

**SCOTLAND (version 1.1)**

**Discretions from 1.4.15. in relation to post 31.3.15. active members and post 31.3.15. leavers, being discretions under:**

- the Local Government Pension Scheme (Scotland) Regulations 2014 [prefix R]
- the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 [prefix TP]
- the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 [prefix A]
- the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (as amended) [prefix B]
- the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008 [prefix T]
- the Local Government Pension Scheme (Scotland) Regulations 1998 (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)	Scottish Ministers
Which employees to designate for membership (admission bodies)	R3(1)(b)	Employer
Whether to agree to an admission agreement with a NHS Scheme employing authority	R4(5)(b)	Admin. Authority
Whether to agree to an admission agreement with a body applying to be an admission body	R3(5) & RSch 2, Part 2, 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 2, paras 1(e) and 2	Scottish Ministers
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 2, para 9(d)	Admin. Authority
Define what is meant by “employed in connection with”	RSch 2, Part 2, 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	RSch 2, Part 2, para 12(c)	Transferor employer

due from that body to the Fund		
Determine rate of employees' contributions	R9(1) to R9(4)	Employer
Determine intervals at which employees' contributions are to be made	R9(10)	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)	R16(1)	Admin. Authority
Whether, how much, and in what circumstances to contribute to a shared cost APC scheme	R16(2)(e)* & R16(4)(d)*	Employer
Whether to require a satisfactory medical before agreeing to an application to pay an APC / SCAPC	R16(10)	Admin. Authority
Whether to turn down an application to pay an APC / SCAPC if not satisfied that the member is in reasonably good health.	R16(10)	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)	R16(16)	Employer
Whether, how much, and in what circumstances to contribute to shared cost AVC arrangements	R17(1) & definition of SCAVC in RSch 1	Employer
Allow late application to convert scheme AVCs into membership credit i.e. allow application more than 30 days after cessation of active membership (where AVC arrangement was entered into before 30/6/05)	TP15(1)(b) & L65(8) & former L65(9)(b)	Employer
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 2015 deferred benefits should not be aggregated with an ongoing concurrent employment	R22(6A)	Employer
Whether to extend the 12 month option period for a member to elect that post 2015 deferred benefits should not be aggregated with a new employment	R22(6B)	Employer
Whether to extend the 12 month option period for a member to elect that pre 2015 deferred benefits for a member who re-joined post 31 March 2015 can be aggregated to purchase an amount of CARE pension	TP10(6)	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 to agree to a request for early voluntary payment of benefits on or after age 55 and before age 60	R29(5) & (13)*	Employer
Whether all or some benefits can be paid if an employee reduces their hours or grade (flexible retirement)	R29(6)* & TP11(2)	Employer
Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement	R29(8)* and TPSch 2, para 2(1)	Employer (or Admin. Authority where Employer has become defunct)
Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age, other than on the grounds of flexible retirement (where the member only has post 31/3/15 membership)	R29(8)*	Employer (or Admin. Authority where Employer has become defunct)

Whether to require any strain on Fund costs to be paid “up front” by employing authority following payment of benefits under <b>R29(5)</b> (early retirement), <b>R29(6)</b> (flexible retirement), <b>R29(7)</b> (redundancy / business efficiency), or the waiver (in whole or in part) under <b>R29(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	<b>R66(2)</b>	Admin. Authority
Whether to apply the 85 year rule for a member voluntarily drawing benefits, with employer consent, on or after age 55 and before age 60 (other than on the grounds of flexible retirement).	<b>TPSch 2, paras 1(2) and 2(1)*</b>	Employer (or Admin. Authority where Employer has become defunct)
Whether to waive, in whole or in part, any actuarial reduction on pre and post April 2015 benefits which a member voluntarily draws before normal pension age other than on the grounds of flexible retirement (where the member has both pre 1/4/15 and post 31/3/15 membership)	<b>TP3(1), (5) and (12), TPSch 2, para 2(1) *</b>	Employer (or Admin. Authority where Employer has become defunct)
Whether to require any strain on Fund costs to be paid “up front” by employing authority if the employing authority applies the 85 year rule for a member voluntarily retiring before normal pension age (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>	<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 £5,000 p.a.)	<b>R30*</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>R31(7)</b>	Admin. Authority
Decide whether to commute small pension	<b>R33(1)</b>	Admin. Authority
Approve medical advisors used by employers (for ill health benefits)	<b>R35(3)</b>	Admin. Authority
Whether to use a certificate produced by an IRMP under the 2009 Scheme for the purposes of making an ill health	<b>TP12(4)</b>	Employer (or Admin. Authority where Employer has

