount of extra pension already granted by the employer under regulation 13 of the LGPS (Benefits, Membership and Contributions) Regulations 2007.

An issue that potentially arises in granting extra annual pension is that, in some cases, it can result in the value of the member's benefits being increased by more than the permitted standard Annual Allowance of, currently, £40,000 (2018/19) (or tapered annual allowance where appropriate). Any increase in value above that figure could result in a tax charge for the individual. Any additional pension granted will also count towards the capitalised value of a person's pension benefits which have to be assessed against the member's Lifetime Allowance (LTA) under the tax regime governing pension schemes.

Additionally, if, on retirement from the LGPS the capitalised value of a member's total LGPS benefits is more than the person's remaining LTA, they will have to pay tax on the excess (at the rate of 25% if the excess is paid in the form of pension and 55% if paid in the form of a lump sum).

### **Mandatory discretion - whether to share the cost of purchasing additional pension (SCAPC)?**

- 2) Whether, where an active member wishes to purchase extra annual pension of up to £6,822 (figure at 1 April 2018<sup>5</sup>) by making additional pension contributions (APCs), to **voluntarily** contribute towards the cost of purchasing that extra pension via a shared cost additional pension contribution (SCAPC) [regulations 16(2)(e) and 16(4)(d) of the LGPS Regulations 2013].

#### **Tip:**

Note that the above discretion does not relate to cases where a member has a period of authorised unpaid leave of absence and elects within 30 days of return to work (or such a longer period as the Scheme employer may allow) to pay a SCAPC to cover the amount of pension 'lost' during that period of absence. That is because, in those cases, the Scheme employer must contribute 2/3rds of the cost to a SCAPC; there is no discretion [regulation 15(5) of the LGPS Regulations 2013].

It should be noted that:

- any extra annual pension granted by the Scheme employer under a SCAPC arrangement would be subject to an actuarial reduction for early payment where, other than in a case of ill health retirement, that extra pension is drawn before the member's Normal Pension Age.
- the amount of extra annual pension purchased (or being purchased) by the Scheme employer under a Shared Cost Additional Pension Contributions (SCAPC) arrangement (including a SCAPC arrangement where a Scheme employer is contributing 2/3<sup>ds</sup> of the cost of purchasing pension 'lost' during a period of absence)

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<sup>5</sup> See [footnote 4](#).

*reduces the amount of extra annual pension the Scheme employer could award under [1](#) above.*

- *the policy intention is that the maximum amount of £6,500 (£6,822 as at April 2018) should include any amount of extra pension already purchased, or being purchased, by the member under regulation 14 of the LGPS (Benefits, Membership and Contributions) Regulations 2007.*

### **Mandatory discretion - whether to permit flexible retirement?**

- 3) Whether to permit flexible retirement for staff aged 55<sup>6</sup> or over who, with the agreement of the Scheme employer, reduce their working hours or grade [regulation 30(6) of the LGPS Regulations 2013] and, if so, as part of the agreement to permit flexible retirement:
- whether, in addition to the benefits the member has accrued prior to 1 April 2008 (which the member must draw), to permit the member to choose to draw
    - all, part or none of the pension benefits they accrued after 31 March 2008 and before 1 April 2014, and / or
    - all, part or none of the pension benefits they accrued after 31 March 2014 [regulations 11(2) and 11(3) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014], and
  - whether to waive, in whole or in part, any actuarial reduction which would otherwise be applied to the benefits taken on flexible retirement before Normal Pension Age (NPA)<sup>7</sup> [regulation 3(5) of the LGPS (Transitional Provisions,

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<sup>6</sup> Age 50 for those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies. Such members only need the Scheme employer's permission to reduce their working hours or grade but, if that permission is given, do not require their Scheme employer's permission to draw their benefits (as such members have the automatic right to take the benefits by virtue of regulation 18A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014).

<sup>7</sup> NPA means the employee's individual State pension age at the time the employment is terminated, but with a minimum of age 65 (although, the NPA for membership accrued prior to 1 April 2014 is still linked to age 65, apart from:

- those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies for whom the NPA for membership accrued prior to 1 April 2014 is, by virtue of that regulation and regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, still linked to age 60, and
- those LGPS members who are employees of the Meat Hygiene Service in the London Pension Fund Authority fund who are covered by regulation 144B of the LGPS Regulations 1997 for whom the NPA for membership accrued prior to 1 April 2014 is, by virtue of that regulation and regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, still linked to age 60). State pension age is currently age 65 for men. State pension age for women is currently being increased to be equalised with that for men. Women's State pension age will reach 65 by November 2018. The State pension age will then increase to 66 for both men and women from December 2018 to October 2020. Under the Pensions Act 2007 the State pension age is due to rise to 67 by April 2036 and to 68 by April 2046. The Chancellor of the Exchequer announced in the Autumn Statement 2013 that the Government intends to introduce legislation under which the SPA will be reviewed every Parliament. Based on the principle that people should expect to spend, on average, up to one third of their adult life in receipt of the State pension, this implies that the increase in State pension age to age 68 is likely to come forward from the current date of 2046 to the mid-2030s, and that the State pension age is likely to increase further to 69 by the late 2040s. For a full breakdown of State pension ages

Savings and Amendment) Regulations 2014, regulation 18(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and regulations 30(6) and 30(8) of the LGPS Regulations 2013].

**Tip:**

*If flexible retirement is agreed for a member aged 55 or over but under 60 who is subject to the 85 year rule and who, at the date of flexible retirement, has either met the 85 year rule or would have met the rule before age 60, there will be a strain on fund cost to be met by, and paid to the Pension Fund by, the Scheme employer in respect of the pension benefits paid, following flexible retirement.*

*Where flexible retirement is agreed for an employee aged 55 or over but under Normal Pension Age the cost of waiving any actuarial reduction, in whole or in part, would have to be met by, and paid to the Pension Fund by, the Scheme employer.*

**Mandatory discretion - whether to 'switch on' the 85 year rule (always excludes flexible retirement) upon the voluntary early payment of deferred benefits?**

- 4) Whether, as the 85 year rule<sup>8</sup> does not (other than on flexible retirement) automatically fully apply to members who would otherwise be subject to it<sup>9</sup> and who choose to voluntarily draw their benefits on or after age 55 and before age 60, to switch the 85 year rule back on in full for such members [paragraph 1(1)(c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014]. Where the Scheme employer **does not do so**, then:
- a) if the member has already met the 85 year rule, the member's benefits are to be reduced<sup>10</sup> in accordance with actuarial guidance issued by the Secretary of State (with the benefits from any pre 1 April 2008 membership for members who will not be 60 or more on 31 March 2016, and benefits from any pre 1 April 2016 membership for members who will be 60 or more on 31 March 2016, which would not normally have been subject to an actuarial reduction nonetheless being subject to a reduction<sup>11</sup> calculated by reference to the

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please see <https://www.pensionsadvisoryservice.org.uk/about-pensions/the-state-pension/know-your-state-pension-age>

- <sup>8</sup> If a member voluntarily draws benefits before their Normal Pension Age (for deferred benefits NPA as defined under the relevant earlier scheme) and they were a member of the LGPS on 30 September 2006, then some or all of their benefits could be protected from the normal actuarial reduction applied to benefits paid early under what is called the 85 year rule. The 85 year rule is satisfied if the member's age at the date they draw their benefits and their scheme membership (each in whole years) adds up to 85 or more. If they are part-time, their membership counts towards the 85 year rule at its full calendar length. Not all membership may count towards working out whether a member meets the 85 year rule – see the 85 year rule technical guide for more information. This can be found in the '[Guides and sample documents](#)' page of [www.lgpsregs.org](http://www.lgpsregs.org).
- <sup>9</sup> The 85 year rule does not apply to former members of the Metropolitan Civil Staffs Superannuation Scheme, or Meat Hygiene Service members, or civil servants transferred to the Environment Agency who by virtue of regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 are subject to, respectively, regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, regulation 144B of the LGPS Regulations 1997 and regulation 15 of the LGPS (Transitional Provisions) Regulations 2008.
- <sup>10</sup> There is no actuarial reduction on pre 1 April 2014 membership in the case of a former member of the Metropolitan Civil Staffs Superannuation Scheme who is aged 55 or over and has 25 years membership and who is covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997.
- <sup>11</sup> See [footnote 10](#).

period between the date the benefits are drawn and age 60) [paragraphs 1(2) and 1(4) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014], or

- b) if the member has not already met the 85 year rule, the member's benefits are to be reduced<sup>12</sup> in accordance with actuarial guidance issued by the Secretary of State (with the reduction on that part of the member's benefits subject to the 85 year rule being calculated by reference to the period between the date the benefits are drawn and age 60, or the date of attaining the 85 year rule, whichever is the later), and
- c) the Scheme employer can exercise a discretion to waive any actuarial reductions (including where an actuarial reduction may still be applied to a member's benefits after 'switching back on' the 85 year rule in full) (at cost to the Scheme employer).

