

## **Discretions Policies for Scheme Employers in England and Wales from 1 April 2014 (version 1.7)**

### **Introduction**

1. The Local Government Pension Scheme (LGPS) in England and Wales was amended from 1 April 2014 so that benefits accruing for service after 31 March 2014 accrue on a Career Average Revalued Earnings (CARE) basis, rather than on a final salary basis.
2. The provisions of the CARE scheme, together with the protections for members' accrued pre 1 April 2014 final salary rights, are contained in the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.
3. As a result of the changes, Scheme employers participating in the LGPS in England or Wales have to formulate, publish and keep under review a Statement of Policy on certain discretions which they have the power to exercise in relation to members of the CARE Scheme.
4. Scheme employers are also required to (or where there is no requirement, are recommended to) formulate, publish and keep under review a Statement of Policy on certain other discretions they may exercise in relation to members of the LGPS.
5. Overall, Scheme employers participating in the LGPS in England or Wales:
  - i) are required to formulate, publish and keep under review a Statement of Policy on certain discretions in accordance with:
    - regulation 60 of the LGPS Regulations 2013,
    - paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014
    - regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008 (in respect of leavers between 1 April 2008 and 31 March 2014), and
    - regulation 106 of the Local Government Pension Scheme Regulations 1997 (in respect of leavers between 1 April 1998 and 31 March 2008);
  - ii) are recommended to formulate, publish and keep under review a Statement of Policy on one discretion under the Local Government Pension Scheme Regulations 1995 (in respect of leavers before 1 April 1998);
  - iii) are (other than admission bodies<sup>1</sup>) required to formulate, publish and keep under review a Statement of Policy on certain discretions in accordance with regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, operative from 1 October 2006;

---

<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.

- iv) are (other than admission bodies<sup>2</sup>) required to formulate, publish and keep under review a Statement of Policy on certain discretions in accordance with regulation 26 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000, operative from 1 October 2000; and
  - v) are (other than admission bodies<sup>3</sup>) required to formulate, publish and keep under review a Statement of Policy on certain discretions relating to injury allowances under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011.
6. The following notes set out the key discretions that apply under the above legislation. A full list of all discretions can be viewed at <http://www.lgpsregs.org/index.php/guides/pdfarchive>. 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.

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

7. 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 are required to prepare and publish a written policy in relation to five specific discretions. These are:
- i) whether, at full cost to the employer, to grant extra annual pension of up to £6,500 (figure at 1 April 2014<sup>4</sup>) to an active Scheme 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]

**Tips:**

Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on granting extra pension of up to £5,000 under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Employers may, therefore, wish to simply carry forward their basic existing policy, but suitably amended to refer to the LGPS Regulations 2013 and the increased limit of £6,500.

Employers considering granting 'straight' extra annual pension of up to £6,500 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).

<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.

<sup>4</sup> The figure of £6,500 will be increased 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 2015 is £6,675.

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.

The facility for employers to grant extra 'augmented' membership of the Pension Scheme ceases after 31 March 2014. Employers who have, prior to 1 April 2014, had a policy to allow 'augmentation by conversion' to members being made redundant or being retired on business efficiency grounds i.e. granting the member augmented membership equivalent to any lump sum termination payment (in excess of the statutory redundancy payment or in excess of the redundancy payment based on an actual week's pay where this exceeds the statutory weeks' pay limit) the employer would otherwise have awarded under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 will no longer be able to do so for retirements on or after 1 April 2014. Instead, the 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 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 employer would be subject to an actuarial reduction where, other than in a case of ill 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 £6,500 includes the amount of extra annual pension purchased (or being purchased) by the employer under a Shared Cost Additional Pension Contributions (SCAPC) arrangement (see (ii) 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 scheme member's benefits being increased by more than the permitted standard Annual Allowance of, currently, £40,000 (2015/16). 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. Each time a person retires and draws benefits from a pension scheme they use up a part of their LTA. If, on retirement under the LGPS, the capitalised value of their 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).

- ii) whether, where an active Scheme member wishes to purchase extra annual pension of up to £6,500 (figure at 1 April 2014<sup>5</sup>) by making Additional Pension Contributions (APCs), to (voluntarily) contribute towards the cost of purchasing

<sup>5</sup> The figure of £6,500 will be increased 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 updated figure as at April 2015 is £6,675.

