

**ENGLAND AND WALES (version 1.5)**

**Discretions from 1.4.14. in relation to post 31.3.14. active members (excluding councillor members) and post 31.3.14. leavers (excluding councillor members), being discretions under:**

- the Local Government Pension Scheme Regulations 2013 [prefix R]
- the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [prefix TP]
- the Local Government Pension Scheme (Administration) Regulations 2008 [prefix A]
- the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended) [prefix B]
- the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 [prefix T]
- the Local Government Pension Scheme Regulations 1997 (as amended) [prefix L]

<b><u>Discretion</u></b>	<b><u>Regulation</u></b>	<b><u>Exercised by</u></b>
Whether to issue actuarial guidance to administering authorities	R2(3)	Secretary of State
To whom to offer membership of the LGPS (designation bodies)	R3(1)(b) & RSch 2, Part 2	Employer
Which employees to designate for membership (admission bodies)	R3(1)(c) & R4(2)(b)	Employer
Whether to agree to an admission agreement with a Care Trust, NHS Scheme employing authority or care Quality Commission	R4(2)(b)	Admin. Authority
Whether to agree to an admission agreement with a body applying to be an admission body	R3(5) & RSch 2, Part 3, para 1	Admin. Authority
Whether to approve / withdraw approval of an admission body providing a public service in the UK and the conditions for such approval / withdrawal	RSch 2, Part 3, paras 1(e) and 2	Secretary of State
Whether to terminate a transferee admission agreement in the event of <ul style="list-style-type: none"> <li>- insolvency, winding up or liquidation of the body</li> <li>- breach by that body of its obligations under the admission agreement</li> <li>- failure by that body to pay over sums due to the Fund within a reasonable period of being requested to do so</li> </ul>	RSch 2, Part 3, para 9(d)	Admin. Authority
Define what is meant by “employed in connection with”	RSch 2, Part 3, para 12(a)	Admin. Authority

Whether, in respect of an admission body providing a service in respect of outsourced work, to set off against payments due to that body any sums due from that body to the Fund	<b>RSch 2, Part 3, para 12(c)</b>	Transferor employer
Determine rate of employees' contributions	<b>R9(1) &amp; R9(3)</b>	Employer
Whether to turn down a request to pay an APC/SCAPC over a period of time where it would be impractical to allow such a request (e.g. where the sum being paid is very small and could be paid as a single payment)	<b>R16(1)</b>	Admin. Authority
Whether, how much, and in what circumstances to contribute to a shared cost APC scheme	<b>R16(2)(e)* &amp; R16(4)(d)*</b>	Employer
Whether to require a satisfactory medical before agreeing to an application to pay an APC / SCAPC	<b>R16(10)</b>	Admin. Authority
Whether to turn down an application to pay an APC / SCAPC if not satisfied that the member is in reasonably good health.	<b>R16(10)</b>	Admin. Authority
Whether to extend 30 day deadline for member to elect for a shared cost APC upon return from a period of absence from work with permission with no pensionable pay (otherwise than because of illness or injury, relevant child-related leave or reserve force service leave)	<b>R16(16)</b>	Employer
Whether, how much, and in what circumstances to contribute to shared cost AVC arrangements entered into on or after 1/4/14	<b>R17(1) &amp; definition of SCAVC in RSch 1</b>	Employer
Whether, how much, and in what circumstances to continue to contribute to a shared cost AVC arrangement entered into before 1/4/14	<b>TP15(1)(d) &amp; A25(3)</b>	Employer
Whether to charge member for provision of estimate of additional pension that would be provided by the Scheme in return for transfer of in house AVC/SCAVC funds (where AVC/SCAVC arrangement was entered into before 1/4/14)	<b>TP15(1)(d) &amp; A28(2)</b>	Admin. Authority
Allow late application to convert scheme AVCs into membership credit i.e. allow application more than 30 days after cessation of active membership (where AVC arrangement was entered	<b>TP15(1)(b) &amp; L66(8) &amp; former L66(9)(b)</b>	Employer

into before 13/11/01)		
Decide to whom any AVC/SCAVC monies (including life assurance monies) are to be paid on death of the member	R17(12)	Admin. Authority
No right to return of contributions if member left due to offence of a fraudulent character or grave misconduct unless employer directs a total or partial refund is to be made	R19(2)	Employer
Specify in an employee's contract what other payments or benefits, other than those specified in R20(1)(a) and not otherwise precluded by R20(2), are to be pensionable	R20(1)(b)	Employer
In determining Assumed Pensionable Pay, whether a lump sum payment made in the previous 12 months is a "regular lump sum"	R21(5)	Employer
Pension account may be kept in such form as is considered appropriate	R22(3)(c)	Admin. Authority
Whether to extend the 12 month option period for a member to elect that post 31 March 2014 deferred benefits should not be aggregated with a new employment	R22(8)(b)	Employer
Whether to extend the 12 month option period for a member to elect that post 31 March 2014 deferred benefits should not be aggregated with an ongoing concurrent employment	R22(7)(b)	Employer
Decide, in the absence of an election from the member within 12 months of ceasing a concurrent employment, which ongoing employment benefits from the concurrent employment which has ceased should be aggregated (where there is more than one ongoing employment)	TP10(9)	Admin. Authority
Whether all or some benefits can be paid if an employee reduces their hours or grade (flexible retirement)	R30(6)* & TP11(2)	Employer
Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement	R30(8)*	Employer (or Admin. Authority where Employer has become defunct)
Whether to waive, in whole or in part, actuarial reduction on benefits which a	R30(8)*	Employer (or Admin. Authority where

