

# New Somerset Council

---

## Pensions Policy and Processes

### Policy Statement

Somerset Council uses the Local Government Pension Scheme (LGPS), the Teachers' Pension Scheme (TP), the National Health Service Pension Scheme (NHS) and the Nest Scheme as our qualifying workplace pension schemes. The terms and conditions of employment dictate which pension scheme a worker can join.

This policy is predominately focused on the LGPS, for information on the other pension schemes **please ask** .....

It covers:

- Auto enrolment
- Non-pensionable absences; e.g. unpaid leave
- Retirement
- Early retirement with an unreduced pension
- Flexible Retirement
- Ill health retirement

The LGPS is a statutory pension scheme that has regulations set out in legislation however there are certain discretions that the employer can make to enhance member's benefits, these are set out in the Council's Employer Discretions Policy ([link](#)) with Peninsula Pensions who administer the LGPS on behalf of Somerset Council.

This policy does not form part of the Somerset Council Terms and Conditions and may be subject to change.

### Process

#### Auto-enrolment

Employers are required to put all workers who meet certain age and earnings criteria into a qualifying workplace pension scheme. Workers aged between 22 and State Pension age, who earn above the enrolment earning threshold set by the UK Government must be automatically enrolled if they are not already in a qualifying workplace scheme, see her for current threshold [Workplace pensions: Joining a workplace pension - GOV.UK \(www.gov.uk\)](https://www.gov.uk/workplace-pensions-joining-a-workplace-pension).

Workers who earn less than the earnings threshold or who are under 22 or above State Pension age will not be automatically enrolled but have the right to request to opt in to a scheme at any time.

The earnings are assessed on a monthly basis so those who earn more than 1/12<sup>th</sup> of the earning threshold in a month will be automatically enrolled, even if total earnings for the year are less than the annual amount. If the worker has more than one position, each of their positions will be assessed separately.

If the worker is employed as a teacher, they will be enrolled into the Teachers' Pension Scheme. Unless one of the following exceptions applies -

- They retired on grounds of ill health pre 1.4.97, are under age 60 and working part-time whilst still in receipt of an ill health pension
- They are a protected member on a full time contract, if they have an additional part-time contract this contract cannot be enrolled into the Teachers Pensions Scheme.

If they are a non-teaching employee, they will be enrolled into the Local Government Pension Scheme.

Somerset Council has an authorised NHS Pension Direction Order in place under section 7(2) of the Superannuation (Miscellaneous Provisions) Act 1967 entitling eligible employees / workers of Somerset Council to remain in, or re-join, the NHS Pension Scheme from their first day of employment. Eligibility is determined as part of the recruitment process where applicable (this applies to certain roles within Public Health only).

If they are paid via a fee arrangement they will be enrolled into the Nest scheme.

### **Pension opt out**

Employees have the right to opt out if they wish. If they do this within three months of being enrolled into the Local Government, National Health Service or Teachers Pension Schemes they will receive a refund of any contributions that have been paid (with the appropriate tax adjustments). If they opt out within one month of being enrolled into the Nest Scheme they will receive a full refund.

Approximately every three years near the anniversary of the date that pensions Automatic Enrolment rules first applied (May), the Government requires employers to

re-assess their workers and re-enrol those that meet the criteria and who are not currently in a workplace pension scheme.

Also, all workers who are currently in the 50/50 section of the Local Government Pension Scheme will be re-enrolled into the main section of the scheme. These workers will be able to opt back in to the 50/50 section in the month following.

If a worker has opted out within a year of the cyclical re-enrolment date (last date 1<sup>st</sup> May 2022) then they will not be re-enrolled back into a pension scheme on this date. However, they can opt back in to the pension scheme whenever they would like.

### **Non pensionable absences (unpaid leave)**

If the employee is a member of the Local Government Pension Scheme, they can elect to pay contributions for the unpaid leave when they return to work in order that the period of unpaid leave can be counted for pension purposes. If they elect to do this within 30 days of receipt of written communication of this option or within 30 days of returning to work the employer will pay two thirds of the cost of the lost pension. If the employee elects to do this more than 30 days after returning to work or more than 30 days after receipt of written communication, the full cost of the lost pension is borne by the employee. The contributions payable will be based on the cost of paying for the pension lost during the unpaid period. Peninsula Pensions can be contacted for further advice. [Also see the Peninsula Pensions Buying Lost Pension Factsheet {add link}](#).