**Tip:**

*If the Scheme employer does agree to switch back on the 85 year rule in full, the Scheme employer will have to meet the cost of any strain on fund resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule, or would meet it before age 60 [paragraph 2(3) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014].*

*Switching the 85 year rule back on in full might be a mechanism Scheme employers would wish to consider to encourage members to retire early to, for example, help achieve a balanced age profile within the workforce or to avoid possible redundancies later (which have attendant greater costs). Whilst also exercising the discretion to waive actuarial reductions would be more expensive than just switching back on the 85 year rule, it would still (in nearly all cases) be less expensive than redundancy.*

**Mandatory discretion - whether to waive upon the voluntary early payment of benefits, any actuarial reduction on compassionate grounds or otherwise (for flexible retirement see [paragraph 3](#) in this section)?**

- 5) For active members voluntarily retiring on or after age 55<sup>13</sup> and before Normal Pension Age, who elect under regulation 30(5) of the LGPS Regulations 2013 to immediately draw benefits<sup>14</sup>, and for deferred members and suspended tier 3 ill health pensioners who elect under regulation 30(5) of the LGPS Regulations 2013 to draw benefits<sup>15</sup> (other than on ill health grounds) on or after age 55<sup>16</sup> and before Normal Pension Age, and who:

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<sup>12</sup> See [footnote 10](#).

<sup>13</sup> Age 50, by virtue of regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, for those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies and those civil servants transferred to the Environment Agency to whom regulation 15 of the LGPS (Transitional Provisions) Regulations 2008 applies.

<sup>14</sup> Including pre 1 April 2014 benefits – see regulation 11(1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

<sup>15</sup> See [footnote 14](#).

<sup>16</sup> Age 50, by virtue of regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, for those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies and

### Group 4 members

5.1) Were **not** members of the LGPS before 1 October 2006, whether to:

- waive on compassionate grounds<sup>17</sup>, any actuarial reduction<sup>18</sup> that would otherwise be applied to benefits, if any, built up before 1 April 2014<sup>19</sup> [regulations 3(1) and (5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 and regulations 30(5) or 30A(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007], and / or
- waive, in whole or in part (on any grounds), any actuarial reduction<sup>20</sup> that would otherwise be applied to benefits built up after 31 March 2014 [regulation 30(8) of the LGPS Regulations 2013].

### Group 1 members

5.2) **were** members of the LGPS before 1 October 2006 and who reached age 60 before 1 April 2016 (i.e. those members falling within paragraph 3(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014), whether to:

- waive on compassionate grounds<sup>21</sup>, any actuarial reduction<sup>22</sup> that would otherwise be applied to benefits built up before 1 April **2016** [paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014], and / or
- waive, in whole or in part (on any grounds), any actuarial reduction<sup>23</sup> that would otherwise be applied to benefits built up after 31 March **2016**<sup>24</sup> [regulation 30(8) of the LGPS Regulations 2013].

### Group 3 members

5.3) **were** members of the LGPS before 1 October 2006 and who will reach age 60 after 31 March 2020 (or who would reach age 60 between 1 April 2016 and 31 March 2020 inclusive, but who would not meet their Critical

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who are electing for early payment of a deferred benefit (but not if they are electing for early payment of a suspended Tier 3 ill health pension) and those civil servants transferred to the Environment Agency to whom regulation 15 of the LGPS (Transitional Provisions) Regulations 2008 applies and who are electing for early payment of a deferred benefit or early payment of a suspended Tier 3 ill health pension.

<sup>17</sup> There is no definition in the regulations of 'compassionate grounds'.

<sup>18</sup> There is no actuarial reduction on pre 1 April 2014 membership in the case of a former member of the Metropolitan Civil Staffs Superannuation Scheme who is aged 55 or over and under 60 who has 25 years membership and who is covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997.

<sup>19</sup> Including Part D2 membership – see the 85 year rule technical guide for more information. This can be found in the '[Guides and sample documents](#)' page of [www.lgpsregs.org](http://www.lgpsregs.org).

<sup>20</sup> See [footnote 18](#) for reference only re pre 1 April 2014 membership though not applicable to post 31 March 2014 membership.

<sup>21</sup> See [footnote 17](#).

<sup>22</sup> See [footnote 18](#).

<sup>23</sup> See [footnote 18](#) for reference only re pre 1 April 2014 membership though not applicable to post 31 March 2014 membership.

<sup>24</sup> See [footnote 19](#).

Retirement Age (CRA) before 1 April 2020 - in this instance CRA is the earlier of the date upon which the member would meet the 85 year rule or age 65) (i.e. those members falling within paragraph 3(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014), whether to:

- waive on compassionate grounds<sup>25</sup>, any actuarial reduction<sup>26</sup> that would otherwise be applied to benefits built up before 1 April 2014 [paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 re the membership before 1 April 2008 and regulations 3(1) and (5) of, and paragraph 2(1) of Schedule 2 to, the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 and regulation 30(5) or 30A(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 re the membership between 1 April 2008 and 31 March 2014], and / or
- waive, in whole or in part (on any grounds), any actuarial reduction<sup>27</sup> that would otherwise be applied to benefits built up after 31 March 2014<sup>28</sup> [regulation 30(8) of the LGPS Regulations 2013].

### Group 2 members

5.4) **were** members of the LGPS before 1 October 2006 and who will reach age 60 between 1 April 2016 and 31 March 2020 inclusive and who will also reach their Critical Retirement Age (CRA) (in this instance CRA is the earlier of the date upon which the member would meet the 85 year rule or age 65) before 1 April 2020 (i.e. those members falling within paragraphs 3(2) and 9 of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014), whether to:

- waive on compassionate grounds<sup>29</sup>, any actuarial reduction<sup>30</sup> that would otherwise be applied to benefits built up before 1 April **2020** [paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014], and / or
- waive, in whole or in part (on any grounds), any actuarial reduction<sup>31</sup> that would otherwise be applied to benefits built up after 31 March **2020**<sup>32</sup> [regulation 30(8) of the LGPS Regulations 2013].

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<sup>25</sup> See [footnote 17](#).

<sup>26</sup> See [footnote 18](#).

<sup>27</sup> See [footnote 18](#) for reference only re pre 1 April 2014 membership though not applicable to post 31 March 2014 membership.

<sup>28</sup> See [footnote 19](#).

<sup>29</sup> See [footnote 17](#).

<sup>30</sup> See [footnote 18](#).

<sup>31</sup> See [footnote 18](#) for reference only re pre 1 April 2014 membership though not applicable to post 31 March 2014 membership.

<sup>32</sup> See [footnote 19](#).

## Non-mandatory discretions

As mentioned previously, there is no requirement to have a written policy in respect of non-mandatory discretions. However, there are eight (**including 3 NEW non-mandatory discretions**) where it is recommended for Scheme employers to have a written policy in order that both members and the Pension Fund administering authority can be clear on the Scheme employer's policy on these matters. They are:

### Non-mandatory discretion - whether to, how much and in what circumstances to contribute to a shared-cost Additional Voluntary Contribution (SCAVC) arrangement?

- 6) Whether, how much, and in what circumstances to contribute to a SCAVC arrangement [regulation 17 of the LGPS Regulations 2013 and regulation 15(2A) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014].

### Non-mandatory discretion – **NEW**: whether to extend the time limit for a member to elect to purchase additional pension by way of a shared cost additional pension contribution (SCAPC) upon return from a period of absence?

- 7) Whether to extend the 30 day deadline for member to elect for a SCAPC 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) [regulation 16(16) of the LGPS Regulations 2013].

### Non-mandatory discretion - whether to extend the 12 month time limit for a member to elect to transfer pension rights from another registered pension scheme into the Scheme?

- 8) Whether, **with the agreement of the Pension Fund administering authority**, to permit a member to elect to transfer pension rights from another registered pension scheme into the LGPS, if they had not made such an election to do so within 12 months of first joining the LGPS in that employment [regulation 100(6) of the LGPS Regulations 2013].

#### **Tip:**

*There may be circumstances where it would be reasonable to accept a late election. For example:*

- *where the member asked for transfer investigations to be commenced within 12 months of joining the LGPS but a quotation of what the transfer value will purchase in the LGPS has not been provided to the member within 11 months of joining the LGPS. The time limit for such a member to make a formal election to transfer pension rights into the LGPS could be extended to, say, one month beyond the date of the letter issued by the Pension Fund administering authority notifying the member of the benefits the transfer will buy in the LGPS;*
- *where the available evidence indicates the member made an election within 12 months of joining the LGPS, but the election was not received by the Pension Fund administering authority (e.g. the election form was lost in the post);*
- *where the available evidence indicates the member had not been informed of the 12 month time limit due to maladministration.*

*Accepting an option after 12 months can result in additional cost to the Scheme employer (e.g. where an employee opts to transfer in prior to a large salary rise / promotion / re-grading if the member has any final salary membership, or where an employee opts to transfer in prior to early retirement on the grounds of redundancy, business efficiency or ill health).*

### **Non-mandatory discretions – whether to extend the 12 month time limit for a member to elect not to aggregate Post 31 March 2014 (or combinations of Pre April 2014 & Post March 2014) deferred benefits?**

- 9) Whether to extend the 12 month time limit within which a member who has a deferred LGPS benefit in England or Wales following the cessation of employment (or cessation of a concurrent employment) **after** 31 March 2014 may elect **not to have** their deferred benefits aggregated with their new LGPS employment (or ongoing concurrent LGPS employment) if the member has not made an election to retain separate benefits within 12 months of commencing membership of the LGPS in that new employment (or within 12 months of ceasing the concurrent membership) [regulations 22(7) and (8) of the LGPS Regulations 2013].