<p>member voluntarily draws before normal pension age other than on the grounds of flexible retirement (where the member only has post 31/3/14 membership)</p>		<p>Employer has become defunct)</p>
<p>Whether to require any strain on Fund costs to be paid “up front” by employing authority following payment of benefits under <b>R30(6)</b> (flexible retirement), <b>R30(7)</b> (redundancy / business efficiency), or the waiver (in whole or in part) under <b>R30(8)</b> of any actuarial reduction that would otherwise have been applied to benefits which a member voluntarily draws before normal pension age or to benefits drawn on flexible retirement</p>	<p><b>R68(2)</b></p>	<p>Admin. Authority</p>
<p>Whether to “switch on” the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60 (other than on the grounds of flexible retirement).</p>	<p><b>TPSch 2, para 1(2)*</b></p>	<p>Employer (or Admin. Authority where Employer has become defunct)</p>
<p>Whether to waive any actuarial reduction for a member voluntarily drawing benefits before normal pension age other than on the grounds of flexible retirement (where the member has both pre 1/4/14 and post 31/3/14 membership) on</p> <ul style="list-style-type: none"> <li>a) on compassionate grounds (pre 1/4/14 membership) and in whole or in part on any grounds (post 31/3/14 membership) if the member was not in the Scheme before 1/10/06,</li> <li>b) on compassionate grounds (pre 1/4/14 membership) and in whole or in part on any grounds (post 31/3/14 membership) if the member was in the Scheme before 1/10/06, will <b>not</b> be 60 by 31/3/16 and will <b>not</b> attain 60 between 1/4/16 and 31/3/20</li> <li>c) on compassionate grounds (pre 1/4/16 membership) and in whole or in part on any grounds (post 31/3/16 membership) if the member was in the Scheme before 1/10/06 and will be 60 by 31/3/16</li> <li>d) on compassionate grounds (pre 1/4/20 membership) and in whole or in part on any grounds</li> </ul>	<p><b>TP3(1), TPsch 2, para 2(1), B30(5) and B30A(5)*</b></p>	<p>Employer (or Admin. Authority where Employer has become defunct)</p>

(post 31/3/20 membership) if the member was in the Scheme before 1/10/06, will <b>not</b> be 60 by 31/3/16 and <b>will</b> attain 60 between 1/4/16 and 31/3/20		
Whether to require any strain on Fund costs to be paid “up front” by employing authority if the employing authority “switches on” the 85 year rule for a member voluntarily retiring (other than flexible retirement) prior to age 60, or waives an actuarial reduction under <b>TPSch 2, para 2(1)</b> or releases benefits before age 60 under <b>B30(1)</b> or <b>B30A</b>	<b>TPSch 2, para 2(3)</b>	Admin. Authority
Whether to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency (by up to £6,500 p.a.)	<b>R31*</b>	Employer
Whether to extend the time limits within which a member must give notice of the wish to draw benefits before normal pension age or upon flexible retirement	<b>R32(7)</b>	Admin. Authority
Decide whether to commute small pension	<b>R34(1)</b>	Admin. Authority
Approve medical advisors used by employers (for ill health benefits)	<b>R36(3)</b>	Admin. Authority
Whether to use a certificate produced by an IRMP under the 2008 Scheme for the purposes of making an ill health determination under the 2014 Scheme.	<b>TP12(6)</b>	Employer (or Admin. Authority where Employer has become defunct)
Determine whether person in receipt of Tier 3 ill health pension has started gainful employment	<b>R37(3) &amp; (4)</b>	Employer
Whether to recover any overpaid Tier 3 pension following commencement of gainful employment	<b>R37(3)</b>	Employer
Decide whether deferred beneficiary meets criteria of being permanently incapable of former job because of ill health and is unlikely to be capable of undertaking gainful employment before normal pension age or for at least three years, whichever is the sooner.	<b>R38(3)</b>	Employer (or Admin. Authority where Employer has become defunct)
Decide whether a suspended ill health tier 3 member is unlikely to be capable of undertaking gainful employment before normal pension age because of ill health	<b>R38(6)</b>	Employer (or Admin. Authority where Employer has become defunct)
Decide to whom death grant is paid	<b>TP17(5) to (8) &amp;</b>	Admin. Authority

	R40(2), R43(2) & R46(2)	
Decide, in the absence of an election from the member, which benefit is to be paid where the member would be entitled to a benefit under 2 or more regulations in respect of the same period of Scheme membership	R49(1)(c)	Admin. Authority
Whether to set up a separate admission agreement fund	R54(1)	Admin. Authority
Determine assets to be transferred from main fund to admission agreement fund	R54(4)(b)	Fund actuary
<p>Governance policy must state whether the admin authority delegates their function of part of their function in relation to maintaining a pension fund to a committee, a sub-committee or an officer of the admin authority and, if they do so delegate, state</p> <ul style="list-style-type: none"> <li>- the frequency of any committee or sub-committee meetings</li> <li>- the terms, structure and operational procedures appertaining to the delegation</li> <li>- whether representatives of employing authorities or members are included and, if so, whether they have voting rights</li> </ul> <p>The policy must also state</p> <ul style="list-style-type: none"> <li>- the extent to which a delegation, or the absence of a delegation, complies with Sec of State guidance and, to the extent it does not so comply, state the reasons for not complying, and</li> <li>- the terms, structure and operational procedures appertaining to the local Pensions Board</li> </ul>	R55*	Admin. Authority
Decide on Funding Strategy for inclusion in funding strategy statement	R58*	Admin. Authority
Whether to have a written pensions administration strategy and, if so, the matters it should include	R59(1) & (2)	Admin. Authority
Communication policy must set out the policy on provision of information and publicity to, and communicating with, members, representatives of members,	R61*	Admin. Authority