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 to pay a SCAPC to cover the amount of pension 'lost' during that period of absence. That is because, in those cases, the employer must contribute 2/3rds of the cost to a SCAPC; there is no discretion [regulation 15(5) of the LGPS Regulations 2013]. There may be some cases, even if it is not the employer's general policy to contribute to a SCAPC, where an employer might wish to do so. For example, where:

- a) an active scheme member returns from a period of authorised leave of absence
- b) the member does not, within 30 days of returning from the leave of absence, make an election to buy-back the amount of pension 'lost' during that period of leave of absence
- c) the member subsequently makes an election to do so whilst an active member and it can be demonstrated that the reason for the member missing the original 30 day deadline was because the member had not been made aware of that deadline
- d) the election is made no more than, say, 6 months after the member returns from the period of leave of absence or such longer period as the scheme employer may deem reasonable in any individual case.

If the employer agrees to extend the 30 day limit in such a case, the employer would be required to contribute 2/3rds of the cost of the SCAPC.

It should be noted that any extra annual pension granted by the employer under a SCAPC arrangement would be subject to an actuarial reduction where, other than in a case of ill health retirement, that extra pension is drawn before the member's Normal Pension Age.

It should also be noted that the amount of extra annual pension purchased (or being purchased) by the employer under a Shared Cost Additional Pension Contributions (SCAPC) arrangement (including a SCAPC arrangement where an employer is contributing 2/3<sup>rds</sup> of the cost of purchasing pension 'lost' during a period of absence) reduces the amount of extra annual pension the employer could award under (i) above.

It should also be noted that the policy intention is that the maximum amount of £6,500 (figure at April 2014) 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.

- iii) whether to permit flexible retirement for staff aged 55<sup>6</sup> or over who, with the agreement of the employer, reduce their working hours or grade [regulation 30(6)]

<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 employer's permission to reduce their working hours or grade but, if that permission is given, do not require their employer's permission to draw their benefits (as such members have the automatic right to take the benefits by

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
  - o all, part or none of the pension benefits they accrued after 31 March 2008 and before 1 April 2014, and / or
  - o 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, 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]

**Tips:**

Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on flexible retirement for flexible retirements under the 2008 Scheme and for waiving any actuarial reduction in whole or in part (in accordance with the LGPS (Administration) Regulations 2008). Employers may, therefore, wish to simply carry forward their basic existing policy, but suitably amended for post 31 March 2014 flexible retirement to reflect the above provisions.

If flexible retirement is agreed for a Scheme 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 would be a strain on fund cost to be met by, and paid to the Pension Fund by, the employer in respect of the pension benefits paid following flexible retirement.

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 please see

<http://www.pensionsadvisoryservice.org.uk/state-pensions/know-your-state-pension-age>

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 employer.

- iv) 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 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 period between the date the benefits are drawn and age 60) [paragraphs 1(2) and (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 employer can exercise a discretion to waive actuarial reductions (at cost to the employer) – see (v) below.

<sup>8</sup> If a member voluntarily draws benefits before their Normal Pension Age 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) add 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 document](#) for more information.

<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.

<sup>12</sup> See Footnote 10.

Tips:

If the employer does agree to switch back on the 85 year rule in full, the 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 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.

- v) 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
- a) were **not** members of the LGPS before 1 October 2006 [Group 4 members], whether to:
- waive on compassionate grounds<sup>17</sup>, any actuarial reduction<sup>18</sup> that would otherwise be applied to benefits, if any, accrued 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

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

<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 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 document](#).



- waive, in whole or in part (on any grounds), any actuarial reduction<sup>20</sup> that would otherwise be applied to benefits accrued after 31 March 2014 [regulation 30(8) of the LGPS Regulations 2013]

b) **were** members of the LGPS before 1 October 2006 and who **will** be 60 or more on 31 March 2016 [Group 1 members] (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 accrued 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 accrued after 31 March **2016**<sup>24</sup> [regulation 30(8) of the LGPS Regulations 2013]

c) **were** members of the LGPS before 1 October 2006 and who will **not** be 60 or more on 31 March 2016 and will **not** attain age 60 between 1 April 2016 and 31 March 2020 [Group 3 members] (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 accrued 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 accrued after 31 March 2014<sup>28</sup> [regulation 30(8) of the LGPS Regulations 2013]

d) **were** members of the LGPS before 1 October 2006 and who will **not** be 60 or more on 31 March 2016 but **will** attain age 60 between 1 April 2016 and 31 March 2020 [Group 2 members] (i.e. those members falling within paragraphs

---

<sup>20</sup> See Footnote 18.