determination under the 2015 Scheme.		become defunct)
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 age Normal Pension Age.	R36(3)	Admin. Authority
Decide to whom death grant is paid	TP17(5) to (8) & R38(2), R41(2) & R44(2)	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	R47(1)(c)	Admin. Authority
Whether to set up a separate admission agreement fund	R52(1)	Admin. Authority
Determine assets to be transferred from main fund to admission agreement fund	R52(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 guidance from Scottish Ministers 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>	R53*	Admin. Authority
Decide on Funding Strategy for	R56*	Admin. Authority

inclusion in funding strategy statement		
Whether to have a written pensions administration strategy and, if so, the matters it should include	R57(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, prospective members and Scheme employers; the format, frequency and method of communications; and the promotion of the Scheme to prospective members and their employers.	R59*	Admin. Authority
Whether to extend valuation report and certificate deadline	R60(2)	Scottish Ministers
Decide assumptions to be used in making a “cost sharing” valuation under R61	R61(5)	Scottish Ministers
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	R62(4)	Admin. Authority
Decide whether to obtain a new rates and adjustments certificate if the Scottish Ministers amend the Regulations as part of the “cost sharing” under R61	R63	Admin. Authority
Decide frequency of payments to be made over to Fund by employers and whether to make an admin charge.	R67(1)	Admin. Authority
Decide form and frequency of information to accompany payments to the Fund	R67(4)	Admin. Authority
Whether to issue employer with notice to recover additional costs incurred as a result of the employer’s level of performance	R68 & TP22(2)	Admin. Authority
Whether to charge interest on payments by employers which are overdue	R69(1)	Admin. Authority
Whether to extend six month period to lodge a stage one IDR P appeal	R72(7)	Adjudicator making stage one IDR P decision
Whether admin. authority should appeal against employer decision (or lack of a decision)	R77(2)	Admin. Authority
Whether to extend six month period for admin. authority to lodge an appeal	R77(3)(b)	Scottish Ministers

against an employer decision		
Specify information to be supplied by employers to enable admin. authority to discharge its functions	R78(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	R80(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.	R81	Admin. Authority
Date to which benefits shown on annual benefit statement are calculated	R87(5)	Admin. Authority
Whether to apply to Scottish Ministers for a forfeiture certificate (where member is convicted of a relevant offence)	R89(1) & (8)	Employer
Whether to issue a forfeiture certificate	R89(1)	Scottish Ministers
Where forfeiture certificate is issued, whether to direct that benefits are to be forfeited (other than rights to GMP – but see R92 below)	R89(4)	Employer
Whether to recover from Fund any monetary obligation or, if less, the value of the member's benefits (other than, subject to R92 below, benefits 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	R90(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 R89 or recovery of a monetary obligation under R90 should deprive the member or the member's surviving spouse or civil partner of any GMP entitlement	R92	Employer
Decide whether to issue a Certificate of Protection if the member does not request one within 12 months of a	R93(4A)	Employer

reduction or restriction in pay		
Agree to bulk transfer payment	R96(1)(b)	Employer / Admin. Authority / trustees of new scheme
Agree set aside of bulk transfer assets / cash and acquisition of rights in new scheme	R96(4)(a)	Fund actuary / new scheme actuary
Determine amount of, and adjustments to, bulk transfer payment	R97(1) & (2)	Fund actuary
Determine who should bear bulk transfer actuarial costs (where more than one employing authority is involved in the transfer)	R97(5)	Fund actuary
Extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS	R98(6)	Employer
Allow transfer of pension rights into the Fund	R98(7)	Admin. authority
Agree bulk inter fund adjustment terms (where 10 or more members affected by a single event)	R100(3)	Actuaries for both Funds
Whether to allow a member to select final pay period for fees to be any 3 consecutive years ending in the 10 years prior to leaving and ending on the anniversary of the date of 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 1.4.15.)	TP3(1)(a), A43(5)	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 1.4.15.)	TP3(6), TP4(6)(c), TP8(4), TP10(2)(a), TP17(2)(b) & A43(10)	Admin. authority
Decide to treat child as being in continuous full-time education or vocational training despite a break	RSch 1 & TP17(9)(a)	Admin. Authority
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 in certain cases where no Fund is specified within paragraphs 1 to 4 of the table in Part 1 of RSch 4	RSch 4, Part 1, para 3	Scottish Ministers