prospective members and Scheme employers; the format, frequency and method of communications; and the promotion of the Scheme to prospective members and their employers.		
Whether to extend valuation report and certificate deadline	R62(2)	Secretary of State
Decide assumptions to be used in making a "cost sharing" valuation under R63	R63(5)	Secretary of State
Whether to suspend, for up to 3 years, an employer's obligation to pay an exit payment where the employer is again likely to have active members within the specified period of suspension.	R64(2A)	Admin. Authority
Whether to obtain revision of employer's contribution rate if there are circumstances which make it likely a Scheme employer will become an exiting employer	R64(4)	Admin. Authority
Decide whether to obtain a new rates and adjustments certificate if the Secretary of State amends the Regulations as part of the "cost sharing" under R63	R65	Admin. Authority
Decide frequency of payments to be made over to Fund by employers and whether to make an admin charge.	R69(1)	Admin. Authority
Decide form and frequency of information to accompany payments to the Fund	R69(4)	Admin. Authority
Whether to issue employer with notice to recover additional costs incurred as a result of the employer's level of performance	R70 & TP22(2)	Admin. Authority
Whether to charge interest on payments by employers which are overdue	R71(1)	Admin. Authority
Whether to extend six month period to lodge a stage one IDRPs appeal	R74(4)	Adjudicator making stage one IDRPs decision
Decide procedure to be followed by adjudicator when exercising stage one IDRPs functions and decide the manner in which those functions are to be exercised	R74(6)	Adjudicator making stage one IDRPs decision
Decide procedure to be followed by admin authority when exercising its stage two IDRPs functions and decide	R76(4)	Admin. Authority

the manner in which those functions are to be exercised		
Whether admin. authority should appeal against employer decision (or lack of a decision)	R79(2)	Admin. Authority
Whether to extend six month period for admin. authority to lodge an appeal against an employer decision	R79(3)(b)	Secretary of State
Specify information to be supplied by employers to enable admin. authority to discharge its functions	R80(1)(b) & TP22(1)	Admin. Authority
Whether to pay death grant due to personal representatives or anyone appearing to be beneficially entitled to the estate without need for grant of probate / letters of administration where payment is less than amount specified in s6 of the Administration of Estates (Small Payments) Act 1965	R82(2)	Admin. Authority
Whether, where a person is incapable of managing their affairs, to pay the whole or part of that person's pension benefits to another person for their benefit.	R83	Admin. Authority
Whether to apply to Secretary of State for a forfeiture certificate (where member is convicted of a relevant offence)	R91(1) & (8)	Employer
Whether to issue a forfeiture certificate	R91(1)	Secretary of State
Where forfeiture certificate is issued, whether to direct that benefits are to be forfeited (other than rights to GMP – but see R95 below)	R91(4)	Employer
Where forfeiture certificate is issued, whether to direct interim payments out of Pension Fund until decision is taken to either apply the certificate or to pay benefits	R92(1) & (2)	Employer
Whether to recover from Fund any monetary obligation or, if less, the value of the member's benefits (other than benefits from transferred in pension rights or APCs or AVCs or, subject to R95 below, in respect of any GMP) where the obligation was incurred as a result of a grave misconduct or a criminal, negligent or fraudulent act or omission in connection with the employment and as a result of which the person has left employment	R93(2)	Employer



Whether, if the member has committed treason or been imprisoned for at least 10 years for one or more offences under the Official Secrets Acts, forfeiture under R91 or recovery of a monetary obligation under R93 should deprive the member or the member's surviving spouse or civil partner of any GMP entitlement	R95	Employer
Agree to bulk transfer payment	R98(1)(b)	Employer / Admin. Authority / trustees of new scheme
Agree set aside of bulk transfer assets / cash and acquisition of rights in new scheme	R98(4)(a)	Fund actuary / new scheme actuary
Determine amount of, and adjustments to, bulk transfer payment	R99(1) & (2)	Fund actuary
Determine who should bear bulk transfer actuarial costs (where more than one employing authority is involved in the transfer)	R99(5)	Fund actuary
Extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS	R100(6)	Employer and Admin. Authority
Allow transfer of pension rights into the Fund	R100(7)	Admin. authority
Agree bulk inter fund adjustment terms (where 10 or more members affected by a single event)	R103(3)	Actuaries for both Funds
Where member to whom B10 applies (use of average of 3 years pay for final pay purposes) dies before making an election, whether to make that election on behalf of the deceased member	TP3(6), TP4(6)(c), TP8(4), TP10(2)(a), TP17(2)(b) & B10(2)	Admin. Authority
Whether to allow a member to select final pay period for fees to be any 3 consecutive years ending 31st March in the 10 years prior to leaving	TP3(6), TP4(6)(c), TP8(4), TP10(2)(a), TP17(2)(b) & B11(2)	Employer
Issue a certificate of protection of pension benefits where eligible non-councillor member fails to apply for one (pay cuts / restrictions occurring pre 1.4.08.)	TP3(1)(a), TSch 1, L23(4)	Employer
Make election on behalf of deceased member with a certificate of protection of pension benefits i.e. determine best pay figure to use in the benefit calculations (pay cuts / restrictions occurring pre 1.4.08.)	TP3(6), TP4(6)(c), TP8(4), TP10(2)(a), TP17(2)(b) & TSch 1 & L23(9)	Admin. authority
Decide to treat child as being in	RSch 1 &	Admin. Authority