Examples of unpaid leave include participating in the purchase leave scheme, the unpaid part of additional maternity or adoption leave or shared parental leave and strike action.

### **Redundancy**

Where a redundancy situation applies and the employee is aged 55 and over, the employee's pension is awarded automatically without reduction and the Council bears the costs of the early withdrawal of pension.

### **Retirement**

Employees are able to decide their own retirement age within the rules of their pension scheme. Employees wishing to retire should notify their Line Manager in writing and will be required to comply with their contractual notice period.

Members of the LGPS may resign and access their pension at any time from their 55th birthday, although if 'retiring' between the ages of 55 and 65 years, there may

be an actuarial reduction in the pension benefit. Employees considering an early retirement should obtain a pension quotation (link) before making a decision.

The normal pension age for benefits that were accrued to 31<sup>st</sup> March 2014 is 65 and for benefits built up from 1<sup>st</sup> April 2014 it is the same as the State Pension age, which is also the earliest date on which an individual may draw their State Pension. An employee choosing to retire at the State Pension age will receive their LGPS benefits without reduction. Details of the State Pension age can be found on [www.direct.gov.uk](http://www.direct.gov.uk). If an employee chooses to draw their pension before their normal pension age their pension benefits will be reduced. The reduction will be based upon how many years before their normal pension age they are choosing to retire. Where an employee chooses to work beyond their State Pension age they may continue to make pension contributions and any additional service will be recognised for the purposes of calculating their pension. An employee is entitled to defer drawing their pension until the date of their 75<sup>th</sup> birthday at the latest.

### **Reductions in Pay**

If, within 10 years of leaving, a member (voluntarily or compulsorily) has restricted pay, reduces their grade or moves to a position with less responsibility (other than in connection with an agreed flexible retirement), the employee can choose to use the average of any 3 consecutive years pay in the last 10 years ending on a 31st March (plus RPI from the end of the 3 year period).

### **Early retirement with an unreduced pension**

#### **In the interest of efficiency of the service**

Applies to employees aged 55 and over where the employee receives immediate access to an unreduced pension and there will be upfront costs to the Council for the early payment of benefits. Early retirement in the 'interests of efficiency in the service' may be used in certain exceptional circumstances and each case must be justified in terms of criteria and cost. It is not a general entitlement to retire early, nor is it an alternative to or substitute for disciplinary action or positively managing capability. In cases where disability materially affects the employee's performance this policy must not be applied until every effort has been made to explore reasonable adjustments in the job, in line with the Equality Act 2010.

The authority to agree a retirement in the interests of efficiency of the service sits with **Management level**.

The criteria for considering possible early retirement in the interests of efficiency of the service of employees aged 55 and over include:

- To facilitate an internal re-organisation where redundancy does not apply, and redeployment/training options have been exhausted.

- To encourage retirement where due to no fault of the employee, the work method or job content have altered to such an extent\* that they affect fundamentally their competence and it is deemed inappropriate to apply the Council's Capability Procedure.
- To allow the retirement of an employee whose failing health significantly impedes their performance in the job, and where the criteria for a retirement on the grounds of ill-health cannot be met.

\*If the job content alters significantly there may be a redundancy situation and this must first be discounted.

### **Compassionate grounds**

Requests for early retirement on compassionate grounds are rare and should be considered on a case by case basis. There are cost implications for the early release of pension benefits and therefore each case must be considered and justified. Consideration may be given to waiving the actuarial reduction in benefits, under the provision of the LGPS Regulations, but the costs must be identified in the proposal. Applications to retire on compassionate grounds will be accompanied by supporting evidence, with relevant medical evidence as appropriate, and these will not proceed for decision until such evidence has been made available.

Requests from ex-employees for access to a deferred pension will also be considered on compassionate grounds, subject to relevant evidence being made available, as above.

The authority to agree an early retirement or deferred early retirement on compassionate grounds, with or without costs, resides with a **Senior manager**.

The exceptional circumstances for an early retirement on compassionate grounds would typically include:

- any other circumstance, which may prevent the employee working for some considerable time in the future, but not sufficient to be permanent ill-health
- Caring responsibilities for a parent, spouse or child that affect their ability to work
- Terminal illness of an immediate family member

### **Flexible Retirement**

Employees aged 55 and over who are members of the Local Government Pension Scheme (LGPS) may request payment of early retirement benefits whilst remaining in the Council's employment on reduced hours and/or a lower grade. This is subject to the approval of the **Senior Leadership Team Member and the Director of HR and OD (see the Flexible Retirement Approval form)**.

