



Looking forward to your retirement

Guidance notes on employer discretions policy

The Local Government Pension Scheme Regulations

All employers who participate in the Local Government Pension Scheme are required to draw up a discretions policy in accordance with Regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008, and Regulation 60 of the Local Government Pension Scheme Regulations 2013.

The policy must be published and kept under review. A copy of the employer's published policy statement must be sent to the Pension Fund administering authority (Peninsula Pensions). Any amendments to the policy must be sent to Peninsula Pensions within one month of the amendment.

There are different types of discretions

There are many discretions in the current regulations, together with several more extant from the previous regulations – please see our [website](#) for the list.

However, there are only a handful of discretions where the employer is required to have a written policy statement, and these discretions are shown below. (Although not all discretions require a written policy, it may be useful for you to formulate a policy document which includes each discretion). For full guidance, please see the full [LGPS Guidance Notes](#).

What do you need to include?

Each employing authority must prepare a written statement of its policies relating to the exercise of its functions under regulations:

- 12: Power of employing authority to increase total membership of active members
- 16: Shared Cost Additional Pension *
- 17 and TP15: Shared Cost AVC arrangement
- 18: Flexible retirement
- 30: Choice of early payment of pension according to the Benefits Regulations
- 31: Power of employing authority to grant additional pension **
- TPSch 2: Power to 'switch on' the 85 year rule

* Pension awarded under Regulation 16 is reduced on redundancy / efficiency retirement and the full cost has to be paid to the Pension Fund while the member is still active.

** Pension bought by the employer under Regulation 31 isn't reduced when bought into payment when the member is retiring on redundancy / efficiency grounds, so incurs an additional strain cost. Regulation 31 can be exercised within 6 months of the employee leaving on redundancy or efficiency grounds.

The 85 Year Rule

The LGPS (Transitional Provisions and Savings) Regulations 2014 require employers to have a policy on whether to agree to apply the 85 year rule to a scheme member wishing to voluntarily draw (non-flexible retirement) benefits on or after 55 and before age 60. The 85 year rule does not automatically apply if the employee decides to voluntarily draw (non-flexible retirement) benefits on or after age 55 and before age 60 but you can agree to apply the 85 year rule. If you do, you would have to meet any strain on Fund cost (as under the 2008 Scheme). If you do not agree to apply the 85 year rule, the scheme member would meet any strain on Fund cost via an actuarial reduction applied to their pension. However, you do also have the discretion to waive actuarial reductions applied to a members benefits but this would incur a Strain cost.

Flexible Retirement

Each scheme employer must formulate, publish and keep under review a separate policy on flexible retirement should they decide to offer this option to their scheme members.

When designing a flexible retirement policy the employer will wish to ensure it fits with any other flexible working policies the employer may have. There are a number of factors that an employer may wish to consider when devising a flexible retirement policy e.g. flexible retirement may:

- be an effective means to reduce capacity
- help to avoid redundancies and the associated strain on Fund pension costs and redundancy payment/compensation costs
- enable the employer to retain or attain a balanced age profile within the workforce
- enable the transfer of skills / knowledge
- offer the opportunity of better succession planning and mentoring
- facilitate the retention of expertise, knowledge and contacts
- offer an acceptable solution to staff who are currently a blockage to promotion or reorganisation
- help alleviate burn out and stress
- improve morale
- offer the flexibility and productivity associated with part-time working / downshifting
- assist staff to
 - ease down into retirement
 - make a gradual adjustment to life without paid employment
 - gradually break free of the routine and habits of work
 - keep mentally / physically active

In deciding their flexible retirement policy, employers will need to:

1. Consider whether or not there should be a minimum reduction in hours or grade – LGPS regulations do not specify a minimum but employers might consider that, for example, an employee would have to take a minimum 20% cut in hours or a minimum reduction of one grade, before flexible retirement might be considered.

2. Consider whether or not the employee should commit to a reduction in hours or grade for a minimum period of time (say 6 months).
3. Consider whether or not the employee should commit to remaining in employment with the employer for a minimum period of time (say 1 year or to age 60 if earlier).

Your flexible retirement policy should also set out as part of the agreement:

- whether, in addition to the benefits the member has accrued prior to 1 April 2008 (which the member must draw), to permit the member to choose to draw
 - all, part or none of the pension benefits they accrued after 31 March 2008 and before 1 April 2014, and / or
 - all, part or none of the pension benefits they accrued after 31 March 2014, 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)

For more guidance on what to consider within your Flexible Retirement, please see the [LGE Circular 193](#) (pages 13 to 34) and the [LGA Technical Guide](#). Please send Peninsula Pensions a copy of your policy.

All the discretions that require you to have a written policy have been included in our [Example Policy document on our website](#).

Other Regulations that require a separate policy: Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations

Under Regulation 7 of the Discretionary Compensation Regulations **2006** and Regulation 26 of the Discretionary Compensation Regulations **2000**, 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 discretionary compensation. Please see the [full list of discretions](#) for more guidance.