continuous full-time education or vocational training despite a break	TP17(9)(a)	
Decide evidence required to determine financial dependence of cohabiting partner on scheme member or financial interdependence of cohabiting partner and scheme member	RSch 1 & TP17(9)(b)	Admin. Authority
Decide appropriate Fund if employer applies to be moved to a different Fund	RSch 3, Part 2, para 3	Secretary of State
Decide policy on abatement of pre 1 April 2014 element of pensions in payment following re-employment	TP3(13) & A70(1)* & A71(4)(c)	Admin. Authority
Extend time period for capitalisation of added years contract	TP15(1)(c) & TSch1 & L83(5)	Admin. Authority
Decide whether to delegate any Secretary of State functions under the Regulations	R105(1)	Secretary of State
Decide whether to delegate any administering authority functions under the Regulations	R105(2)	Admin. Authority
Decide whether to establish a joint local pensions board (if approval has been granted by the Secretary of State)	R106(3)	Admin. Authority
Decide whether to withdraw approval for establishment of a joint local pensions board	R106(5)	Secretary of State
Decide procedures applicable to the local pensions board	R106(6)	Admin. Authority
Decide appointment procedures, terms of appointment and membership of local pension board	R107(1)	Admin. Authority
Decide procedures applicable to the scheme advisory board	R110(4)	Scheme Advisory Board
Decide whether to appoint up to 3 non-voting members to the scheme advisory board	R111(4)	Scheme Advisory Board
Decide whether to appoint non-board members to sub-committees of the scheme advisory board	R111(6)	Scheme Advisory Board
Decide whether to make recommendations to the Secretary of State for changes to the scheme to keep cost of scheme within the target cost	R116(2) and (3)	Scheme Advisory Board

\* These are matters about which the regulations require there must be a written policy.

## Formulating and publishing a policy under the 2014 Scheme Regulations

The employer must formulate, publish and keep under review a statement of their policy. A copy of the policy must be sent to the relevant administering authority.

If the 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 an employer is required by the Regulations to have regard to the extent to which the exercise of their discretionary powers could lead to a serious loss of confidence in the public service.

### **Discretions in relation to scheme members (excluding councillor members) who ceased active membership on or after 1.4.08. and before 1.4.14., being discretions under:**

- **the Local Government Pension Scheme (Administration) Regulations 2008 [prefix A]**
- **the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended) [prefix B]**
- **the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 [prefix T]**
- **the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [prefix TP]**
- **the Local Government Pension Scheme Regulations 2013 [prefix R]**
- **the Local Government Pension Scheme Regulations 1997 (as amended) [prefix L]**

<u>Discretion</u>	<u>Regulation</u>	<u>Exercised by</u>
Whether, for a member leaving on the grounds of redundancy or business efficiency on or before 31 <sup>st</sup> March 2014, to augment membership (by up to 10 years). The resolution to do so would have to be made within 6 months of the date of leaving. Hence this discretion is spent entirely after 30 <sup>th</sup> September 2014.	<b>B12*</b>	Employer
Whether to charge member for provision of estimate of additional pension that would be provided by the Scheme in return for transfer of in house AVC/SCAVC funds	<b>A28(2)</b>	Admin. Authority
Allow late application to convert scheme AVCs into membership credit i.e. allow application more than 30 days after cessation of active membership	<b>TSch1 &amp; L66(8) &amp; former L66(9)(b)</b>	Employer
Extend time period for capitalisation of added years contract	<b>TSch1 &amp; L83(5)</b>	Admin. Authority

No right to return of contributions due to offence of a fraudulent character or grave misconduct unless employer directs a total or partial refund is to be made	A47(2)	Employer
Outstanding employee contributions can be recovered as a simple debt or by deduction from benefits	A45(3)	Admin. Authority
Contribution Equivalent Premium (CEP) in excess of the Certified Amount (CA) recovered from a refund of contributions can be recovered from the Pension Fund	A49(1) & (2)	Employer
Can pay death grant due to personal representatives or anyone appearing to be beneficially entitled to the estate without need for grant of probate / letters of administration	A52(2)	Admin. Authority
Approve medical advisors used by employers (for early payment, on grounds of ill health, of a deferred benefit or a suspended Tier 3 ill health pension)	A56(2)	Admin. Authority
Whether to extend six month period to lodge a stage one IDRPs appeal	A58(7)(b)	Person making stage one IDRPs decision
Decide procedure to be followed by admin authority when exercising its stage two IDRPs functions and decide the manner in which those functions are to be exercised	A60(8)	Admin. Authority
Whether admin. authority should appeal against employer decision (or lack of a decision)	A63(2)	Admin. Authority
Whether to extend six month period for admin. authority to lodge an appeal against an employer decision	A63(3)(b)	Secretary of State
Specify information to be supplied by employers to enable admin. authority to discharge its functions	A64(1)(b)	Admin. Authority
Decide policy on abatement of pensions following re-employment	TP3(13) & A70(1)* & A71(4)(c) & T12	Admin. Authority
Whether to apply to Secretary of State for a forfeiture certificate (where member is convicted of a relevant offence)	A72(1) & (6)	Employer
Whether to issue a forfeiture certificate	A72(1)	Secretary of State
Where forfeiture certificate is issued, whether to direct that benefits are to be forfeited	A72(3)	Employer