<sup>21</sup> There is no definition in the regulations of 'compassionate grounds'.

<sup>22</sup> See Footnote 18.

<sup>23</sup> See Footnote 18.

<sup>24</sup> Including Part D2 membership – see the [85 year rule document](#).

<sup>25</sup> There is no definition in the regulations of 'compassionate grounds'.

<sup>26</sup> See Footnote 18.

<sup>27</sup> See Footnote 18.

<sup>28</sup> Including Part D2 membership – see the [85 year rule document](#).



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 accrued 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 accrued after 31 March 2020<sup>32</sup> [regulation 30(8) of the LGPS Regulations 2013]

8. The Scheme employer should preferably prepare and publish a written statement of its policy on the above matters before 1 April 2014 but must do so, and send a copy to the Pension Fund administering authority, by no later than 30 June 2014 [regulation 60(2) of the LGPS Regulations 2013].
9. The Scheme employer is required to keep its statement under review and make such revisions as are appropriate following a change in its policy. Following any change in its policy the Scheme employer must publish the revised policy and send a copy to the Pension Fund administering authority within one month of the date the policy is revised [regulations 60(3) and (4) of the LGPS Regulations 2013].
10. In formulating and reviewing its policy, the Scheme employer must have regard to the extent to which the exercise of its discretionary powers could lead to a serious loss of confidence in the public service [regulation 60(5) of the LGPS Regulations 2013].
11. There are a number of other discretions which Scheme employers may exercise under the LGPS Regulations 2013 (see the full list at <http://www.lgpsregs.org/index.php/guides/pdfarchive>). There is, however, no requirement to have a written policy in respect of these but there are five in respect of which it would perhaps be appropriate for Scheme employers to have a written policy in order that members can be clear on the employer's policy on these matters. They are:
  - i) whether, how much, and in what circumstances to contribute to a shared-cost Additional Voluntary Contribution (SCAVC) arrangement entered into on or after 1 April 2014 [regulation 17 of the LGPS Regulations 2013] and whether, how much, and in what circumstances to continue to contribute to any shared cost Additional Voluntary Contribution (SCAVC) arrangement that the employer had entered into before 1 April 2014 [regulation 15(1)(d) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, regulation 25(3) of the LGPS (Administration) Regulations 2008 and regulation 15(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007]

---

<sup>29</sup> There is no definition in the regulations of 'compassionate grounds'.

<sup>30</sup> See Footnote 18.

<sup>31</sup> See Footnote 18.

<sup>32</sup> Including Part D2 membership – see the [85 year rule document](#).

Tip: Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on SCAVCs under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Employers may, therefore, wish to simply carry forward their existing policy, but suitably amended to reflect both of the elements referred to above.

- ii) whether, with the agreement of the Pension Fund administering authority, to permit a Scheme member to elect to transfer other pension rights into the LGPS if he / she has not made such an election within 12 months of joining the LGPS [regulation 100(6) of the LGPS Regulations 2013]

Tips:

Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on late elections under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Employers may, therefore, wish to simply carry forward their existing policy on this matter.

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 Scheme 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 employer (e.g. where an employee opts to transfer in prior to a large salary rise / promotion / re-grading if the member has any pre 1 April 2014 membership, or where an employee opts to transfer in prior to early retirement on the grounds of redundancy, business efficiency or ill health.)

Unlike under the 2008 Scheme, where the discretion to allow a late election rested solely with the employer, under the 2014 Scheme both the employer and the Pension Fund administering authority have to agree to the acceptance of a late election. If one agrees, and the other does not, the late election cannot be accepted.

- iii) whether to extend the 12 month time limit within which a Scheme 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 the 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 the 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 pre 1 April 2014 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 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).