**Tip:**

*There may be circumstances where it would be reasonable to accept a late election to retain separate benefits. For example:*

- *where the available evidence indicates the member made an election within 12 months of joining the LGPS, but the election was not received by the Pension Fund administering authority (e.g. the election form was lost in the post);*
- *where the available evidence indicates the member had not been informed of the 12 month time limit due to maladministration;*
- *where the member has final salary membership and the available evidence indicates that, due to maladministration, the member had not been informed of the implications of having benefits aggregated and would, in consequence, suffer a detriment to their pension benefits (for example, where member's whole-time equivalent pensionable pay on commencing with the Scheme employer is, in real terms after allowing for inflation, significantly less than the whole-time equivalent pensionable pay upon which the deferred benefits were calculated).*

### **Non-mandatory discretions – *NEW*: whether to extend the 12 month time limit for a member to elect to aggregate Pre 1 April 2014 deferred benefits?**

- 10) Whether to extend the 12 month time limit within which a member (who has not elected to be treated as a member who, in the same employment, was contributing to the Scheme on both 31 March 2014 and 1 April 2014) who has a deferred LGPS benefit in England or Wales following the cessation of employment **before** 1 April 2014, to elect to aggregate their deferred benefits with their new LGPS employment that commenced on or after 14 May 2018, to purchase earned pension [regulation 10(6) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 as amended by regulation 27 of the LGPS (Amendment) Regulations 2018].

**Tip:**

*There may be circumstances where it would be reasonable to accept a late election to aggregate benefits. For example:*

- where the available evidence indicates the member made an election within 12 months of joining the LGPS, but the election was not received by the Pension Fund administering authority (e.g. the election form was lost in the post);
- where the available evidence indicates the member had not been informed of the 12 month time limit due to maladministration.

### **Non-mandatory discretions – how an employee’s contribution band will be initially determined and thereafter reviewed?**

11) How the pension contribution band to which an employee is to be allocated on joining the Scheme, and at each subsequent April, will be determined and the circumstances in which the Scheme employer will, in addition to the review each April, review the pension contribution band to which an employee has been allocated following a material change which affects the member’s pensionable pay in the course of a Scheme year (1 April to 31 March) [regulations 9 and 10 of the LGPS Regulations 2013].

**Tip:**

See the information on allocation to a contribution band in sections 2A, 2B, 4, 5 and 10 of the HR guide in the [guides and sample documents pages](http://www.lgpsregs.org) of [www.lgpsregs.org](http://www.lgpsregs.org)

### **Non-mandatory discretions – whether to include a regular lump sum payment when calculating assumed pensionable pay (APP)?**

12) Whether, when calculating assumed pensionable pay when a member is:

- on reduced contractual pay or no pay on due to sickness or injury, or
- absent during ordinary maternity, paternity or adoption leave, or paid shared parental leave, or during paid additional maternity or adoption leave, or
- absent on reserve forces service leave, or
- retires with a Tier 1 or Tier 2 ill health pension, or
- dies in service

to include in the calculation the amount of any ‘regular lump sum payment’ received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred. A ‘regular lump sum payment’ is a payment for which the member’s Scheme employer determines there is a reasonable expectation that such a payment would be paid on a regular basis [regulations 21(4)(a)(iv), 21(4)(b)(iv) and 21(5) of the LGPS Regulations 2013].

**Tip:**

It is entirely at the Scheme employer’s discretion whether or not to include in the calculation of assumed pensionable pay the amount of any ‘regular lump sum payment’ received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred. Take, for example, the following two situations as examples:

- if a ‘regular lump sum payment’ is added back for a member on reduced contractual pay or no pay due to sickness or injury, or absent during ordinary maternity, paternity or adoption leave, or paid shared parental leave, or during paid additional maternity or adoption leave, or absent on reserve forces service leave, that member can finish up with a bigger pension accrual than if the member had not been absent and had, instead, been at work. Take the case where a member receives a £1,200 annual performance payment in May 2014 and goes onto reduced contractual pay due to sickness for the period 1 November 2014 to 31 December 2014, returning to full pay

from 1 January 2015. The £1,200 has already been included in the member's pensionable pay cumulatives for 2014/15. If it was included in assumed pensionable pay for November and December 2014, 2/12 of £1,200 (i.e. £200) would be added into the cumulative pensionable pay. If the member had not been sick, that £200 would not have been included in pensionable pay (as the member was not next due to get a lump sum annual performance payment until May 2015)

- it might seem reasonable to add back any 'regular lump sum payment' received by the member in the 12 months preceding ill health retirement or death in service into the assumed pensionable pay to be used to work out the amount of enhanced pension for a member who retires with a Tier 1 or Tier 2 ill health pension, or used to work out the survivor pension and / or death grant for a member who dies in service. However, what if the member is, say, only 40 at the time of the ill health retirement / death in service? Is it likely that the Scheme employer would have paid such a lump sum to the member every year between age 40 and the member's Normal Pension Age? That, in essence, would be implied as being the case if the Scheme employer were to add the lump sum back into the assumed pensionable pay figure to be used to calculate the amount of ill health enhanced pension and / or survivor pension.

Any decision as to whether or not to include in the calculation of a member's assumed pensionable pay the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred would need to be fair, equitable and justifiable.

### **Non-mandatory discretions – *NEW*: whether, subject to qualification, to substitute a higher level of pensionable pay when calculating assumed pensionable pay (APP)?**

13) When a member is:

- on reduced contractual pay or no pay due to sickness or injury, or
- absent during ordinary maternity, paternity or adoption leave, or paid shared parental leave, or during paid additional maternity or adoption leave, or
- absent on reserve forces service leave, or
- retires with a Tier 1 or Tier 2 ill health pension, or
- dies in service

if, in the Scheme 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 when calculating APP, having had regard to the level of pensionable pay received by the member in the previous 12 months [regulations 21(5A) and 21(5B) of the LGPS Regulations 2013]. Although, this discretion is ***NEW***, its effective date is backdated to 1 April 2014 by way of regulation 7 of the LGPS (Amendment) Regulations 2018.

#### ***Tip:***

*It is entirely at the Scheme employer's discretion whether or not to opine that the pensionable pay in the period set out above is materially lower than the level of pensionable pay the member would have normally received. Thereafter, again it is entirely at the Scheme employer's discretion as to whether or not to substitute a higher level of pensionable pay. The intention of this discretion is to 'smooth' any irregularities that might occur when calculating assumed pensionable pay, resulting in the member ending up with a lower level of pension than they would otherwise have received, but for the absence.*

**Summary of the discretions to be exercised on and after 1 April 2014 (as at 14 May 2018) in relation to members (excluding councillor members) who ceased active membership between 1 April 2008 and 31 March 2014**

**Mandatory discretions**

*By virtue of regulations 24(a), 30(a), 30(c), 30(e) and 30(f) of the LGPS (Amendment) Regulations 2018, with effect from 14 May 2018, the mandatory discretion to obtain a Scheme employer's approval for the voluntary early payment of a deferred benefit or a suspended tier 3 ill health pension, on or after age 55 and prior to age 60 has been removed and two **NEW** mandatory discretions have been introduced as set out below.*

By virtue of regulation 66 of the LGPS (Administration) Regulations 2008 and regulation 60 of the LGPS Regulations 2013 by virtue of paragraph 2(2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 Scheme employers (employing authorities) are required to prepare and publish a written policy in relation to four mandatory discretions. These are:

**Mandatory discretion – *NEW*: whether to 'switch on' the 85 year rule upon the voluntary early payment of deferred benefits?**

- 1) Whether, as the 85 year rule<sup>33</sup> does not automatically fully apply to members who would otherwise be subject to it<sup>34</sup> and who choose to voluntarily draw their deferred benefits (on or after 14 May 2018) on or after age 55 and before age 60, to switch the 85 year rule back on in full for such members [paragraph 1(1)(c) & 1(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014]. For more information see [paragraph 4](#) within the section titled 'Summary of the key discretions to be exercised on and after 1 April 2014 (as at 14 May 2018) in relation to active members (excluding councillor members) and members (excluding councillor members) who cease active membership after 31 March 2014'.

**Mandatory discretion – *NEW*: whether to 'switch on' the 85 year rule upon the voluntary early payment of a suspended tier 3 ill health pension?**

- 2) Whether, as the 85 year rule<sup>35</sup> does not automatically fully apply to members who would otherwise be subject to it<sup>36</sup> and who choose to voluntarily draw their suspended tier 3 ill health pension (on or after 14 May 2018) on or after age 55 and before age 60, to switch the 85 year rule back on in full for such members [paragraph 1(1)(c) & 1(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014]. For more information see [paragraph 4](#) within the section titled 'Summary of the key discretions to be exercised on and after 1 April 2014 (as at 14 May 2018) in relation to active members (excluding

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<sup>33</sup> See [footnote 8](#).