Where forfeiture certificate is issued, whether to direct interim payments out of Pension Fund until decision is taken to either apply the certificate or to pay benefits	A73(1) & (2)	Employer
Whether to recover from Fund any monetary obligation or, if less, the value of the member's benefits (other than transferred in pension rights or AVCs/SCAVCs) where the obligation was incurred as a result of a criminal, negligent or fraudulent act or omission in connection with the employment and as a result of which the person has left employment	A74(2)	Employer
Whether to recover from Fund any financial loss caused by fraudulent offence or grave misconduct of employee (who has left because of that), or amount of refund if less	A76(2) & (3)	Employer
Where member to whom B10 applies (use of average of 3 years pay for final pay purposes) dies before making an election, whether to make that election on behalf of the deceased member	B10(2)	Admin. Authority
Whether to allow a member to select final pay period for fees to be any 3 consecutive years ending 31 <sup>st</sup> March in the 10 years prior to leaving	B11(2)	Employer
Whether to pay the whole or part of a child's pension to another person for the benefit of that child	B27(5)	Admin. Authority
Whether, where a person (other than an eligible child) is incapable of managing their affairs, to pay the whole or part of that person's pension benefits to another person for their benefit.	A52A	Admin. Authority
Whether to grant application for early payment of deferred benefits on or after age 55 and before age 60	B30(2)*	Employer (or Admin. Authority where Employer has become defunct)
Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30	B30(5)*	Employer (or Admin. Authority where Employer has become defunct)
Whether to grant an application for early payment of a suspended tier 3 ill health pension on or after age 55 and before age 60	B30A(3)*	Employer (or Admin. Authority where Employer has become defunct)
Whether to waive, on compassionate	B30A(5)*	Employer (or Admin.

grounds, the actuarial reduction applied to benefits paid early under <b>B30A</b>		Authority where Employer has become defunct)
Decide whether deferred beneficiary meets permanent ill health and reduced likelihood of gainful employment criteria	<b>B31(4)</b>	Employer (or Admin. Authority where Employer has become defunct)
Decide whether a suspended ill health tier 3 member is permanently incapable of undertaking any gainful employment	<b>B31(7)</b>	Employer (or Admin. Authority where Employer has become defunct)
Decide to whom death grant is paid	<b>B23(2) &amp; B32(2) &amp; B35(2) &amp; TSch1 &amp; L155(4)</b>	Admin. Authority
Decide evidence required to determine financial dependence of co-habitee on scheme member or financial interdependence of co-habitee and scheme member	<b>B25</b>	Admin. Authority
Decide to treat child as being in continuous education or vocational training despite a break	<b>RSch 1 &amp; TP 17(9)</b>	Admin. Authority
Decide whether to commute small pension	<b>B39 &amp; T14(3)</b>	Admin. Authority
Decide, in the absence of an election from the member, which benefit is to be paid where the member would be entitled to a benefit under 2 or more regulations in respect of the same period of Scheme membership	<b>B42(1)(c)</b>	Admin. Authority
Make election on behalf of deceased member with a certificate of protection of pension benefits i.e. determine best pay figure to use in the benefit calculations (pay cuts / restrictions occurring pre 1.4.08.)	<b>TSch 1 &amp; L23(9)</b>	Admin. authority

\* These are matters about which the regulations require there must be a written policy.

#### Formulating and publishing a policy under the 2008 Scheme Regulations

The employer must formulate, publish and keep under review a statement of their policy. A copy of the policy must be sent to the relevant administering authority.

If the 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 an employer is required by the Regulations to have regard to the extent to which the exercise of their discretionary powers could lead to a serious loss of confidence in the public service.

**Discretions under the Local Government Pension Scheme Regulations 1997 (as amended) in relation to:**

- a) active councillor members, and**
- b) councillor members who ceased active membership on or after 1.4.98., and**
- c) any other scheme members who ceased active membership on or after 1.4.98. and before 1.4.08.**

<u>Discretion</u>	<u>Regulation</u>	<u>Exercised by</u>
Allow a councillor who has opted out more than once to rejoin	7(9)(a)	Employer
Frequency of payment of councillors' contributions	12(5)	Admin. Authority
Extend normal 12 month period following end of relevant reserve forces leave for "Cancelling notice" to be submitted by a councillor member requesting that the service should not be treated as relevant reserve forces service	17(4),(7),(8), & 89(4) & Sch 1	Admin. Authority
Allow a late application by a councillor member to pay optional contributions for a period of absence	18(6) & (7)	Employer
Allow post 31.3.98. / pre 1.4.08. non-councillor leaver to select final pay period for fees to be a period of not less than 3 or more than 5 years back from date of leaving [Note: to all intents and purposes this discretion is now spent]	22(1)(b)	Employer
Select appropriate final pay period for deceased non-councillor member (leavers post 31.3.98. / pre 1.4.08.) [Note: to all intents and purposes this discretion is now spent]	22(7)	Admin. Authority
Make election on behalf of deceased non-councillor member with a certificate of protection of pension benefits i.e. determine best pay figure to use in the benefit calculations (pay cuts / restrictions occurring pre 1.4.08.) [Note: to all intents and purposes this discretion is now spent]	23(9)	Admin. authority
Grant application from a post 31.3.98. / pre 1.4.08. leaver or from a councillor for early payment of benefits on or after age 50/55 and before age 60 (see Note below)	31(2)*	Employer
Waive, on compassionate grounds, the actuarial reduction applied to benefits paid early for a post 31.3.98. / pre 1.4.08. leaver or a councillor leaver	31(5)*	Employer
Councillor optants out and pre 1.4.08. employee	31(7A)*	Employer