A flexible retirement is allowed at the Council's discretion. The Council will apply this discretion providing the arrangement is considered operationally viable. The reduction in salary must be at least 20% either through reducing hours and/or grade and should be permanent. This is because the combined pay and pension are subject to tax deductions, making a reduction in salary of at least 20% should avoid the total earnings being subject to a higher tax bracket. Check the income tax earnings limits using this link [Income Tax rates and Personal Allowances : Current rates and allowances - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/income-tax-rates-and-personal-allowances). The employee should remain in employment for a minimum of one year from the effective date of the flexible retirement. The employee takes all of their accrued pension at the point the flexible retirement begins. The Council will only consider deviations to the above in exceptional circumstances. Please refer to SC's Pensions Discretions Policy.

Flexible retirement does not apply to employees who are receiving a redundancy payment and early pension benefits or who are taking early retirement in the interests of efficiency of the service or on compassionate grounds.

In applying for flexible retirement both the Council and the employee have two decisions to make: whether the flexible working arrangements proposed are operationally viable and whether the flexible retirement is cost effective.

The possible outcomes are:

- Flexible working request and early retirement benefits are agreed
- Flexible working request is agreed but early retirement benefits are refused
- The flexible working request is declined, therefore flexible retirement cannot take place

The only way an individual can remain in work and draw their pension is through flexible retirement. If early retirement benefits are refused in relation to a flexible working request an employee can choose to retire from the age of 55 and accept the reduction in pension.

### **Points of Note**

It is recommended that any flexible working request is made a minimum of three months in advance of the intended start date to take into account the timescales of the two processes that are followed. [Please see What Happens with a Flexible Retirement Request.](#)

Peninsula Pensions and [HR Admin and Payroll](#) timelines and deadlines must be taken into account when planning an effective date for any new working arrangements. For example, it is better for the employee if their new working arrangements start at the beginning of a month, otherwise commencement of pension payments will be delayed. This is because [HR Admin and Payroll](#) need figures from the final payroll

run to be able to provide the information to Peninsula Pensions to enable them to calculate the CARE pension scheme benefits, as set out in the LGPS Pension Regulations.

Payment of the lump sum is made by Peninsula Pensions and the monthly pension is administered by **HR Admin and Payroll**.

Employees retiring before their normal retirement age may suffer an actuarial reduction in their pension benefits to reflect the early payment. (Further information can be obtained from Peninsula Pensions).

Where pension benefits are reduced in accordance with actuarial tables, the Council may use its discretion to waive the actuarial reduction in accordance with the Council's flexible retirement process on the following grounds only:

- compassionate reasons
- the member has protected rights
- in exceptional cases, where the Council is satisfied there is a clear business case

There may be a cost to the Council for the payment of benefits for employees between ages 55 – 60 which will be considered when making a decision.

As an application for flexible retirement can result in a range of decisions, the employee may not wish to proceed with the new arrangements if the service is not able to approve the entire request.

If the employee wishes to make any significant changes, such as a change in role, after the flexible retirement has been affected there could be pension entitlement implications. In these circumstances, the employee should seek information from Peninsula Pensions.

On taking flexible retirement the current pension is closed. Employees reducing their hours or taking a reduction in pay will be automatically enrolled into a new pension but can opt-out (see the Peninsula Pensions website).

**Employees should be aware that it cannot be guaranteed that Peninsula Pensions will be able to pay the lump sum on the day of retirement or that the first pension payment will be made at the month of retirement. This is due to the information requirements of the CARE Pension Scheme.**

### **III Health Retirement**

For a LGPS member with at least two years' continuous contributory membership in the pension scheme, an ill health retirement may be available if either:

1. there is permanent incapacity to discharge efficiently the duties of the relevant employment by reason of ill health, or,
2. the ill health condition is likely to restrict the member from undertaking gainful employment before normal retirement age

The Council must make two decisions, whether to terminate the employee's employment on the grounds of incapacity due to ill health and to determine the amount entitlement to pension. Both decisions are conditional upon the receipt of a medical certification. The medical processes should be completed prior to termination to enable the employer to decide whether or not to terminate a member's employment with an entitlement to an ill-health retirement pension. In practice therefore the two decisions need to be taken in tandem.

In the circumstances above, the LGPS provides a three tier ill-health retirement package; providing graded levels of benefit based on how likely the member is capable of gainful employment after they leave.