<sup>34</sup> See [footnote 9](#).

<sup>35</sup> See [footnote 8](#).

<sup>36</sup> See [footnote 9](#).

councillor members) and members (excluding councillor members) who cease active membership after 31 March 2014’.

### **Mandatory discretion - whether to waive upon the voluntary early payment of deferred benefits, any actuarial reduction on compassionate grounds?**

- 3) Whether, on compassionate grounds<sup>37</sup>, to waive any actuarial reduction<sup>38</sup> that would normally be applied to deferred benefits which are paid before age 65<sup>39</sup> [regulation 30(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014]. For more information see [paragraph 5](#) within the section titled ‘Summary of the key discretions to be exercised on and after 1 April 2014 (as at 14 May 2018) in relation to active members (excluding councillor members) and members (excluding councillor members) who cease active membership after 31 March 2014’.

### **Mandatory discretion - whether to waive upon the voluntary early payment of a suspended tier 3 ill health pension, any actuarial reduction on compassionate grounds?**

- 4) Whether, on compassionate grounds<sup>40</sup>, to waive any actuarial reduction that would normally be applied to any suspended tier 3 ill health pension benefits which are brought back into payment before age 65<sup>41</sup> [regulation 30A(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014]. For more information see [paragraph 5](#) within the section titled ‘Summary of the key discretions to be exercised on and after 1 April 2014 (as at 14 May 2018) in relation to active members (excluding councillor members) and members (excluding councillor members) who cease active membership after 31 March 2014’.

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<sup>37</sup> See [footnote 17](#).

<sup>38</sup> See [footnote 18](#).

<sup>39</sup> Age 60 in the case of members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies, and for employees of the Meat Hygiene Service in the London Pension Fund Authority fund who are covered by regulation 144B of the LGPS Regulations 1997, and for former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, and for former NHSPS members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997.

<sup>40</sup> See [footnote 17](#).

<sup>41</sup> See [footnote 37](#).

**Summary of the discretions to be exercised on and after 1 April 2014 (as at 14 May 2018) in relation to active and deferred councillor members and any other members who ceased active membership between 1 April 1998 and 31 March 2008**

**Mandatory discretions**

*By virtue of regulations 24(a), 30(e) and 30(f) of the LGPS (Amendment) Regulations 2018, with effect from 14 May 2018, the mandatory discretion to obtain a Scheme employer's approval for the voluntary early payment of a deferred benefit, on or after age 55 and prior to age 60, has been removed (though this discretion remains in place for payment on or after age 50 and prior to age 55).*

By virtue of regulation 106 of the Local Government Pension Scheme Regulations 1997 and regulation 60 of the LGPS Regulations 2013 by virtue of paragraph 2(2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 Scheme employers are required to have a policy in relation to three specific mandatory discretions. These are:

**Mandatory discretion – *NEW*: whether to 'switch on' the 85 year rule upon the voluntary early payment of deferred benefits?**

- 1) Whether, as the 85 year rule<sup>42</sup> does not automatically fully apply to members who would otherwise be subject to it<sup>43</sup> and who choose to voluntarily draw their deferred benefits (on or after 14 May 2018) on or after age 55 and before age 60, to switch the 85 year rule back on in full for such members [paragraph 1(1)(f) & 1(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014]. For more information see [paragraph 4](#) within the section titled 'Summary of the key discretions to be exercised on and after 1 April 2014 (as at 14 May 2018) in relation to active members (excluding councillor members) and members (excluding councillor members) who cease active membership after 31 March 2014'.

**Mandatory discretion – *AMENDED*: whether to grant early payment of benefits on or after age 50 and prior to age 55?**

- 2) Whether<sup>44</sup> to grant applications for the early payment of pension benefits on or after age 50<sup>45</sup> and before age 55 [regulation 31(2) of the LGPS Regulations 1997].

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<sup>42</sup> See [footnote 8](#).

<sup>43</sup> See [footnote 9](#).

<sup>44</sup> This discretion does not apply to those LGPS members who are former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997 or to former NHSPS members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997 (as such members have the automatic right to take benefits on or after age 50 and before age 60).

<sup>45</sup> It should be noted that, except in the case of LGPS members who are former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, or former NHSPS members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997, benefits paid on or after age 50 and before age 55 will be subject to an unauthorised payments charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under that Act, and a Scheme sanction charge on any benefits built up after 5 April 2006.

## Mandatory discretion - whether to waive upon the payment of benefits, any actuarial reduction on compassionate grounds?

- 3) Whether, on compassionate grounds<sup>46</sup>, to waive any actuarial reduction<sup>47</sup> that would normally be applied to benefits which are paid before age 65<sup>48</sup> [regulation 31(5) of the LGPS Regulations 1997 and paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014]. For more information see [paragraph 5](#) within the section titled 'Summary of the key discretions to be exercised on and after 1 April 2014 (as at 14 May 2018) in relation to active members (excluding councillor members) and members (excluding councillor members) who cease active membership after 31 March 2014'.

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**Summary of the discretions to be exercised on and after 1 April 2014 (as at 14 May 2018) in relation to members who ceased active membership before 1 April 1998**

### Mandatory discretions

There is only one mandatory discretion to be determined upon under the LGPS Regulations 1995 [by virtue of regulation 2 the LGPS (Transitional Provisions) Regulations 1997 – although the common provisions do not specify regulation D11(2)(c) noted below, we understand that it was their intention that they should do so] Scheme employers (employing authorities) must formulate, publish and keep under review a statement of policy on:

### Mandatory discretion - whether to grant early payment of benefits on compassionate grounds?

- 1) Whether to grant applications for the early payment of deferred pension benefits on or after age 50<sup>49</sup> and before NRD<sup>50</sup> on compassionate grounds<sup>51</sup> [regulation D11(2)(c) of the LGPS Regulations 1995].

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<sup>46</sup> See [footnote 17](#).

<sup>47</sup> See [footnote 18](#).

<sup>48</sup> Age 60 in the case of employees of the Meat Hygiene Service in the London Pension Fund Authority fund who are covered by regulation 144B of the LGPS Regulations 1997 and members who are former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997 and for former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, and for former NHSPS members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997.

<sup>49</sup> It should be noted that, except in the case of former NHSPS members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997, benefits paid on or after age 50 and before age 55 will be subject to an unauthorised payments charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under that Act, but there would be no Scheme sanction charge.

<sup>50</sup> NRD under the 1995 Regulations is defined as the earlier of: age 60 if, by that age, the member would have had 25 or more years membership of the scheme if they had remained in the scheme until then, or

## Summary of the discretions to be exercised under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

### Mandatory discretions

By virtue of regulation 7(1) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, operative from 1 October 2006, employers (employing authorities), other than admission bodies<sup>52</sup>, must formulate, publish and keep under review a statement of policy on the following mandatory discretions:

#### Mandatory discretion - whether to base redundancy payments on an actual week's pay where this exceeds the statutory week's pay limit?

- 1) Whether to base a redundancy payment on an employee's actual weeks' pay where this exceeds the statutory week's pay limit of, currently, £508 per week (as at 6 April 2018) [regulation 5 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006]

#### Mandatory discretion - whether to award lump sum compensation of up to 104 week's pay in cases of redundancy, termination of employment on efficiency grounds, or cessation of a joint appointment?

- 2) Whether to make a termination payment (inclusive of any redundancy payment) of up to a maximum of 104 weeks' pay to an employee who is, or is eligible to be, a member of the LGPS and whose employment is terminated on the grounds of redundancy or in the interests of the efficient exercise of the employer's functions or, in the case of a joint appointment<sup>53</sup>, because the other holder of the appointment has left it [regulation 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006]

**Tip:**

*A payment under [2](#) cannot be made if the employer makes an award of additional pension under regulation 31 of the LGPS Regulations 2013. Although regulation 31 of the LGPS Regulations 2013 is not specifically referred to in regulation 6(1)(b) of the Discretionary*

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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 if they had remained in the scheme until then.

<sup>51</sup> See [footnote 17](#).

<sup>52</sup> See [footnote 1](#).

<sup>53</sup> This relates to appointments which are a 'joint appointment' e.g. the former practice of jointly appointing a husband and wife as officers in charge of a childrens' or older peoples' home. It does not relate to job shares where two or more employees share the duties of a post but hold separate contracts of employment.

*Compensation Regulations 2006 it is believed that section 17 of the Interpretation Act 1978 can be relied upon to enable regulation 6(1)(b) to be read as if it already incorporated a reference to regulation 31 of the LGPS Regulations 2013.*

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## Summary of the discretions to be exercised under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000

### Mandatory discretions

Although the 2000 Compensation Regulations have been revoked, they still apply to any Compensatory Added Years previously awarded by an employer (employing authority) before 1 April 2007 [regulation 11(2) of, and Schedule 2 to, the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006].

By virtue of regulation 26(1) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000, employers who made awards of Compensatory Added Years (other than admission bodies<sup>54</sup>) must formulate, publish and keep under review a statement of policy on the following mandatory discretions:

### Mandatory discretion - whether and to what extent to reduce or suspend a person's annual compensatory added year's payment during any period of re-employment in local government and thereafter?