optants out only to get benefits paid from NRD if employer agrees		
Whether to extend 12 month period for aggregation of deferred benefits (where deferred councillor member wishes to aggregate with current councillor membership in the same Fund)	32(8A)	Employer
Decide, in the absence from a post 31.3.98. / pre 1.4.08. leaver of an election from the member within 3 months of being able to elect, which benefit is to be paid where the member would be entitled to a pension or retirement grant under 2 or more regulations in respect of the same period of Scheme membership	34(1)(b)	Employer
Decide to whom death grant is paid in respect of councillor members and post 31.3.98. / pre 1.4.08. leavers	38(1) & 155(4)	Admin. Authority
Decide to treat child as being in continuous education or vocational training despite a break (children of councillor members and children of post 31.3.98. / pre 1.4.08. leavers)	Reg 17(9) of the LGPS (Transitional Provisions, Savings and Amendment) Regs 2014 and definition in Sch 1 of the LGPS Regulations 2013	Admin. Authority
Apportionment of children's pension amongst eligible children (children of councillor members and children of post 31.3.98. / pre 1.4.08. leavers)	47(1)	Admin. Authority
Pay child's pension to another person for the benefit of the child (children of councillor members and children of post 31.3.98. / pre 1.4.08. leavers)	47(2)	Admin. Authority
Agree to commutation of small pension (pre 1.4.08. leavers or pre 1.4.08. Pension Credit members)	49 & 156	Admin. Authority
Commute benefits due to exceptional ill-health (councillor members, pre 1.4.08. leavers and pre 1.4.08. Pension Credit members)	50 and 157	Admin. Authority
Whether acceptance of AVC election is subject to a minimum payment (councillors only)	60(5)	Admin. Authority
Consent to a member's former employer assigning to the new employer rights under any SCAVC life assurance policy (pre 1.4.08. non-councillor leavers)	71(7)(a)	Employer
Whether to require any strain on Fund costs to be paid "up front" by employing authority	80(5)	Admin. Authority



following early voluntary retirement of a councillor (i.e. after age 50/55 and before age 60), or early payment of a deferred benefit on health grounds or from age 50 with employer consent (pre 1.4.08. leavers) – (see Note below)		
Frequency of employer's payments to the fund (in respect of councillor members).	81(1)	Admin. Authority
Form and frequency of information to accompany payments to the Fund (in respect of councillor members)	81(5)	Admin. Authority
Interest on payments by employers overdue by more than 1 month (in respect of councillor members)	82(1)	Admin. Authority
No right to return of contributions due to offence of a fraudulent character unless employer directs a total or partial refund is to be made (councillors and pre 1.4.08. leavers)	88(2)	Employer
Employer may deduct contributions from an councillor's pay or reserve forces pay	89(1) & (2)	Employer
Outstanding employee contributions can be recovered as a simple debt or by deduction from benefits (councillors and pre 1.4.08. leavers)	89(3)	Admin. Authority
Timing of pension increase payments by employers to fund (pre 1.4.08. leavers)	91(6)	Admin. Authority
Contribution Equivalent Premium (CEP) in excess of the Certified Amount (CA) recovered from a refund of contributions can be recovered from the Pension Fund (councillor leavers and pre 1.4.08. leavers)	92	Employer
Pay death grant due to personal representatives without need for grant of probate / letters of administration (death of councillor or pre 1.4.08. leaver)	95	Admin. Authority
Approve medical advisors used by employers (re ill health benefits for councillors and re pre 1.4.08. preserved benefits payable on health grounds)	97(10)	Admin. Authority
Decide procedure to be followed by admin authority when exercising its IDRPs functions and decide the manner in which those functions are to be exercised (councillors and pre 1.4.08. leavers)	99	Admin. Authority
Appeal against employer decision, or lack of a decision (councillors and pre 1.4.08. leavers)	105(1)	Admin. Authority
Extend appeal period under reg 105	105(2)	Secretary of State
Date to which benefits shown on annual deferred benefit statement are calculated	106A(5)	Admin. Authority
Abatement of pensions following re-employment (councillors and pre 1.4.08. leavers)	109* & 110(4)(b)	Admin. Authority

Forfeiture of pension rights on issue of Secretary of State's certificate (councillors and pre 1.4.08. leavers)	111(2) & (5)	Employer
Where forfeiture certificate is issued, direct interim payments out of Pension Fund until decision is taken to either apply the certificate or to pay benefits (councillors and pre 1.4.08. leavers)	112(1)	Employer
Recovery from Fund of monetary obligation owed by former employee or, if less, the value of the member's benefits (other than transferred in pension rights) (councillors and pre 1.4.08. leavers)	113(2)	Employer
Recovery from Fund of financial loss caused by employee, or amount of refund if less (councillors and pre 1.4.08. leavers)	115(2) & (3)	Employer
Retention of CEP where member transfers out (councillors and pre 1.4.08. leavers)	118	Admin. Authority
Discharge Pension Credit liability (in respect of Pension Sharing Orders for councillors and pre 1.4.08. Pension Sharing Orders for non-councillor members)	147	Admin. Authority

\*These are matters about which the regulations require there must be a written policy.

**Note:** benefits paid on or after age 50 and before age 55 are subject to an unauthorised payments charge and, where applicable, an unauthorised payments surcharge under the Finance Act 2006. Also, any part of the benefits which had accrued after 5 April 2006 would generate a scheme sanction charge.

#### Formulating and publishing a policy under the LGPS Regulations 1997

The employer must formulate, publish and keep under review a statement of their policy. A copy of the policy must be sent to the relevant administering authority.

If the 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 an employer is required by the Regulations to have regard to the extent to which the exercise of their discretionary powers could lead to a serious loss of confidence in the public service.

