

Local Government Pension Scheme

2025/03

Who should read:

- Secretary General, Convention of Scottish Local Authorities
- Chief Executive, Scottish Local Authorities
- Chief Executive, Water Authorities
- Principal Reporter, Scottish Children's Reporter Administration
- Chief Executive, Scottish Environment Protection Agency
- Director General, Strathclyde Passenger Transport Executive
- Clerk, Strathclyde Passenger Transport Authority
- Chief Executive/Director, VisitScotland

Action:

This circular should be brought to the attention of Pension Managers, Superannuation Sections and LGPS Employer HR & Payroll Departments. You may also wish to draw it to the attention of the Directors of Finance and Administration

Subject:

Flexible Retirement

Date:

6 August 2025

The purpose of this circular is to clarify employer duties when making discretionary decisions on whether to allow flexible retirement under The Local Government Pension Scheme (Scotland) Regulations 2018

1. In the Local Government Pension Scheme (Scotland) Regulations 2018, Regulation 58, **Statements of policy about exercise of discretionary functions**, a scheme employer must prepare a written statement of its policy in relation to the exercise of its functions including regulation 29(7) (Flexible Retirement).
2. This circular outlines what the employer should take into consideration, when applying their discretion on an application for flexible retirement, under the Local Government Pension Scheme (Scotland) (LGPS(S)).
3. The decision maker must have a policy which sets out the way in which a discretion should be exercised to achieve consistency; however, the decision maker should also consider the facts of each case and be prepared to make exceptions, depending on the situation of the member. The decision maker must keep an open mind and consider the pertinent facts of every case.
4. Flexible Retirement is one of the discretions afforded an employer under the LGPS(S) Regulations. When a decision maker bases all decisions on a policy which refuses flexible retirement solely on the basis of cost, this is known in legal terms as a 'fettering of their discretion.'

5. The ‘fettering of a discretion’ is a legal principle which has been cited in cases of maladministration by the Pensions Ombudsman (TPO). The basis of this is that the decision maker is required to exercise their discretion in each individual case and not by reference to an inflexible policy rule. Therefore, a decision should be made taking in to account **all relevant matters** and reach a decision which is **not perverse**.

6. The decision maker must keep an open mind and consider each case on its merits. These may include considerations about the health of the member, caring responsibilities, or other pertinent issues, otherwise the discretion may not be exercised properly. For instance, if a member agrees to reduce their hours by 20% or they take on a role of lesser responsibility, there may be a cost saving to the employer which would offset a ‘strain cost’. In this case, the decision by the employer to refuse the request on the basis of cost could be considered ‘perverse.’

7. The Scottish Public Pensions Agency has recently received several appeals to the Scottish Ministers from members of the scheme who have had their requests for Flexible Retirement refused, solely on the grounds of cost. In addition, some employer communications state that they will not agree to a request for flexible retirement if there is any cost to the employer. Employers have also said that employees have **no right of appeal** against these decisions.

8. Regulation 71(2) of the LGPS(S) provides that a member of the Scheme has a **right to appeal** to Scottish Ministers where there is a disagreement about a matter in relation to the Scheme between a member and a Scheme employer or the administering authority.

9. Whilst the right to Flexible Retirement is a discretion for the employer, SPPA, will decide on behalf of Scottish Ministers an appeal based on the evidence provided and may find in favour of the applicant if the employer has clearly not taken all pertinent facts into account and therefore not applied their discretion correctly. These cases will be sent back to the employer to review and the employer will be expected to provide the evidence taken into account and the reasons for their decision.

10. We have discussed these issues with TPO and they have confirmed that they will take action if it is clear that an employer has not exercised their discretion appropriately. Their stated role is to ensure that the employer’s discretionary power has been used for the proper purpose, all relevant factors have been taken into account, employers have asked themselves the correct questions and reached a decision which was not perverse. They also expect the decision-maker to ‘evidence’ their decision.

11. TPO publishes examples of cases relating to the use of discretions on their [website](#). The ‘fettering of discretion’ is considered maladministration and TPO may award compensation to the member, particularly in cases where the employer has stated that there is ‘**no right of appeal**.’

12. Administering Authorities are asked to ensure that the content of this circular is brought to the attention of all LGPS(S) employers and staff at their earliest convenience.

Kimberly Linge
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6 August 2025

Contact Information:

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