- iv) 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 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 at [www.lgpsregs.org](http://www.lgpsregs.org)

- v) whether or not, 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 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 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 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, 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 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 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 scheme 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.

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

12. By virtue of regulation 66 of the LGPS (Administration) Regulations 2008 Scheme employers (employing authorities) are required to prepare and publish a written policy in relation to five specific discretions. These are:

- i) whether<sup>33</sup> to grant applications for the early payment of deferred pension benefits on or after age 55<sup>34</sup> and before age 60 [regulation 30(2) of the LGPS (Benefits, Membership and Contributions) Regulations 2007]
- ii) whether, on compassionate grounds<sup>35</sup>, to waive any actuarial reduction<sup>36</sup> that would normally be applied to deferred benefits which are paid before age 65<sup>37</sup> [regulation 30(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007]
- iii) whether<sup>38</sup> to grant applications for the early payment of a suspended tier 3 ill health pension on or after age 55<sup>39</sup> and before age 60 [regulation 30A(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007]
- iv) 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]
- v) whether, within 6 months of the date of termination, to grant extra membership in the pension scheme to a Scheme member whose employment was terminated before 1 April 2014 on the grounds of redundancy or business efficiency [regulation 12 of the LGPS (Benefits, Membership and Contributions) Regulations

<sup>33</sup> This discretion does not apply to those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies or 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 NHS Scheme 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>34</sup> Age 50 for those civil servants transferred to the Environment Agency to whom regulation 15 of the LGPS (Transitional Provisions) Regulations 2008 applies.

<sup>35</sup> There is no definition in the regulations of 'compassionate grounds'.

<sup>36</sup> There is no actuarial reduction 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>37</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 NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997.

<sup>38</sup> This discretion does not apply to those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies or 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 NHS Scheme 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>39</sup> Age 50 for those civil servants transferred to the Environment Agency to whom regulation 15 of the LGPS (Transitional Provisions) Regulations 2008 applies.

<sup>40</sup> There is no definition in the regulations of 'compassionate grounds'.

<sup>41</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 NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997.

2007 and regulation 3(10) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014]. Note that this is a time limited discretion which expires on 30 September 2014 for those whose employment is terminated on 31 March 2014.

Tip: Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on the above matters under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Scheme employers should ensure that their current policy is up to date.

13. The Scheme employer must prepare and publish a written statement of its policy on the above matters and must send a copy to the Pension Fund administering authority [regulation 66(2) of the LGPS (Administration) Regulations 2008].
14. The Scheme employer is required to keep its statement under review and make such revisions as are appropriate following a change in its policy. Following any change in its policy the Scheme employer must publish the revised policy and send a copy to the Pension Fund administering authority within one month of the date the policy is revised [regulations 66(3) and (4) of the LGPS (Administration) Regulations 2008].
15. In formulating and reviewing its policy, the Scheme employer must have regard to the extent to which the exercise of its discretionary powers could lead to a serious loss of confidence in the public service [regulation 66(5) of the LGPS (Administration) Regulations 2008].

**Summary of the discretions to be exercised on and after 1 April 2014 in relation to active councillor members, councillor members who ceased active membership on or after 1 April 1998 and any other scheme members who ceased active membership between 1 April 1998 and 31 March 2008**

16. By virtue of regulation 106 of the Local Government Pension Scheme Regulations 1997 Scheme employers are required to have a policy in relation to two specific discretions. These are:
  - i) whether<sup>42</sup> to grant applications for the early payment of pension benefits on or after age 50<sup>43</sup> and before age 60 [regulation 31(2) of the LGPS Regulations 1997], and

<sup>42</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 NHS Scheme 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>43</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 NHS Scheme 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.

- ii) whether, on compassionate grounds<sup>44</sup>, to waive any actuarial reduction<sup>45</sup> that would normally be applied to benefits which are paid before age 65<sup>46</sup> [regulation 31(5) of the LGPS Regulations 1997].

Tip: Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on the above matters under the 1998 Scheme (in accordance with the LGPS Regulations 1997). Scheme employers should ensure that their current policy is up to date.