**Discretions under the Local Government Pension Scheme Regulations 1995 (as amended) in relation to scheme members who ceased active membership before 1.4.98.**

<u>Discretion</u>	<u>Regulation</u>	<u>Exercised by</u>
Grant application from a pre 1.4.98. leaver for early payment of deferred benefits on or after age 50 on compassionate grounds (see Note below)	D11(2)(c)	Employer
Decide, in the absence from a pre 1.4.98. leaver of an election from the member within 3 months of being able to elect, which benefit is to be paid where the member would be entitled to a pension or retirement grant under 2 or more regulations in respect of the same period of Scheme membership	D10	Employer
Decide to whom death grant is paid in respect of pre 1.4.98. retirees / pre 1.4.98. deferreds	E8	Admin. Authority
Whether to pay spouse's pensions for life for pre 1.4.98 retirees / pre 1.4.98 deferreds who die on or after 1.4.98. (rather than ceasing during any period of remarriage or co-habitation)	F7	Admin. Authority
Decide to treat child as being in continuous education or vocational training despite a break (children of pre 1.4.98. retirees / pre 1.4.98. deferreds)	Reg 17(9) of the LGPS (Transitional Provisions, Savings and Amendment) Regs 2014 and definition in Sch 1 of the LGPS Regulations 2013	Admin. Authority
Apportionment of children's pension amongst eligible children (children of pre 1.4.98. retirees / pre 1.4.98. deferreds)	G11(1)	Admin. Authority
Pay child's pension to another person for the benefit of the child (children of pre 1.4.98. retirees / pre 1.4.98. deferreds)	G11(2)	Admin. Authority

**Note:** benefits paid on or after age 50 and before age 55 are subject to an unauthorised payments charge and, where applicable, an unauthorised payments surcharge under the Finance Act 2006. However, as the benefits had accrued prior to 6 April 2006, they would not generate a scheme sanction charge.

**Discretions under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (as amended)**

Under Regulation 7 of the Discretionary Compensation Regulations, each authority (other than an Admitted Body) is required to formulate and keep under review a policy which applies in respect of exercising their discretion in relation to:

<u>Discretion</u>	<u>Regulation</u>	<u>Exercised by</u>
To base redundancy payments on an actual weeks pay where this exceeds the statutory week's pay limit.	5	Employer
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.	6	Employer
To award compensatory added years to a person aged 50 or over with 5 or more years membership (or notional membership) of the LGPS in cases of redundancy, termination of employment on efficiency grounds, or cessation of a joint appointment which occurred after 30 <sup>th</sup> September 2006 and before 1 <sup>st</sup> April 2007 (but only if employment had commenced pre 1 <sup>st</sup> October 2006) [Note: to all intents and purposes this discretion is now spent]	11(2)	Employer

**Note:** For the purposes of the above table, 'local government' means employment with 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). Technically, an employee of an Admitted Body (i.e. a body that has applied to the administering authority to allow its employees to join the LGPS and has entered into a formal admission agreement) is only employed in 'local government' if he / she is a member of the LGPS.

**Formulating and publishing a policy under the Discretionary Compensation Regs 2006**

The employer must formulate, publish and keep under review a statement of their policy. 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.

**Discretions under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 (as amended)**

Under Regulation 26 of the Discretionary Compensation Regulations, each authority (other than an Admitted Body) is required to formulate and keep under review a policy which applies in respect of exercising their discretion in relation to:

How to apportion any surviving spouse's or civil partner's annual compensatory added years payment where the deceased person is survived by more than one spouse or civil partner	21(4)	Employer
How it will decide to whom any children's annual compensatory added years payments are to be paid where children's pensions are not payable under the LGPS (because the employee had not joined the LGPS) and, in such a case, how the annual added years will be apportioned amongst the eligible children	25(2)	Employer
Whether, in respect of the spouse of a person who ceased employment before 1 April 1998 and where the spouse or civil partner remarries, enters into a new civil partnership or cohabits after 1 April 1998, the normal pension suspension rules should be disapplied i.e. whether the spouse's or civil partner's annual compensatory added years payments should continue to be paid	21(7)	Employer
If, under the preceding decision, the authority'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	21(5)	Employer
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 cohabitation lasts, should be disapplied i.e. whether the spouses' or civil partners' annual CAY payments should continue to be paid to both of them	21(7)	Employer

Whether and to what extent to reduce or suspend the member's annual compensatory added years payment during any period of re-employment in local government	17	Employer
How to reduce the member's annual compensatory added years payment following the cessation of a period of re-employment in local government	19	Employer
Agree to pay annual compensation on behalf of employer and recharge payments to employer	31(2)	Admin. Authority

**Note:** For the purposes of the above table, 'local government' means employment with 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). Technically, an employee of an Admitted Body (i.e. a body that has applied to the administering authority to allow its employees to join the LGPS and has entered into a formal admission agreement) is only employed in 'local government' if he / she is a member of the LGPS.

Formulating and publishing a policy under the Discretionary Compensation Regs 2000

The employer must formulate, publish and keep under review a statement of their policy.

If the employer decides to amend the policy, a new written statement must be published within a month of when the employer decided on the amendment(s). 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.

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

Under Regulation 14 of the Injury Allowances Regulations, each LGPS employer (other than an Admitted Body) is required to formulate, publish and keep under review the policy that it will apply in the exercise of its discretionary powers to make any award under the Injury Allowances Regulations in respect of leavers, deaths and reductions in pay that occurred post 15 January 2012.