Discretions for scheme members (excluding councillor members) who ceased active membership on or after 1.4.08 and before 1.4.14

It will also be necessary to draw up a new list of discretions for post-31st March 2008 / pre-1st April 2014 leavers as you will still have to publish a policy in respect of your discretions for these leavers. For example, the need for employer consent to applications for early payment of benefits for employees under the age of 60 will fall away on 1st April 2014 as there is no equivalent 'consent' provision from April 2014 but, as it will still be possible for pre-1st April 2014 leavers to ask for employer consent to the early release of their deferred benefits, you will have to have a policy in this respect.

A Full list of discretions can be found on the [LGA Website](#)

Policy Requirements

- Each employing authority must send a copy of its statement to each relevant administering authority and must publish its statement within three months of becoming an employer within the LGPS.
- An employing authority must:
 - Keep its statement under review, and
 - Make such revisions as are appropriate following a change in its policy.
- Each employing authority must send a copy of its revised statement to each relevant administering authority and must publish its statement as revised within one month of making any amendments.
- In preparing, or reviewing and making revisions to its statement, an employing authority must
 - consider the extent to which the exercise of any of the functions under the mentioned regulations in accordance with its policy 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 foreseeable costs.
- Please note that a relevant administering authority – in relation to an employing authority – is any authority which is an appropriate administering authority for that employer’s employees.

Points for employers to consider when setting policies

Costs

This may go without saying, but exercising discretionary powers comes at a price. An employer is required to formulate policies that do not lead to loss of confidence in public service. It follows, therefore, that these policies should be affordable.

Exercising the major discretions may result in a cost to the employer (commonly called ‘pension strain’). However, an employer can obtain an estimate of the strain cost from Peninsula Pensions before making a decision about whether to apply a particular discretion or not. This is only an option if you have stated in your policy that you may allow discretion or make a decision on a case for case basis etc.

Fettering discretions (restricting or limiting)

Your pension policy should show the basis on which the employer would make its decisions on the various discretions.

The government has advised you should not ‘fetter their discretion’; i.e. policies should not be so rigid or restrictive as to prevent flexibility where a (possibly unanticipated) situation requires it.”

It is not advisable just to simply state you will not apply a discretion as this will restrict your flexibility and bind employers to make the same decision in every single case. The government have advised that in these cases, a scheme employer can state that’s its normal policy is not to exercise the discretion but then goes onto explain the circumstances where the discretion might be exercised. For example:

'the authority will not exercise discretion x on grounds of cost, except in exceptional circumstances where there is clear merit or where the cost to the authority is not considered to be significant or material'

Other example wording:

"This discretion will only be exercised in the most exceptional circumstances having regard to the Council's general policies and the particular circumstances of the case.

The xxxxx Council will only consider exercising these discretions in the most exceptional circumstances having particular regard to the following:

- The interests of the Council;
- Any potential benefits or savings to the Council;
- Other options that are, from time to time, available under the Council's severance arrangements;
- The member's personal circumstances;
- The additional contributions due to the Fund;
- The ability of the Council to meet the cost of granting such an award;
- The funding position of the Council within the xx Pension Fund."

Anti-discrimination laws

In drafting any policy, employers should have regard to the age regulations, whether it is on an 'each case on its merits' policy, one that applies a standard approach, or even one that uses either approach depending on the circumstances.

The policy will need either to be free of age influence, or if age-related criteria or criteria that could be indirectly age discriminatory are used, the employer should be reasonably assured that the policy falls within the exceptions provided by the age regulations. If not, the employer would need to be able to defend any claim of age discrimination by satisfying a tribunal that its policy is objectively justified. In order to do so, the employer would have to demonstrate that the policy pursues a legitimate aim and that it is proportionate (in other words, it is an appropriate and necessary means of achieving that aim). Employers will need to provide real evidence to support any claim of objective justification. Assertion alone will not be sufficient and each case must be considered on its individual merits.

Age discrimination is not the only form of discrimination that must be avoided but it is the forefront of most policy makers' minds. Care needs to be taken, also, to make sure that the criteria do not discriminate on other grounds, such as:

- Gender
- Race
- Disability
- Sexual orientation
- Religion, or
- Belief.

Why 'follow my leader' isn't necessarily sensible.

Some employers play 'follow my leader' and wait for the lead authority that holds the pension fund for their area to issue their employer discretions policy. A simple 'copy and paste' procedure then follows, with a 'top and tail' to make it their own.

Quite often, the lead authority is the biggest employer in the local fund. It is thought of as the local expert in the LGPS and that it's sensible to follow its lead. However, the membership demographics and funding levels of one employer are unlikely to match that of another, so following the lead authority may not be appropriate.

Each employer is advised, therefore, to consider the issues outlined in these notes and formulate their own policies based on their membership base and budgetary constraints.

Remember, your policy needs to be:

Workable – easy and definitive

Affordable – fits in with your budget

Reasonable – fair or 'not unreasonable'

Foreseeable – affordable for the future budget (2/3 years)

If you need further advice about setting up an Employer's Discretion Policy, please contact Emma Davies on 01392 383000 or via email emma.davies@devon.gov.uk