17. The Scheme employer must prepare and publish a written statement of its policy on the above matters and must send a copy to the Pension Fund administering authority [regulations 106(1) and (3) of the Local Government Pension Scheme Regulations 1997].
18. The Scheme employer is required to keep its statement under review and make such revisions as are appropriate following a change in its policy. Following any change in its policy the Scheme employer must send a copy to the Pension Fund administering authority within one month of the date the policy is revised regulations 106(1) and (4) of the Local Government Pension Scheme Regulations 1997].
19. In formulating and reviewing its policy, the Scheme employer must have regard to the extent to which the exercise of its discretionary powers could lead to a serious loss of confidence in the public service [regulation 106(6) of the Local Government Pension Scheme Regulations 1997].

### **Summary of the discretions to be exercised on and after 1 April 2014 in relation to scheme members who ceased active membership before 1 April 1998**

20. Scheme employers (employing authorities) are recommended to formulate, publish and keep under review a Statement of Policy on whether to grant applications for the early payment of deferred pension benefits on or after age 50<sup>47</sup> and before age 65 on compassionate grounds<sup>48</sup> [regulation D11(2)(c) of the LGPS Regulations 1995].

Tip: Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on the above matter under the 1995 Scheme (in accordance with the LGPS Regulations 1995). Scheme employers should ensure that their current policy is up to date.

<sup>44</sup> There is no definition in the regulations of 'compassionate grounds'.

<sup>45</sup> There is no actuarial reduction 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>46</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 NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997.

<sup>47</sup> It should be noted that, except in the case of former NHS Scheme 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>48</sup> There is no definition in the regulations of 'compassionate grounds'.



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

21. 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, Scheme employers (employing authorities), other than admission bodies<sup>49</sup>, are required to formulate, publish and keep under review a Statement of Policy on:

- i) whether to base a redundancy payment on an employee's actual weeks' pay where this exceeds the statutory weeks pay limit of, currently, £464 per week (as at 6 April 2014) [regulation 5 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006]
- ii) 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>50</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]

**Tips:**

Scheme employers (other than admission bodies) should, prior to 1 April 2014, already have prepared and published a policy on the above matters under the Discretionary Compensation Regulations 2006. Scheme employers should ensure that their current policy is up to date.

A payment under (ii) cannot be made if the employer makes an award of:

- augmented membership under regulation 12 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 – see paragraph 12(v) above, or
- 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 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.

22. In formulating and reviewing its policy under the 2006 Discretionary Compensation Regulations, the Scheme employer:

<sup>49</sup> Admission bodies can use the 2006 Compensation Regulations by analogy and, if they do so, they might wish to have a written policy.

<sup>50</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.

- i) must have regard to the extent to which the exercise of its discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service; and
- ii) must be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs

[regulation 7(3) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006].

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

- 23. Although the 2000 Compensation Regulations have been revoked, they still apply to any Compensatory Added Years previously awarded by a Scheme 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].
- 24. By virtue of regulation 26(1) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000, Scheme employers who made awards of Compensatory Added Years are (other than admission bodies<sup>51</sup>) required to formulate, publish and keep under review a Statement of Policy on:
  - i) 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) [Parts VI and VII of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000]
  - ii) 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]
  - iii) 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].

---

<sup>51</sup> Admission bodies who made such awards might nevertheless wish to have a written policy.

- iv) 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]
- v) 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 partner's 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]
- vi) 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]

Tip: Scheme employers (other than admission bodies) who have previously made awards of Compensatory Added Years should, prior to 1 April 2014, already have prepared and published a policy on the above matters under the Discretionary Compensation Regulations 2000. Scheme employers should ensure that their current policy is up to date.

25. In formulating and reviewing its policy under the 2000 Discretionary Compensation Regulations, the Scheme employer:

- i) must have regard to the extent to which the exercise of its discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service; and
- ii) must be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.

[regulation 26(4) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000].

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

26. Under regulation 14(1) of the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 Scheme employers (LGPS employers), other than admission bodies<sup>52</sup>, must formulate, publish and keep under review a policy on:

- a) 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 or dependant, and
- b) if the Scheme employer has a policy to make such payments, how it will determine the amount of injury allowance to be paid

[regulations 3 to 7 of the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011].

Tip: Scheme employers (other than admission bodies) should, prior to 1 April 2014, already have prepared and published a policy on the above matters under the Injury Allowances Regulations 2011. Scheme employers should ensure that their current policy is up to date.