<u>Discretion</u>	<u>Regulation</u>	<u>Exercised by</u>
Whether to grant an injury allowance following reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job.	3(1)	Employer
Amount of injury allowance following reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job.	3(4) and 8	Employer
Determine whether person continues to be entitled to an injury allowance awarded under regulation 3(1).	3(2)	Employer
Whether to grant an injury allowance following cessation of employment as a result of permanent incapacity caused by sustaining an injury or contracting a disease in the course of carrying out duties of the job.	4(1)	Employer
Amount of injury allowance following cessation of employment as a result of permanent incapacity caused by sustaining an injury or contracting a disease in the course of carrying out duties of the job.	4(3) and 8	Employer
Determine whether person continues to be entitled to an injury allowance awarded under regulation 4(1).	4(2)	Employer
Whether to suspend or discontinue injury allowance awarded under regulation 4(1) if person secures paid employment for not less than 30 hours per week for a period of not less than 12 months.	4(5)	Employer
Whether to grant an injury allowance following cessation of employment with entitlement to immediate LGPS pension where a reg 3 payment was being made at date of cessation of employment but reg 4 does not apply.	6(1)	Employer
Determine amount of any injury allowance to be paid under regulation	6(1)	Employer

6(1)		
Determine whether and when to cease payment of an injury allowance payable under regulation 6(1)	6(2)	Employer
Whether to grant an injury allowance to the spouse, civil partner, nominated co-habiting partner or dependent of an employee who dies as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job.	7(1)	Employer
Determine amount of any injury allowance to be paid under regulation 7(1)	7(2) and 8	Employer
Determine whether and when to cease payment of an injury allowance payable under regulation 7(1)	7(3)	Employer

Formulating and publishing a policy under the Injury Allowances Regulations 2011

Each LGPS employer (other than an Admitted Body) is required to formulate, publish and keep under review the policy that it will apply in the exercise of its discretionary powers to make any award under the Injury Allowances Regulations.

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

**Discretions under the Local Government (Discretionary Payments) Regulations 1996 (as amended)**

The following discretions under the Discretionary Payments Regulations:

- a) which relate to injury allowances, apply only in respect of leavers, deaths and reductions in pay that occurred before 16 January 2012; and
- b) which relate to gratuities, apply only in respect of leavers and deaths that occurred before 16 January 2012.

<u>Discretion</u>	<u>Regulation</u>	<u>Exercised by</u>
Amount of injury allowance following loss of employment through permanent incapacity after sustaining an injury or contracting a disease as a result of anything required to do in carrying out duties of job.	34(2) and 38	Employer



Suspend or discontinue injury allowance if person becomes capable of working again	34(4)	Employer
Amount of injury allowance following reduction in pay after sustaining an injury or contracting a disease as a result of anything required to do in carrying out duties of job.	35(3) and 38	Employer
Amount and duration of injury allowance following cessation of employment where reg 35 payment was being made but reg 34 does not apply.	36	Employer
Amount and duration of a dependant's, spouse's or civil partner's injury allowance following death of employee after sustaining an injury or contracting a disease as a result of anything required to do in carrying out duties of job.	37(3), 37(6) and 38	Employer
Reinstate spouse's or civil partner's injury allowance following earlier cessation due to cohabitation, remarriage or registration of a new civil partnership	37(4)	Employer
Amount of death in service gratuity payable to surviving dependant, spouse or civil partner	40	Employer
Amount or retirement gratuity payable	41	Employer
Amount of gratuity payable to surviving dependant, spouse or civil partner where amount of annuity payments fall short of their capital value at date of award	41(4)	Employer
Amount if redundancy gratuity payable	42	Employer
Amount of gratuity payable to surviving dependant, spouse or civil partner where amount of redundancy annuity payments fall short of their capital value at date of award	42(4)	Employer
Amount of gratuity payable to any other surviving dependant, spouse or civil partner where amount of annuity payments paid under 42(4) fall short of their capital value at date of award	42(7)	Employer
Formulate and keep under review the injury allowance and gratuity policies to be operated by the authority	46A	Employer

## Discretions under the Local Government (Wales) Measure 2011

<u>Discretion</u>	<u>Section</u>	<u>Exercised by</u>
<p>Decide the descriptions of members (other than co-opted members) to or in respect of whom a relevant authority will be required to pay a pension (a “relevant pension”) and decide the relevant matters in respect of which a relevant authority will be required to pay a relevant pension.</p> <p>The Panel may make different decisions in relation to authorities of different descriptions or different authorities of the same description.</p> <p>An authority is a “relevant authority” if it comes within one of the following descriptions—</p> <p>(a) a local authority;</p> <p>(b) a community council;</p> <p>(c) a National Park authority (established under section 63 of the Environment Act 1995) for a National Park in Wales; and</p> <p>(d) a Welsh fire and rescue authority, that is an authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies.</p> <p>“Member”, in relation to a relevant authority, includes—</p> <p>(a) an elected mayor of the authority (within the meaning of section 39(1) of the Local Government Act 2000), and</p> <p>(b) an elected executive member of the authority (within the meaning of section 39(4) of that Act).</p>	<p>143</p>	<p>Independent Remuneration Panel for Wales</p>

**Discretions under the Local Authorities (Members' Allowances) (England) Regulations 2003 [SI 2003/1021]**

<u>Discretion</u>	<u>Regulation</u>	<u>Exercised by</u>
Scheme of allowances made by a district council, county council or London borough council must specify which members will be eligible to join the LGPS and whether the basic and / or special responsibility allowances will be pensionable. An authority may only include someone who has first been recommended by the independent remuneration panel.	11	Relevant Authority

**Disclaimer**

This document has been prepared based on the LGPC Secretariat's understanding of the information presently available including the relevant Statutory Instruments governing the Local Government Pension Scheme, associated overriding legislation and relevant draft legislation. It represents the views of the Secretariat and should not be treated as a complete and authoritative statement of the law. Readers may wish, or will need, to take their own legal advice on the interpretation of any particular piece of legislation. No responsibility whatsoever will be assumed by the Local Government Association for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained herein.

Terry Edwards

Senior Pensions Adviser

Local Government Association

10<sup>th</sup> April 2015