- 1) How a person's annual compensatory added years payment is to be abated during, and following the cessation of, any period of re-employment by an employer who offers membership of the LGPS to its employees, regardless of whether or not the employee chooses to join the LGPS (except where the employer is an admitted body, in which case abatement only applies if the person is in the LGPS in the new employment) [regulations 17 and 19 - Parts VI and VII of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000].

### Mandatory discretion - how to apportion any surviving spouses or civil partner's annual compensatory added years' payment?

- 2) How any surviving spouse's or civil partner's annual compensatory added years is to be apportioned where the deceased person is survived by more than one spouse or civil partner [regulation 21(4) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000].

### Mandatory discretion - whether the spouse's or civil partner's annual compensatory added years payments should continue to be paid following remarriage, commencement of a new civil partnership or cohabitation?

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<sup>54</sup> See [footnote 2](#).

- 3) Whether, if the spouse or civil partner of a person who ceased employment before 1 April 1998 remarries, enters into a civil partnership or cohabits after 1 April 1998, the normal annual compensation suspension rules will be disapplied i.e. the spouse's or civil partner's annual compensatory added years will continue to be paid [regulation 21(5) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000].

**Mandatory discretion - whether the spouse's or civil partner's annual compensatory added years payments should be reinstated following the cessation of a remarriage, a new civil partnership or cohabitation?**

- 4) If, under the preceding decision, the employer's policy is to apply the normal suspension rules, whether the spouse's or civil partner's annual compensatory added years payment should be reinstated after the end of the remarriage, new civil partnership or cohabitation [regulation 21(5) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000].

**Mandatory discretion – whether to suspend the payment of annual compensatory added years where the spouse or civil partner remarries or cohabits or enters into a civil partnership on or after 1 April 1998 with another person who is also entitled to a spouse's or civil partners annual CAY payment?**

- 5) Whether, in respect of the spouse or civil partner of a person who ceased employment before 1 April 1998 and where the spouse or civil partner remarries or cohabits or enters into a civil partnership on or after 1 April 1998 with another person who is also entitled to a spouse's or civil partners annual CAY payment, the normal rule requiring one of them to forego payment whilst the period of marriage, civil partnership or co-habitation lasts, should be disapplied i.e. whether the spouses' or civil partners' annual CAY payments should continue to be paid to both of them [regulation 21(7) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000].

**Mandatory discretion - how to decide to whom any children's annual compensatory added years payments are to be paid (and apportioned) where children's pensions are not payable under the LGPS?**

- 6) How, if compensatory added years were awarded to an employee who was not in the LGPS (because the employee had not joined or had opted out of the LGPS) the employer will decide to whom any children's annual compensatory added years payments are to be paid and, in such a case, how the annual added years will be apportioned amongst the eligible children cohabitation [regulation 25(2) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000].

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**Summary of the discretions to be exercised under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011**

## Mandatory discretions

Under regulation 14(1) of the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 employers (LGPS employers), other than admission bodies<sup>55</sup>, must formulate, publish and keep under review a policy on the following mandatory discretions:

### Mandatory discretion – whether to pay an injury award and in what circumstances?

- 1) Whether to make an injury award to those who sustain an injury or contract a disease as a result of anything they were required to do in performing the duties of their job and in consequence of which they:
  - suffer a reduction remuneration, or
  - cease to be employed as a result of an incapacity which is likely to be permanent and which was caused by the injury or disease, or
  - die leaving a surviving spouse, civil partner, cohabiting partner (for awards made on or after 1 April 2008 the requirement to nominate a co-habiting partner has ceased due to the outcome of the *Elmes v Essex* high court judgement) or dependant.[regulations 3 to 7 of the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011].

### Mandatory discretion – how to determine the amount of an injury award and for how long it will be paid?

- 2) How it will determine the amount of injury allowance to be paid and for how long to continue payment [regulations 3 to 7 of the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011].

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#### Disclaimer

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<sup>55</sup> See [footnote 3](#).

## **Appendix A: Information on the exercise of discretions in respect of employees in Maintained Schools with a delegated budget**

### **General**

Staff in community schools, community special schools, maintained nursery schools or voluntary controlled schools are employed by the Local Authority.

Staff in foundation schools, foundation special schools, foundation trust schools and voluntary aided schools are employed by the Governing Body of the school.

A Maintained School is a community school, a community special school, a maintained nursery school, a foundation school, a foundation special school, a foundation trust school, or a voluntary school.

Section 37 of the Education Act 2002 provides that the Governing Body of a Maintained School with a delegated budget shall determine whether any payment shall be made by the Local Authority in respect of the dismissal of, or for the purpose of securing the resignation of, any member of the school's staff. It is also for the Governing Body to determine the amount of the payment. However, section 37 does not apply in relation to any payment which the Local Authority is required to make by virtue of any contract, other than one made in contemplation of the impending dismissal or resignation, or under any statutory provision (e.g. the payment of a statutory redundancy payment).

### **Discretionary policies under the LGPS Regulations 2013**

Discretionary policies under the LGPS Regulations 2013 are covered in the section titled '[Summary of the key discretions to be exercised on and after 1 April 2014 \(as at 14 May 2018\) in relation to active members \(excluding councillor members\) and members \(excluding councillor members\) who cease active membership after 31 March 2014](#)'.

Regulation 60 of the LGPS Regulations 2013 and paragraph 2(2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 say that a Scheme employer must prepare and publish a written statement of its policy in relation to the exercise of its functions under these regulations.

Schedule 1 of the LGPS Regulations 2013 defines a Scheme employer as "a body listed in Schedule 2 employing an employee who is eligible to be a member and includes an admission body".

Schedule 2 includes Local Authorities and Part 4 of Schedule 2 provides that although employees in foundation schools, foundation special schools, foundation trust schools, voluntary aided schools, technical institutes and federated schools are employed by the Governing Body, the Scheme employer is deemed to be the Local Authority.

Staff in community schools, community special schools, maintained nursery schools or voluntary controlled schools are employed by the Local Authority.

Thus, the Local Authority's discretions policy will apply to employees of a community school, a community special school, a maintained nursery school, a voluntary controlled school, a foundation school, a foundation special school, a foundation trust school, a voluntary aided school, a technical institute and a federated school.

## **Appendix A: Information on the exercise of discretions in respect of employees in Maintained Schools with a delegated budget**

Although section 37 of the Education Act 2002 gives all of the Maintained Schools with a delegated budget the power to go beyond the Local Authority's policies in respect of the dismissal of, or for the purpose of securing the resignation of, any member of the school's staff, in reality, as this will entail additional cost, a community school, a community special school, a maintained nursery school, a foundation school, a foundation special school, a foundation trust school or a voluntary school is unlikely to depart from the Local Authority's policy. Nevertheless, the power to go beyond the Local Authority's policy for the purposes of the dismissal of, or securing the resignation of, any member of the school's staff exists and so the Local Authority's policy statement in relation to the ability to award extra annual pension of up to £6,822 (figure at 1 April 2018<sup>56</sup>) as part of an arrangement for the dismissal of, or for the purpose of securing the resignation of, a member of staff, will have to contain a modification to reflect the powers conferred by the Education Act 2002 on such Maintained Schools with a delegated budget.

### **Discretionary policies under the LGPS (Administration) Regulations 2008**

Discretionary policies under the LGPS (Administration) Regulations 2008 are covered in the section titled '[Summary of the discretions to be exercised on and after 1 April 2014 \(as at 14 May 2018\) in relation to members \(excluding councillor members\) who ceased active membership between 1 April 2008 and 31 March 2014](#)'.

Regulation 66 of the LGPS (Administration) Regulations 2008 and paragraph 2(2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 says that each employing authority must prepare and publish a written statement of its policy in relation to the exercise of its functions under these regulations.

Schedule 1 of the LGPS (Administration) Regulations 2008 defines an employing authority as "a body employing an employee who is eligible to be a member".

Staff who were employed in a community school, a community special school, a maintained nursery school, or a voluntary controlled school were employed by the Local Authority (the 'employing authority') and are, therefore, subject to the Local Authority's discretions policy.

However, the position of staff in a foundation school, foundation special school, foundation trust school or voluntary aided school is slightly more convoluted. Such schools are the employer of the staff. Thus it may appear that the school is an 'employing authority' and so would have to have a discretionary policy under these regulations. However, regulation 8 of the LGPS (Administration) Regulations 2008 provides that the employees of such an establishment and of a technical institute or a federated school are deemed for the purposes of the LGPS to be employees of the Local Authority (although their actual employer is the Governing Body). They are also treated as if references in the LGPS to employment by a Scheme employer and all similar expressions included them. So, as the body employing an employee who is eligible to be a member has to prepare and publish a policy and, for the purposes of the LGPS, the employees are deemed to be in the employment of the Local Authority, it is considered that they will be

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<sup>56</sup> See [footnote 4](#).

## **Appendix A: Information on the exercise of discretions in respect of employees in Maintained Schools with a delegated budget**

subject to the Local Authority's policy. This is consistent with the position under the LGPS Regulations 2013 and the LGPS Regulations 1997.