27. In formulating and reviewing its policy under the 2011 Injury Allowance Regulations, the Scheme employer:

- i) must have regard to the extent to which the exercise of its discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service; and
- ii) must be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs

[regulation 14(3) of the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011].

**Effective date of changes in policy**

28. Any change to the discretions exercised under the LGPS Regulations can take immediate effect from the date the Scheme employer agrees the change.

29. Any change to the discretions exercised under the Discretionary Compensation Regulations 2000, the Discretionary Compensation Regulations 2006 or the Injury

<sup>52</sup> Admission bodies can use the 2011 Injury Regulations by analogy and, if they do so, they might wish to have a written policy.

Allowances Regulations 2011 cannot take effect until one month after the date the Scheme employer publishes a statement of its amended policy [regulation 26(2) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000, regulation 7(2) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, and regulation 14(2) of the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011].

## **Disclaimer**

30. 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  
10<sup>th</sup> April 2015

## **Appendix A**

This appendix provides 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).

### **Discretions policy under the LGPS Regulations 2013**

Discretions under the LGPS Regulations 2013 are covered in paragraphs 7 to 11 of this paper.

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 set out in paragraph 7 of this paper.

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.

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 paragraph 7(i) of this paper (in relation to the ability to award extra annual pension of up to £6,500 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.

### **Discretions policy under the LGPS (Administration) Regulations 2008**

Discretions under the LGPS (Administration) Regulations 2008 are covered in paragraph 12 of this paper.

Regulation 66 of the LGPS (Administration) Regulations 2008 says that each employing authority must prepare and publish a written statement of its policy in relation to the exercise of its functions set out in paragraph 12 of this paper.

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 discretions policy on the matters in paragraph 12 of this paper. 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 scheme 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 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.

### **Discretions policy under the LGPS Regulations 1997**

Discretions under the LGPS Regulations 1997 are covered in paragraph 16 of this paper.

Regulation 106 of the LGPS Regulations 1997 says that a Scheme employer must prepare a written statement of its policy in relation to the exercise of its functions set out in paragraph 16 of this paper.

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.

### **Discretions policy under the LGPS Regulations 1995**

Discretions under the LGPS Regulations 1995 are covered in paragraph 20 of this paper.

Employing authorities can grant applications for the early payment of a deferred benefit on compassionate grounds.

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 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.

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

Discretions under the Discretionary Compensation Regulations 2006 are covered in paragraph 21 of this paper.

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 in paragraph 21 of this paper.

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.

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.

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

Discretions under the Discretionary Compensation Regulations 2000 are covered in paragraph 24 of this paper.

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 in paragraph 24 of this paper.

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.

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

Discretions under the Injury Allowances Regulations 2011 are covered in paragraph 26 of this paper.

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 in paragraph 26 of this paper.

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 discretions policy on the matters in paragraph 26 of this paper. 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.

<b>APPENDIX B</b>	<b>Early voluntary payment of deferred benefit (or of a suspended Tier 3 ill health pension under the 2008 Scheme)</b>			<b>85 year rule</b>	<b>Normal Pension Age</b>	<b>Late retirement</b>
<b>SPECIAL CASES – leavers before 1/4/14</b>	<b>Earliest retirement age</b>	<b>Employer consent necessary for voluntary retirement before 60</b>	<b>Actuarial reduction applied to [age below]</b>	<b>Does 85 year rule apply?</b>	<b>Pre 1/4/14 membership</b>	<b>Actuarial increase for deferment of benefits after [age below]</b>
<b>Former NHS scheme 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	60	No	60	65
<b>Civil Servants transferred to the Environment Agency (see 12)</b>	50	Yes	60	No	65	65
<b>Former Learning and Skills Council for England members (see 13)</b>	50 (but 55 for voluntary payment of suspended Tier 3 pension)	No	60	No	60	65