Decide policy on abatement of pre 1 April 2015 element of pensions in payment following re-employment	TP3(11) & A64(1)* & A65(4)(c)	Admin. Authority
Extend time period for capitalisation of added years contract	TP15(1)(c) & TSch1 & L82(5)	Admin. Authority

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

#### Formulating and publishing a policy under the 2015 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 who ceased active membership on or after 1.4.09. and before 1.4.15., being discretions under:**

- **the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 [prefix A]**
- **the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (as amended) [prefix B]**
- **the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008 [prefix T]**
- **the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 [prefix TP]**
- **the Local Government Pension Scheme (Scotland) Regulations 2014 [prefix R]**
- **the Local Government Pension Scheme (Scotland) Regulations 1998 (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 2015, 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 2015.	B12*	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	A25(2)	Admin. Authority

AVC/SCAVC funds		
Allow late application to convert scheme AVCs into membership credit i.e. allow application more than 30 days after cessation of active membership	TSch1 & L65(8) & former L65(9)(b)	Employer
Extend time period for capitalisation of added years contract	TSch1 & L82(5)	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	A42(2)	Employer
Outstanding employee contributions can be recovered as a simple debt or by deduction from benefits	A40(3)	Admin. Authority
Issue a certificate of protection of pension benefits where eligible member fails to apply for one	A43(5)	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	A43(10)	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	A45(1) & (2)	Employer
Allow extension of period within which a scheme member must submit election for benefits or alter the date from which he / she elects to have pension paid	A46(7) & (8)	Admin. Authority
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	A48(2)	Admin. Authority
Approve medical advisors used by employers (for early payment, on grounds of ill health, of a deferred benefit)	A52(2)	Admin. Authority
Whether to extend six month period to lodge a stage one IDRPs appeal	A54(7)(b)	Person making stage one IDRPs decision
Decide procedure to be followed by the Scottish Ministers when exercising their stage two IDRPs functions and decide the manner in which those functions are to be exercised	A56(8)	Scottish Ministers
Whether admin. authority should appeal against employer decision (or lack of a decision)	A59 (2)	Admin. Authority

Whether to extend six month period for admin. authority to lodge an appeal against an employer decision	<b>A59(3)(b)</b>	Scottish Ministers
Specify information to be supplied by employers to enable admin. authority to discharge its functions	<b>A60(1)(b)</b>	Admin. Authority
Decide policy on abatement of pensions following re-employment	<b>TP3(11) &amp; A64(1)* &amp; A65(4)(c) &amp; T12</b>	Admin. Authority
Whether to apply to the Scottish Ministers for a forfeiture certificate (where member is convicted of a relevant offence)	<b>A66(6)</b>	Employer
Whether to issue a forfeiture certificate	<b>A66(1)</b>	Scottish Ministers
Where forfeiture certificate is issued, whether to direct that benefits are to be forfeited	<b>A66(2)</b>	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	<b>A67(1) &amp; (2)</b>	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	<b>A68(2)</b>	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	<b>A70(2) &amp; (3)</b>	Employer
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	<b>B11(2)</b>	Employer
Whether to grant application for early payment of deferred benefits on or after age 50/55 and before age 60	<b>B30(2)*</b>	Employer (or Admin. Authority where Employer has become defunct)
Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early	<b>B30(5)*</b>	Employer (or Admin. Authority where Employer has become defunct)
Decide whether deferred beneficiary meets permanent ill health criteria	<b>B31</b>	Admin. Authority