Thus, the Local Authority's discretions policy will apply to those who were employees of a community school, a community special school, a maintained nursery school, a voluntary controlled school, a foundation school, a foundation special school, a foundation trust school, a voluntary aided school, a federated school or a technical institute.

### **Discretionary policies under the LGPS Regulations 1997**

Discretionary policies under the LGPS Regulations 1997 are covered in the section titled '[Summary of the discretions to be exercised on and after 1 April 2014 \(as at 14 May 2018\) in relation to active and deferred councillor members and any other members who ceased active membership between 1 April 1998 and 31 March 2008](#)'.

Regulation 106 of the LGPS Regulations 1997 and paragraph 2(2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 says that a Scheme employer must prepare a written statement of its policy in relation to the exercise of its functions set out under these regulations.

Schedule 1 of the LGPS Regulations 1997 defines a Scheme employer as "a resolution body listed in regulation 4(6)(a) or a body specified in Schedule 2 (but see regulation 5B(8) and Chapter I of Part IV)".

Regulation 128, which is contained in Chapter I of Part IV of the LGPS Regulations 1997, provides that although employees who were employed in foundation schools, foundation special schools, (foundation trust schools), voluntary schools and technical institutes were employed by the Governing Body, the Scheme employer is deemed to be the Local Authority.

Staff who were employed in community schools, community special schools, maintained nursery schools or voluntary controlled schools were employed by the Local Authority.

Thus, the Local Authority's discretions policy will apply to those who were employees of a community school, a community special school, a maintained nursery school, a voluntary controlled school, a foundation school, a foundation special school, (a foundation trust school), a voluntary aided school and a technical institute.

### **Discretionary policies under the LGPS Regulations 1995**

Discretionary policies under the LGPS Regulations 1995 are covered in the section titled '[Summary of the discretions to be exercised on and after 1 April 2014 \(as at 14 May 2018\) in relation to members who ceased active membership before 1 April 1998](#)'.

Schedule A1 to, and regulation B16 of, the LGPS Regulations 1995 defines an employing authority as "the body employing an employee who is eligible to be a member of the Scheme".

Regulation B6 of, and Schedule B3 to, the LGPS Regulations 1995 provide that the employees who were employed in a voluntary school maintained but not provided by a

## **Appendix A: Information on the exercise of discretions in respect of employees in Maintained Schools with a delegated budget**

local authority or of a technical institute are deemed for the purposes of the LGPS to be employees of the Local Authority (although their actual employer is the Governing Body). They are also treated as if references in the LGPS to employment by a Scheme employer and all similar expressions included them.

Staff who were employed in community schools, community special schools, maintained nursery schools or voluntary controlled schools were employed by the Local Authority.

Thus, the Local Authority's discretions policy will apply to those who were employees of a community school, a community special school, a maintained nursery school, a voluntary controlled school, a voluntary aided school and a technical institute.

### **Discretionary policies under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006**

Discretionary policies under the Discretionary Compensation Regulations 2006 are covered in the section titled '[Summary of the discretions to be exercised under the Local Government \(Early Termination of Employment\) \(Discretionary Compensation\) \(England and Wales\) Regulations 2006](#)'.

Regulation 7(1) of the Discretionary Compensation Regulations 2006 says that each employing authority must prepare and publish a statement of its policy in relation to the exercise of its functions set out under these regulations.

Regulation 2(1) of the Discretionary Compensation Regulations 2006 defines an employing authority as:

“(a) a body listed in Part 1 of Schedule 2 (Scheme employers) to the Administration Regulations by whom the person is employed immediately before the termination date;

(b) a body listed in Part 2 of that Schedule by whom the person is employed immediately before the termination date and who has been designated by the body as being eligible for membership of the Scheme under regulation 4(3) of those Regulations; or

(c) in the case of a person who is eligible to be a Scheme member under regulation 8(1) of the Administration Regulations, the local authority local authority by whom the person is deemed to be employed under regulation 8(2) of those Regulations. “

Staff employed in a community school, a community special school, a maintained nursery school or a voluntary controlled school are employed by the Local Authority and will, therefore, be subject to the Local Authority's policies under the Discretionary Compensation Regulations 2006.

Staff employed in voluntary aided schools, foundation schools, foundation special schools, foundation trust schools, technical institutes and federated schools are deemed by virtue of regulation 2 of the Discretionary Compensation Regulations 2006 to be employed by the Local Authority. Thus, the Local Authority's policies under those Regulations apply.

## **Appendix A: Information on the exercise of discretions in respect of employees in Maintained Schools with a delegated budget**

Section 37 of the Education Act 2002 provides that the Governing Body of a Maintained School with a delegated budget shall determine whether any payment shall be made by the Local Authority in respect of the dismissal of, or for the purpose of securing the resignation of, any member of the school's staff. It is also for the Governing Body to determine the amount of the payment.

Although section 37 of the Education Act 2002 gives all Maintained Schools with a delegated budget the power to go beyond the Local Authority's policies, in reality, as the award of compensation will entail costs, the schools are unlikely to depart from the Local Authority's policy.

Nevertheless, the power to go beyond the Local Authority's policy exists and, in the circumstances, the Local Authority's policy statement should be modified to reflect the powers conferred on Maintained Schools with a delegated budget by the Education Act 2002.

There does, however, appear to be a slight conflict between regulations 5(3) and 6(2) of the Discretionary Compensation Regulations 2006 which say:

'5 Power to increase statutory redundancy payment

(3) The power to pay compensation is exercisable by the employing authority

6 Discretionary compensation

(2) Where this regulation applies, the employing authority may, not later than six months after the termination date, decide to pay compensation under this regulation....'

and section 37(1) of the Education Act 2002 which says:

'(1) it shall be for the governing body of a maintained school to determine

a) whether any payment should be made by the Local Authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of staff of the school and

b) the amount of such payment.'

So, on the one hand, the Discretionary Compensation Regulations 2006 say that the employing authority (which is defined by regulation 2 of the Discretionary Compensation Regulations 2006 as the Local Authority) shall decide whether to pay compensation and, if so, how much to pay; and on the other hand the Education Act 2002 says that it is the governing body who shall decide whether the Local Authority should pay compensation and, if so, how much. Perhaps the only way to rationalise this apparent anomaly is if one takes the view that the Education Act 2002 gives the power to the governing body to decide whether the Local Authority should pay compensation and, if so, how much and the Local Authority must then simply exercise its discretion under regulations 5(3) and 6(2) of the Discretionary Compensation Regulations 2006 to merely pay the amount decided upon by the governing body.

## **Appendix A: Information on the exercise of discretions in respect of employees in Maintained Schools with a delegated budget**

### **Discretionary policies under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000**

Discretionary policies under the Discretionary Compensation Regulations 2000 are covered in the section titled '[Summary of the discretions to be exercised under the Local Government \(Early Termination of Employment\) \(Discretionary Compensation\) \(England and Wales\) Regulations 2000](#)'.

Regulation 26(1) of the Discretionary Compensation Regulations 2000 says that each employing authority must prepare and publish a statement of its policy in relation to the exercise of its functions set out under these regulations.

Schedule 1 of the Discretionary Compensation Regulations 2000 defines an employing authority as:

- (a) a body listed in Schedule 2 (Scheme employers) to the Pension Regulations by whom he is employed immediately before the termination date; or
- (b) a body specified in regulation 4(6) (resolution bodies)[21] of those Regulations -
  - (i) by whom he is employed immediately before the termination date; and
  - (ii) which has passed a relevant resolution, within the meaning of regulation 4(5) of those Regulations, which covers him;

Staff who were employed in a community school, a community special school, a maintained nursery school or a voluntary controlled school were employed by the Local Authority and will, therefore, be subject to the Local Authority's policies under the Discretionary Compensation Regulations 2000.

There does not appear to be any specific provision in the Discretionary Compensation Regulations 2000 stating that staff who were employed in voluntary aided schools, foundation schools, foundation special schools or foundation trust schools should be deemed to be employed by the Local Authority. However, given the provisions in the Discretionary Compensation Regulations 2006 it is reasonable to assume that the Local Authority's policies under the Discretionary Compensation Regulations 2000 should apply to them.

### **Discretionary policies under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011**

Discretionary policies under the Injury Allowances Regulations 2011 are covered in the section titled '[Summary of the discretions to be exercised under the Local Government \(Discretionary Payments\) \(Injury Allowances\) Regulations 2011](#)'.

Regulation 14(1) of the Injury Allowances Regulations 2011 says that each LGPS employer must prepare and publish a statement of its policy in relation to the exercise of its functions set out under these regulations.

## **Appendix A: Information on the exercise of discretions in respect of employees in Maintained Schools with a delegated budget**

Regulation 2(1) of the Injury Allowances Regulations 2011 defines an LGPS employer as:

(a) a Scheme employer, being a body mentioned in regulation 8, or listed in Schedule 2 to the Administration Regulations; or

(b) a police authority in relation to a police cadet appointed under section 28 of the Police Act 1996.

Staff employed in a community school, a community special school, a maintained nursery school or a voluntary controlled school are employed by the Local Authority and will, therefore, be subject to the Local Authority's policy.