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	Employer consent necessary for voluntary retirement / early voluntary payment before 60	Actuarial reduction applied to [age below]	Earliest flexible retirement age	Employer consent to draw benefits required if 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 NHS scheme members</b>	55 (see 4, 6, 9, 15)	No (see 1, 4, 6, 9)	60 for pre 1/4/14 membership (see 1, 4, 9) SPA (min 65) for post 31/3/14 membership (see 2, 8)	55 (see 4, 7, 9)	Yes (see 4, 7, 9)	65 for pre 1/4/14 membership (see 4, 7, 9) SPA (min 65) for post 31/3/14 membership (see 2, 7, 8)	Yes (as the NHS transfer occurred on or after 1/8/91 but before 1/10/06)	65 (see 2, 4, 9)	SPA (min 65) (see 2, 8)	65 for pre 1/4/14 membership (see 2, 4, 9) SPA (min 65) for post 31/3/14 membership (see 2, 4, 5, 8)
<b>Former Metropolitan Civil Staffs Superannuation Scheme members</b>	55 (see 6, 10)	No (see 1, 6, 10)	60 (or to date 25 years membership achieved if before age 60) for pre	55 (see 7, 10)	Yes (see 7, 10)	65 for pre 1/4/14 membership (see 7, 10) SPA (min 65) for post 31/3/14	No - but see 25 year rule for pre 1/4/14 membership (see 1, 10)	65 (see 2, 10)	SPA (min 65) (see 2, 8)	65 for pre 1/4/14 membership (see 2, 10) SPA (min 65) for post 31/3/14



			1/4/14 membership (see 1, 10) SPA (min 65) for post 31/3/14 membership (see 2, 8)			membership (see 2, 7, 8)				membership (see 2, 5, 8) – EXCEPT for road crossing patrols (as there is no actuarial increase for late retirement after 65/SPA for such members)
<b>Meat Hygiene Service members</b>	55 (see 6, 11)	No* (see 6)  * was Yes prior to 1/4/14 but became No on 1/4/14 due to reg 30(5) of the LGPS Regulations 2013	60 for pre 1/4/14 membership (see 1, 11) SPA (min 65) for post 31/3/14 membership (see 2, 8)	55 (see 7, 11)	Yes (see 7, 11)	65 for pre 1/4/14 membership (see 7, 11) SPA (min 65) for post 31/3/14 membership (see 2, 7, 8)	No (see 1, 11)	60 (see 1, 11)	SPA (min 65) (see 2, 8)	65 for pre 1/4/14 membership (see 2, 11) SPA (min 65) for post 31/3/14 membership (see 2, 5, 8)
<b>Civil Servants transferred to the Environment</b>	50 (see 1, 12)	Yes, prior to age 55 (see 1, 6, 12)	60 for pre 1/4/14 membership (see 1, 12)	55 (see 7, 12)	Yes (see 7, 12)	60 for pre 1/4/14 membership (see 7, 12)	No (see 1, 3, 12)	65 (see 2, 12)	SPA (min 65) (see 2, 8)	65 for pre 1/4/14 membership (see 2, 12)

<b>Agency</b>		No, from age 55 (see 6)	SPA (min 65) for post 31/3/14 membership (see 2, 8)			SPA (min 65) for post 31/3/14 membership (see 2, 7, 8)				SPA (min 65) for post 31/3/14 membership (see 2, 5, 8)
<b>Former Learning and Skills Council for England members</b>	50 (but 55 for voluntary payment of suspended Tier 3 pension and for redundancy / business efficiency retirement) (see 1, 13)	No (see 1, 13 – and 6 for early payment of suspended Tier 3 ill health pension from 55 or over)	60 for pre 1/4/14 membership (see 1, 13) SPA (min 65) for post 31/3/14 membership (see 2, 8)	50 (see 1, 13)	No (see 1, 14)	60 for pre 1/4/14 membership (see 1, 13) SPA (min 65) for post 31/3/14 membership (see 2, 7, 8)	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 earlier LGPS deferred benefits, including pre 1/10/06 membership, which they aggregated upon rejoining the LGPS. However, paragraph B.25 of the Secretary of State guidance on	60 (see 1, 13)	SPA (min 65) (see 2, 8)	65 for pre 1/4/14 membership (see 2, 13) SPA (min 65) for post 31/3/14 membership (see 2, 5, 8)

							Early payment of Pensions dated 28/3/14 says the 85 year rule should not be applied).			
--	--	--	--	--	--	--	---	--	--	--

**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
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 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 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, whether the member meets those conditions and, even if the member does, whether that protection continues to apply is not clear given that DCLG 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 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.