### **Tier 1 Arrangements**

For a member with at least two years' continuous contributory membership in the pension scheme and no reasonable prospect of being capable of gainful employment before normal retirement age, ill health benefits in the new scheme are based on membership built up to the date of leaving plus 100% of prospective membership from leaving to normal retirement age. In other words, the pension will be based on membership as if the member had stayed in the scheme until age 65.

### **Tier 2 Arrangements**

For a member with at least two years' continuous contributory membership in the pension scheme and unlikely to be capable of gainful employment within a reasonable period of leaving, but who may be capable of gainful employment at some date in the future before normal retirement age, ill health benefits in the new scheme are based on membership built up to leaving plus 25% of prospective membership from leaving to normal retirement age.

For Tiers 1 and 2, there are protections for existing scheme members who will be aged 45 or over on 31st March 2008, to ensure they receive no less than they would have done under the old scheme.

Ill health enhancement for part time employees falling into Tier 1 or 2 is based on the hours they are working at the date of leaving. An employee who drops their hours prior to ill health retirement, as part of a trial period to see if they are capable of



remaining in work, for example, could lose out unless the hours are increased to the previous level just before retirement. Alternatively if the Occupational Health Practitioner is able to certify that the reason for the reduction in hours is due to ill health, the ill health enhancements will be based on the hours before they were reduced.

### **Tier 3 Arrangements**

For a member with at least two years' continuous contributory membership who is permanently incapable of their local authority employment but is judged by an Independent Registered Medical Practitioner (IRMP) to be capable of gainful employment within a reasonable period after leaving that employment will be entitled to their annual accrued benefits payable as a pension for such time as the member does not obtain gainful employment up to a maximum of three years, or until the Council stops payments following the review see Somerset Council's Pensions Discretions.

### **Tier 3 Definitions**

'Reasonable period' means a period of three years.

'Gainful employment' means any paid employment for not fewer than 30 hours in each week for a period of not fewer than 12 months.

The 3rd tier member will be required to notify the Council when employment is found providing details, including pay, working hours and length of contract of that employment, and the Council will then stop payments if this was 'gainful employment.'

If payments have continued when gainful employment has been found, the Council has powers to recover any overpayment from the 3rd tier member.

Should the member's health subsequently deteriorate as a result of the ill health condition that gave rise to the meeting of the Tier 3 criteria, regulation 37 permits consideration of ill health retirement and the awarding of a Tier 2 pension, but such a determination has to be made within three years of the date of the Tier 3 payments ceased.

The definition of the status of a 3rd tier member whose benefits are discontinued is 'a pensioner member with deferred benefits' and as such the member can request early payment of deferred benefits on ill health grounds see the Council's Pensions Discretions.

In this situation, if the "pensioner member with deferred benefits" subsequently becomes an active member of the LGPS again, the earlier period of membership,

which resulted in ill health benefits, should not be aggregated with the later active membership.

### **Tier 3 Review**

The Council will undertake a review when payments have been made for 18 months if payments are still continuing at that point.

At the review, the Council will ask the 3rd tier member if their circumstances have changed seeking details of working hours, pay and length of contract. If the Council decides, from the information provided that gainful employment has been obtained, the 3rd tier payments will be stopped.

The Pensions Section must be notified without delay when payments should be discontinued.

If, as a result of the Council's review, it is found that a 3rd tier member has not found gainful employment, the Council may seek a further opinion from an IRMP concerning the condition which resulted in the 3rd tier membership. The Council may select the same IRMP for the review who made the judgement for the 3rd tier decision.

The IRMP should be asked

1. whether it remains the case that gainful employment could have been obtained within a reasonable period of leaving the Council's employment and, if this is the case, the precise point at which gainful employment could be obtained or
2. if the member is judged to be incapable of undertaking gainful employment within a reasonable period but is likely to be able to obtain gainful employment before retirement age.

If the IRMP is of the opinion that the member remains capable of gainful employment within the reasonable period (see point 1 above), the Council will be able to discontinue payments at the date specified by the IRMP.

If the IRMP is of the opinion, on the basis of the ill health condition that gave rise to the initial third tier determination, that the member is judged to be incapable of undertaking gainful employment within a reasonable period but is likely to be able to obtain gainful employment before his retirement age (see point 2 above), the Council is able to reclassify the scheme member from third tier to second tier see the Council's Pensions Discretions.

Version	
---------	--

Date	
Relevant Legislation	