Decide to whom death grant is paid	<b>B23(2) &amp; B32(2) &amp; B35(2) &amp; A95(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; TP17(9)(a)</b>	Admin. Authority
Decide whether to commute small pension	<b>B39 &amp; A98</b>	Admin. Authority
Decide whether to commute pension on grounds of serious ill health	<b>B40 &amp; A99</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>B43(1)(c)</b>	Admin. Authority
Decide valuation day for pension Sharing Order	<b>A86(5)</b>	Admin. Authority
How to discharge Pension Credit liability	<b>A89(1) &amp; (2)</b>	Admin. Authority
Extend implementation period for a Pension Credit	<b>A94(3)</b>	Regulatory Authority
Decide charges to be levied in Pension Sharing cases	<b>A101</b>	Admin. Authority

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

#### Formulating and publishing a policy under the 2009 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 (Scotland) Regulations 1998 (as amended) in relation to pre 1.4.09. scheme leavers**

<u>Discretion</u>	<u>Regulation</u>	<u>Exercised by</u>
Allow member 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]	21(1)(b)	Employer
Select appropriate final pay period for deceased member [Note: to all intents and purposes this discretion is now spent]	21(8)	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 [Note: to all intents and purposes this discretion is now spent]	22(10)	Admin. authority
Grant application from a post 31.3.98. / pre 1.4.09. leaver for early payment of benefits on or after age 50 and before age 60 (see Note below)	30(2)*	Employer
Waive, on compassionate grounds, the actuarial reduction applied to benefits paid early for a post 31.3.98. / pre 1.4.09. leaver	30(5)*	Employer
Pre 1.4.09. optants out only to get benefits paid from NRD if employer agrees	30(7A)*	Employer
Decide, in the absence from a post 31.3.98. / pre 1.4.09. 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	33(1)(b)	Employer
Decide to whom death grant is paid in respect of post 31.3.98. / pre 1.4.09. leavers	37(1) & 150(4)	Admin. Authority
Decide to treat child as being in continuous education or vocational training despite a break (children of post 31.3.98. / pre 1.4.09. leavers)	Reg 17(9) of the LGPS (Transitional Provisions and Savings) (Scotland) Regs 2014 and definition in Sch 1 of the LGPS (Scotland) Regulations 2014	Admin. Authority
Apportionment of children's pension amongst eligible children (children of post 31.3.98. / pre 1.4.09. leavers)	46(1)	Admin. Authority
Pay child's pension to another person for the	46(2)	Admin. Authority

benefit of the child (children of post 31.3.98. / pre 1.4.09. leavers)		
Agree to commutation of small pension (pre 1.4.09. leavers or pre 1.4.09. Pension Credit members)	48 & 153	Admin. Authority
Commute benefits due to exceptional ill-health (pre 1.4.09. leavers or pre 1.4.09. Pension Credit members)	49 and 154	Admin. Authority
Consent to a member's former employer assigning to the new employer rights under any SCAVC life assurance policy	70(7)(a)	Employer
Whether to require any strain on Fund costs to be paid "up front" by employing authority following early payment of a deferred benefit on health grounds or from age 50 with employer consent (pre 1.4.09. leavers) - (see Note below)	79(5)	Admin. Authority
Agree dates on which instalments under reg 79(5) are due	79(7)(b)	Employer / 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 (pre 1.4.09. leavers)	87(2)	Employer
Outstanding employee contributions can be recovered as a simple debt or by deduction from benefits (pre 1.4.09. leavers)	88(3)	Admin. Authority
Timing of pension increase payments by employers to fund (pre 1.4.09. leavers)	90(4)	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 (pre 1.4.09. leavers)	91	Employer
Pay death grant due to personal representatives without need for grant of probate / letters of administration (death of pre 1.4.09. leaver)	94	Admin. Authority
Approve medical advisors used by employers (re ill health benefits for pre 1.4.09. preserved benefits payable on health grounds)	96(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 (pre 1.4.09. leavers)	98	Admin. Authority
Appeal against employer decision, or lack of a decision (pre 1.4.09. leavers)	104(1)	Admin. Authority
Extend appeal period under reg 104	104(2)	Secretary of State
Date to which benefits shown on annual deferred benefit statement are calculated	105A(5)	Admin. Authority
Abatement of pensions following re-employment (pre 1.4.09. leavers)	109* & 110(4)(b)	Admin. Authority

