

# Public Agenda Pack



Notice of Meeting of

## **HUMAN RESOURCES COMMITTEE**

**Tuesday, 11 July 2023 at 2.00 pm**

**Luttrell Room - County Hall, Taunton TA1 4DY**

To: The members of the Human Resources Committee

Chair: Councillor Theo Butt Philip

Vice-chair:

Councillor Mandy Chilcott

Councillor Mark Healey

Councillor Alistair Hendry

Councillor Andy Kendall

Councillor Graham Oakes

Councillor Emily Pearlstone

Councillor Faye Purbrick

Councillor Tony Robbins

Councillor Mike Stanton

Councillor Sarah Wakefield

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All members of the public are welcome to attend our meetings and ask questions or make a statement **by giving advance notice** in writing or by e-mail to the Monitoring Officer at email: [democraticservicesteam@somerset.gov.uk](mailto:democraticservicesteam@somerset.gov.uk) by **5pm on Wednesday, 5 July 2023**.

This meeting will be open to the public and press, subject to the passing of any resolution under the Local Government Act 1972, Schedule 12A: Access to Information.

The meeting will be webcast and an audio recording made.

Issued by (the Proper Officer) on Monday, 3 July 2023

# AGENDA

Human Resources Committee - 2.00 pm Tuesday, 11 July 2023

**Public Guidance Notes contained in Agenda Annexe** 5 - 6

**Click here to join the online meeting** 7 - 8

## **1 Apologies for Absence**

To receive any apologies for absence.

## **2 Minutes from the Previous Meeting (Pages 9 - 14)**

To note the minutes from the previous meeting.

## **3 Declarations of Interest**

To receive and note any declarations of interests in respect of any matters included on the agenda for consideration at this meeting.

(The other registrable interests of Councillors of Somerset Council, arising from membership of City, Town or Parish Councils and other Local Authorities will automatically be recorded in the minutes: [City, Town & Parish Twin Hatters - Somerset Councillors 2023](#) )

## **4 Public Question Time**

The Chair to advise the Committee of any items on which members of the public have requested to speak and advise those members of the public present of the details of the Council's public participation scheme.

For those members of the public who have submitted any questions or statements, please note, a three minute time limit applies to each speaker and you will be asked to speak before Councillors debate the issue.

We are now live webcasting most of our committee meetings and you are welcome to view and listen to the discussion. The link to each webcast will be available on the meeting webpage, please see details under 'click here to join online meeting'.

**5 Somerset Council Employment Policies including Pensions Discretion Policy  
(Pages 15 - 64)**

To consider both the report and supporting appendix A to D.

**6 Update on Human Resource Matters**

To receive a verbal update from the Service Director of Workforce.

## Guidance notes for the meeting

### Council Public Meetings

The legislation that governs Council meetings requires that committee meetings are held face-to-face. The requirement is for members of the committee and key supporting officers (report authors and statutory officers) to attend in person, along with some provision for any public speakers. Provision will be made wherever possible for those who do not need to attend in person including the public and press who wish to view the meeting to be able to do so virtually.

#### Inspection of Papers

Any person wishing to inspect minutes, reports, or the background papers for any item on the agenda should contact Democratic Services at [democraticserviceteam@somerset.gov.uk](mailto:democraticserviceteam@somerset.gov.uk) or telephone 01823 357628.

They can also be accessed via the council's website on [Committee structure - Modern Council \(somerset.gov.uk\)](#)

### Members' Code of Conduct requirements

When considering the declaration of interests and their actions as a councillor, Members are reminded of the requirements of the Members' Code of Conduct and the underpinning Principles of Public Life: Honesty; Integrity; Selflessness; Objectivity; Accountability; Openness; Leadership. The Code of Conduct can be viewed at: [Code of Conduct](#)

### Minutes of the Meeting

Details of the issues discussed, and recommendations made at the meeting will be set out in the minutes, which the Committee will be asked to approve as a correct record at its next meeting.