However, because of the wording in (a) above, the position of staff in a foundation school, foundation special school, foundation trust school, voluntary aided school, technical institution or federated school is slightly less clear. This is because the body mentioned in regulation 8 of the LGPS (Administration) Regulations 2008 is the foundation school, foundation special school, foundation trust school, voluntary aided school, technical institution or federated school. Thus, the school is the body referred to and is thus the body that would appear to be required to have a discretionary policy under these regulations. However, regulation 8 of the LGPS (Administration) Regulations 2008 provides that the employees of such an establishment are deemed for the purposes of the LGPS to be employees of the Local Authority (although their actual employer is the Governing Body). They are also treated as if references in the LGPS to employment by a Scheme employer and all similar expressions included them. So, is the school required to prepare and publish a policy or, as the employees are deemed to have been employees of the Local Authority, does the Local Authority's policy apply? On balance, and given the line taken in respect of all the other matters in this Appendix, it is considered that the Local Authority's policy should be applied.

Thus, the Local Authority's discretions policy will apply to those who were employees of a community school, a community special school, a maintained nursery school, a voluntary controlled school, a foundation school, a foundation special school, a foundation trust school, a voluntary aided school, a federated school or a technical institute.

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## Appendix B: Special cases

SPECIAL CASES – leavers before 1/4/14	Early voluntary payment of deferred benefit (or of a suspended Tier 3 ill health pension under the 2008 Scheme)			85 year rule	Normal Pension Age	Late retirement
	Earliest retirement age	Scheme employer consent necessary for voluntary retirement before 60	Actuarial reduction applied to [age below]	Does 85 year rule apply?	Pre 1/4/14 membership	Actuarial increase for deferment of benefits after [age below]
<b>Former NHSPS members (see 9 and 15)</b>	50 pre 1/4/08 leavers 55 leavers 1/4/08 to 31/3/14 (but 50 if member elected to draw deferred benefits before 1/4/10 – see 7A)	No	60	Yes	65	65
<b>Former Metropolitan Civil Staffs Superannuation Scheme members (see 10)</b>	50 pre 1/4/08 leavers 55 leavers 1/4/08 to 31/3/14 (but 50 if member elected to draw deferred benefits before 1/4/10 – see 7A)	No	60 (or to date 25 years membership achieved if before age 60)	No - but see 25 year rule	65	65
<b>Meat Hygiene Service members (see 11)</b>	50 pre 1/4/08 leavers 55 leavers 1/4/08 to 31/3/14 (but 50 if member elected to draw deferred benefits before 1/4/10 – see 7A)	Yes, prior to age 55 No, from age 55 for payments made on or after 14 May 2018	60	No	60	65
<b>Civil Servants transferred to the Environment Agency (see 12)</b>	50	Yes, prior to age 55 No, from age 55 for payments made on or after 14 May 2018	60	No	65	65
<b>Former Learning and Skills Council for England members</b>	50 subject to qualification (but 55 for voluntary payment of suspended Tier 3 pension)	No (but yes for voluntary payment of a suspended Tier	60	No	60	65

## Appendix B: Special cases

SPECIAL CASES – leavers before 1/4/14	Early voluntary payment of deferred benefit (or of a suspended Tier 3 ill health pension under the 2008 Scheme)			85 year rule	Normal Pension Age	Late retirement
	Earliest retirement age	Scheme employer consent necessary for voluntary retirement before 60	Actuarial reduction applied to [age below]	Does 85 year rule apply?	Pre 1/4/14 membership	Actuarial increase for deferment of benefits after [age below]
<a href="#">(see 13)</a>		3 pension)				

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## Appendix B: Special cases

SPECIAL CASES – leavers and flexible retirements after 31/3/14	Early voluntary retirement / early voluntary payment of deferred benefit or suspended Tier 3 ill health pension			Flexible retirement			85 year rule	Normal Pension Age		Late retirement
	Earliest retirement age	Scheme Employer consent necessary for voluntary retirement / early voluntary payment before 60	Actuarial reduction applied to [age below]	Earliest flexible retirement age	Scheme employer consent to draw benefits required if Scheme employer has agreed to reduction in hours or grade	Actuarial reduction applied to [age below]	Does 85 year rule apply?	Pre 1/4/14 membership	Post 31/3/14 membership	Actuarial increase for deferment of benefits after [age below]
<b>Former NHSPS members</b>	55 (see <a href="#">4, 6, 9, 15</a> )	No (see <a href="#">1, 4, 6, 9</a> )	60 for pre 1/4/14 membership (see <a href="#">1, 4, 9</a> ) SPA (min 65) for post 31/3/14 membership (see <a href="#">2, 8</a> )	55 (see <a href="#">4, 7, 9</a> )	Yes (see <a href="#">4, 7, 9</a> )	65 for pre 1/4/14 membership (see <a href="#">4, 7, 9</a> ) SPA (min 65) for post 31/3/14 membership (see <a href="#">2, 7, 8</a> )	Yes (as the NHS transfer occurred on or after 1/8/91 but before 1/10/06)	65 (see <a href="#">2, 4, 9</a> )	SPA (min 65) (see <a href="#">2, 8</a> )	65 for pre 1/4/14 membership (see <a href="#">2, 4, 9</a> ) SPA (min 65) for post 31/3/14 membership (see <a href="#">2, 4, 5, 8</a> )
<b>Former Metropolitan</b>	55 (see <a href="#">6, 10</a> )	No (see <a href="#">1, 6, 10</a> )	60 (or to date 25)	55 (see <a href="#">7, 10</a> )	Yes (see <a href="#">7, 10</a> )	65 for pre 1/4/14	No - but see 25 year rule	65 (see <a href="#">2, 10</a> )	SPA (min 65)	65 for pre 1/4/14

## Appendix B: Special cases

SPECIAL CASES – leavers and flexible retirements after 31/3/14	Early voluntary retirement / early voluntary payment of deferred benefit or suspended Tier 3 ill health pension			Flexible retirement			85 year rule	Normal Pension Age		Late retirement
	Earliest retirement age	Scheme Employer consent necessary for voluntary retirement / early voluntary payment before 60	Actuarial reduction applied to [age below]	Earliest flexible retirement age	Scheme employer consent to draw benefits required if Scheme employer has agreed to reduction in hours or grade	Actuarial reduction applied to [age below]	Does 85 year rule apply?	Pre 1/4/14 membership	Post 31/3/14 membership	Actuarial increase for deferment of benefits after [age below]
<b>Civil Staffs Superannuation Scheme members</b>			years membership achieved if before age 60) for pre 1/4/14 membership (see <a href="#">1, 10</a> ) SPA (min 65) for post 31/3/14 membership (see <a href="#">2, 8</a> )			membership (see <a href="#">7, 10</a> ) SPA (min 65) for post 31/3/14 membership (see <a href="#">2, 7, 8</a> )	for pre 1/4/14 membership (see <a href="#">1, 10</a> )		(see <a href="#">2, 8</a> )	membership (see <a href="#">2, 10</a> ) SPA (min 65) for post 31/3/14 membership (see <a href="#">2, 5, 8</a> ) – EXCEPT for road crossing patrols (as there is no actuarial

## Appendix B: Special cases

SPECIAL CASES – leavers and flexible retirements after 31/3/14	Early voluntary retirement / early voluntary payment of deferred benefit or suspended Tier 3 ill health pension			Flexible retirement			85 year rule	Normal Pension Age		Late retirement
	Earliest retirement age	Scheme Employer consent necessary for voluntary retirement / early voluntary payment before 60	Actuarial reduction applied to [age below]	Earliest flexible retirement age	Scheme employer consent to draw benefits required if Scheme employer has agreed to reduction in hours or grade	Actuarial reduction applied to [age below]	Does 85 year rule apply?	Pre 1/4/14 membership	Post 31/3/14 membership	Actuarial increase for deferment of benefits after [age below]
										increase for late retirement after 65/SPA for such members)
<b>Meat Hygiene Service members</b>	55 (see <a href="#">6, 11</a> )	No* (see <a href="#">6</a> ) * was Yes prior to 1/4/14 but became No on 1/4/14	60 for pre 1/4/14 membership (see <a href="#">1, 11</a> ) SPA (min 65) for post	55 (see <a href="#">7, 11</a> )	Yes (see <a href="#">7, 11</a> )	65 for pre 1/4/14 membership (see <a href="#">7, 11</a> ) SPA (min 65) for post	No (see <a href="#">1, 11</a> )	60 (see <a href="#">1, 11</a> )	SPA (min 65) (see <a href="#">2, 8</a> )	65 for pre 1/4/14 membership (see <a href="#">2, 11</a> ) SPA (min 65) for post