Forfeiture of pension rights on issue of Secretary of State's certificate (pre 1.4.09. 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 (pre 1.4.09. 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) (pre 1.4.09. leavers)	113(2)	Employer
Recovery from Fund of financial loss caused by employee, or amount of refund if less (pre 1.4.09. leavers)	115(2) & (3)	Employer
Recovery of half Payment in Lieu from refund of contributions (under Part III of NI Act 1965)	115(4)	Admin. Authority
Retention of CEP where member transfers out (pre 1.4.09. leavers)	118	Admin. Authority
Discharge Pension Credit liability (pre 1.4.09. Pension Sharing Orders)	144	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 (Scotland) Regulations 1998

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 Superannuation (Scotland) Regulations 1987 (as amended) in relation to pre 1.4.98. scheme leavers**

<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)	E2(6)(b)	Employer
Decide to whom death grant is paid in respect of pre 1.4.98. retirees / pre 1.4.98 deferreds	E11ZA	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 and Savings) (Scotland) Regs 2014 and definition in Sch 1 of the LGPS (Scotland) Regulations 2014	Admin. Authority
Apportionment of children's pension amongst eligible children (children of pre 1.4.98. retirees / pre 1.4.98. deferreds)	E9(7)	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)	E9(7)	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 (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (as amended)**

Under Regulation 51A of the Discretionary Payments 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:

To base redundancy payments on an actual weeks pay where this exceeds the statutory weeks pay limit.	4	Employer
To award lump sum compensation of up to 104 weeks' pay in cases of redundancy or termination of employment on efficiency grounds.	35	Employer
To award compensatory added years to a person aged 55 or over with 5 or more	8(1)	Employer

years membership (or notional membership) of the LGPS in cases of redundancy, termination of employment on efficiency grounds, or cessation of a joint appointment		
How to apportion any surviving spouse's annual compensatory added years payment where the deceased person is survived by more than one spouse	20(2)	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	26(2)	Employer
Whether, in respect of the spouse or civil partner of a person who ceased employment before 1 April 1998, the normal pension suspension rules should be disapplied during a period of re-marriage or new civil partnership i.e. whether the spouse's or civil partner's annual compensatory added years payments should continue to be paid	20(6)	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	20(4)	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 with another person who is also entitled to a spouse's or civil partners annual CAY payment, the normal rule requiring one of them to forego payment whilst the period of marriage, civil partnership or co-habitation lasts, should be disapplied i.e. whether the spouses' or civil partners' annual CAY payments should continue to be paid to both of them	20(6)	Employer
Intervals at which instalments of annual compensation are payable (paying authority may agree to pay at different intervals to that on which LGPS pension	29(1)	Paying authority

is payable)		
Agree to pay annual compensation on behalf of employer and recharge payments to employer	31(2)	Admin. Authority
To award a lump sum of up to 30 weeks' pay in cases where, in the case of a member of the LGPS who has 2 or more years membership, the employer terminates employment on the grounds of ill health or infirmity of mind or body but does not terminate the employment under regulation 34 of the LGPS Regulations (Scotland) 2014.	49B	Employer

Formulating and publishing a policy under regulation 51A of the Discretionary Payments Regulations 1998

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.

**In addition to the matters outlined in the table above in respect of which the employer must have a written policy, the employer also has discretions to exercise in relation to the following matters (although there is no requirement to have a written policy)**

<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.	39(2) and 43	Employer
Suspend or discontinue injury allowance if person becomes capable of working again	39(4)	Employer
Amount of injury allowance following reduction in pay after sustaining an injury or contracting a disease as a result of	40(3) and 43	Employer

anything required to do in carrying out duties of job.		
Amount and duration of injury allowance following cessation of employment where reg 40 payment was being made but reg 39 does not apply.	41	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.	42(3), 42(6) and 43	Employer
Reinstate spouse's or civil partner's injury allowance following earlier cessation due to cohabitation, remarriage or registration of a new civil partnership	42(4)	Employer
Amount of death in service gratuity payable to surviving dependant, spouse or civil partner	46	Employer
Amount of retirement gratuity payable	47	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	47(4)	Employer
Amount of redundancy gratuity payable	48	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	48(4)	Employer
Amount of gratuity payable to any other surviving dependant, spouse or civil partner where amount of annuity payments paid under 48(4) fall short of their capital value at date of award	48(7)	Employer

### 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.

10<sup>th</sup> April 2015