## Appendix B: Special cases

SPECIAL CASES – leavers and flexible retirements after 31/3/14	Early voluntary retirement / early voluntary payment of deferred benefit or suspended Tier 3 ill health pension			Flexible retirement			85 year rule	Normal Pension Age		Late retirement
	Earliest retirement age	Scheme Employer consent necessary for voluntary retirement / early voluntary payment before 60	Actuarial reduction applied to [age below]	Earliest flexible retirement age	Scheme employer consent to draw benefits required if Scheme employer has agreed to reduction in hours or grade	Actuarial reduction applied to [age below]	Does 85 year rule apply?	Pre 1/4/14 membership	Post 31/3/14 membership	Actuarial increase for deferment of benefits after [age below]
		due to reg 30(5) of the LGPS Regulations 2013	31/3/14 membership (see <a href="#">2, 8</a> )			31/3/14 membership (see <a href="#">2, 7, 8</a> )				31/3/14 membership (see <a href="#">2, 5, 8</a> )
<b>Civil Servants transferred to the Environment Agency</b>	50 (see <a href="#">1, 12</a> )	Yes, prior to age 55 (see <a href="#">1, 6, 12</a> ) No, from age 55 (see <a href="#">6</a> )	60 for pre 1/4/14 membership (see <a href="#">1, 12</a> ) SPA (min 65) for post 31/3/14 membership	55 (see <a href="#">7, 12</a> )	Yes (see <a href="#">7, 12</a> )	60 for pre 1/4/14 membership (see <a href="#">7, 12</a> ) SPA (min 65) for post 31/3/14 membership	No (see <a href="#">1, 3, 12</a> )	65 (see <a href="#">2, 12</a> )	SPA (min 65) (see <a href="#">2, 8</a> )	65 for pre 1/4/14 membership (see <a href="#">2, 12</a> ) SPA (min 65) for post 31/3/14 membership

## Appendix B: Special cases

SPECIAL CASES – leavers and flexible retirements after 31/3/14	Early voluntary retirement / early voluntary payment of deferred benefit or suspended Tier 3 ill health pension			Flexible retirement			85 year rule	Normal Pension Age		Late retirement
	Earliest retirement age	Scheme Employer consent necessary for voluntary retirement / early voluntary payment before 60	Actuarial reduction applied to [age below]	Earliest flexible retirement age	Scheme employer consent to draw benefits required if Scheme employer has agreed to reduction in hours or grade	Actuarial reduction applied to [age below]	Does 85 year rule apply?	Pre 1/4/14 membership	Post 31/3/14 membership	Actuarial increase for deferment of benefits after [age below]
			(see <a href="#">2, 8</a> )			(see <a href="#">2, 7, 8</a> )				(see <a href="#">2, 5, 8</a> )
<b>Former Learning and Skills Council for England members</b>	50 subject to qualification (but 55 for voluntary payment of suspended Tier 3 pension and for redundancy / business	No (see <a href="#">1, 13, 6</a> for early payment of suspended Tier 3 ill health pension from 55 or over)	60 for pre 1/4/14 membership (see <a href="#">1, 13</a> ) SPA (min 65) for post 31/3/14 membership (see <a href="#">2, 8</a> )	50 subject to qualification (see <a href="#">1, 13</a> )	No (see <a href="#">1, 14</a> )	60 for pre 1/4/14 membership (see <a href="#">1, 13</a> ) SPA (min 65) for post 31/3/14 membership (see <a href="#">2, 7, 8</a> )	No (the LSC transfer was not until 1/4/10 and so the 85 year rule would not normally be possible but could apply for members who had	60 (see <a href="#">1, 13</a> )	SPA (min 65) (see <a href="#">2, 8</a> )	65 for pre 1/4/14 membership (see <a href="#">2, 13</a> ) SPA (min 65) for post 31/3/14 membership (see <a href="#">2, 5, 8</a> )

## Appendix B: Special cases

SPECIAL CASES – leavers and flexible retirements after 31/3/14	Early voluntary retirement / early voluntary payment of deferred benefit or suspended Tier 3 ill health pension			Flexible retirement			85 year rule	Normal Pension Age		Late retirement
	Earliest retirement age	Scheme Employer consent necessary for voluntary retirement / early voluntary payment before 60	Actuarial reduction applied to [age below]	Earliest flexible retirement age	Scheme employer consent to draw benefits required if Scheme employer has agreed to reduction in hours or grade	Actuarial reduction applied to [age below]	Does 85 year rule apply?	Pre 1/4/14 membership	Post 31/3/14 membership	Actuarial increase for deferment of benefits after [age below]
	efficiency retirement) (see <a href="#">1, 13</a> )						earlier LGPS deferred benefits, including pre 1/10/06 membership, which they aggregated upon rejoining the LGPS. However, paragraph			

## Appendix B: Special cases

SPECIAL CASES – leavers and flexible retirements after 31/3/14	Early voluntary retirement / early voluntary payment of deferred benefit or suspended Tier 3 ill health pension			Flexible retirement			85 year rule	Normal Pension Age		Late retirement
	Earliest retirement age	Scheme Employer consent necessary for voluntary retirement / early voluntary payment before 60	Actuarial reduction applied to [age below]	Earliest flexible retirement age	Scheme employer consent to draw benefits required if Scheme employer has agreed to reduction in hours or grade	Actuarial reduction applied to [age below]	Does 85 year rule apply?	Pre 1/4/14 membership	Post 31/3/14 membership	Actuarial increase for deferment of benefits after [age below]
							B.25 of the Secretary of State guidance on Early payment of Pensions dated 28/3/14 says the 85 year rule should not be applied).			

## Appendix B: Special cases

### Key:

1. Regulation 24(1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014
2. Regulation 24(2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014
3. Regulation 24(4) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014
4. Regulation 24(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014
5. Regulation 30(4) of the LGPS Regulations 2013
6. Regulation 30(5) of the LGPS Regulations 2013
7. Regulation 30(6) of the LGPS Regulations 2013
- 7A. Regulation 30(6) of the LGPS (Benefits, Membership and Contributions) Regulations 2007
8. Definition of normal pension age in Schedule 1 of the LGPS Regulations 2013
9. Regulation 23 of the LGPS (Transitional Provisions) Regulations 1997
10. Regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997 and regulation 2 of, and Schedule 1 to, the LGPS (Transitional Provisions) Regulations 2008
11. Regulation 144B of the LGPS Regulations 1997 and regulation 2 of, and Schedule 1 to, the LGPS (Transitional Provisions) Regulations 2008
12. Regulation 15 of the LGPS (Transitional Provisions) Regulations 2008 and regulation 3(5A) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014
13. Regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007
14. Regulation 18A of the LGPS (Benefits, Membership and Contributions) Regulations 2007
15. Regulation 23 of the LGPS (Transitional Provisions) Regulations 1997 replaced the words “may elect” with “is entitled” in regulation 31 of the LGPS Regulations 1997. This meant that members had the right to draw deferred benefits under regulation 31 of the LGPS Regulations 1997 from age 50 without the need for Scheme employer consent. Thus, members who left prior to 1st April 2008 with a deferred benefit retain an age 50 earliest retirement age. However:
  - a) There was nothing in the LGPS (Benefits, Membership and Contributions) Regulations 2007 or the LGPS (Transitional Provisions) Regulations 2008 that specifically carried forward the age 50 protections. Under regulation 30 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 the earliest payment age was age 55. Regulation 24(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 reintroduce the protection under regulation 23 of the LGPS (Transitional Provisions) Regulations 1997. The protection was to have the right to draw deferred benefits before age 60 without the need for Scheme employer consent, but does not go as far as protecting the minimum age of 50 too for a member who left with a deferred benefit after 31st March 2008. However, the courts in the ECJ cases of Beckmann v Dynamco Whicheloe Macfarlane and Martin v South Bank University cases have confirmed that rights under early retirement provisions transfer over under TUPE. The NHS Pension Scheme Regulations 1995 and the NHS Pension Scheme Regulations 2008 provide that:
    - If the member joined the 1995 section before 6 April 2006 they can choose to take voluntary early retirement from age 50 (the ‘protected pension age’) and receive reduced benefits.
    - If the member joined the 1995 section on or after 6 April 2006 the minimum retirement age changed from 50 to 55 on 6 April 2010.
    - The minimum retirement age in the 2008 section is 55. Members can choose to take voluntary early retirement from the minimum retirement age and receive reduced benefits.All of the transferred NHS members covered by the table will have fallen into the first category above and so would have retained an age 50 ‘protected pension age’ under the NHS Pension Scheme if the conditions in Part 3 of Schedule 36 to the Finance Act 2004 are satisfied. However,

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whether the member meets those conditions and, even if the member does, whether that protection continues to apply is not clear given that MHCLG have taken the view that the change from 50 to 55 introduced within regulation 30 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 was a change upon which they consulted interested parties and which, in consequence of a lack of responses seeking protections beyond 31 March 2010, took the form of an agreed change to members' pension provision. Given this uncertainty, the entry in the table reflects the wording of the LGPS Regulations but it is for Scheme employers to decide, perhaps having taken legal advice, whether TUPE provides the members with an entitlement to an age 50 'protected pension age'; and

- b) The early payment of a suspended Tier 3 pension cannot be protected by regulation 24(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 because there was no such concept as a Tier 3 suspended pension when the NHS staff transferred over to the LGPS. Regulation 23 of the LGPS (Transitional Provisions) Regulations 1997 only gave protections to deferred benefits, not to suspended Tier 3 pensions. Thus the earliest payable age for a suspended Tier 3 pension is 55 and not 50.

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