### Public Question Time

If you wish to speak or ask a question about any matter on the Committee's agenda please contact Democratic Services by 5pm providing 3 clear working days before the meeting. (for example, for a meeting being held on a Wednesday, the deadline will be 5pm on the Thursday prior to the meeting) Email [democraticserviceteam@somerset.gov.uk](mailto:democraticserviceteam@somerset.gov.uk) or telephone 01823 357628.

Members of public wishing to speak or ask a question will need to attend in person or if unable can submit their question or statement in writing for an officer to read out, or alternatively can attend the meeting online.

A 20-minute time slot for Public Question Time is set aside near the beginning of the meeting, after the minutes of the previous meeting have been agreed. Each speaker will have 3 minutes to address the committee.

You must direct your questions and comments through the Chair. You may not take a direct part in the debate. The Chair will decide when public participation is to finish. If an item on the agenda is contentious, with many people wishing to attend the meeting, a representative should be nominated to present the views of a group.

### **Meeting Etiquette for participants**

Only speak when invited to do so by the Chair.

Mute your microphone when you are not talking.

Switch off video if you are not speaking.

Speak clearly (if you are not using video then please state your name)

If you're referring to a specific page, mention the page number.

There is a facility in Microsoft Teams under the ellipsis button called turn on live captions which provides subtitles on the screen.

### **Exclusion of Press & Public**

If when considering an item on the agenda, the Committee may consider it appropriate to pass a resolution under Section 100A (4) Schedule 12A of the Local Government Act 1972 that the press and public be excluded from the meeting on the basis that if they were present during the business to be transacted there would be a likelihood of disclosure of exempt information, as defined under the terms of the Act.

If there are members of the public and press listening to the open part of the meeting, then the Democratic Services Officer will, at the appropriate time, ask participants to leave the meeting when any exempt or confidential information is about to be discussed.

### **Recording of meetings**

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## **Tuesday the 11<sup>th</sup> of July teams link for Human Resources Committee**

Microsoft Teams meeting

**Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

Meeting ID: 313 523 865 659

Passcode: K9hKHu

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**Or call in (audio only)**

[+44 1823 772277,,696329048#](#) United Kingdom, Taunton

Phone Conference ID: 696 329 048#

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## **HUMAN RESOURCES COMMITTEE**

Minutes of a meeting of the HR Committee held in the Wyndham Room - County Hall, Taunton, on Wednesday 29 March 2023 at 14.00.

**Present:** Cllr L Leyshon (Chair), Cllr A Dingwall, Cllr D Fothergill, Cllr A Kendall, Cllr V Keitch (substitute), Cllr C Payne (substitute), Cllr L Redman, Cllr M Stanton, Cllr S Wakefield.

**Committee members attending virtually:** Cllr S Ajula and Cllr T Robbins.

**Other Members attending virtually:** Cllr M Kravis, Cllr M Lovell, Cllr F Purbrick and Cllr P Seib.

### **32. Apologies for absence – Item 1**

Cllr G Oakes, Cllr E Pearlstone (sent substitute), Cllr T Robbins, Cllr D Rodrigues (sent substitute).

The Chair noted that from the 1 April and the advent of the new Somerset Council it was possible there could be a realignment of the portfolios for each Executive Lead Member, meaning this might be her last meeting as Chair of the Committee.

### **33. Declaration of Interest – Item 2**

Cllr Leyshon, and Cllr Kendall declared a personal interest as members of the Local Government Pension Scheme.

### **34. Minutes from the previous meeting held on 21 February 2023 – Item 3**

The Committee agreed the minutes were an accurate record of the previous meeting.

### **35. Public Question Time – Item 4**

There were no petitions presented or questions/statements asked by members of the public.

### **36. GR Policies for Approval – Item 5**

The Chair invited the Service Manager - HR Policy and Projects, to introduce the report and Members were reminded that policies for the new Somerset Council requiring approval had been submitted for such where there had been a change resulting in a direct impact on terms and conditions.

The Committee noted that as part of the transition work for the new Council, any employment policy which met one or more of the criteria set out in the report would be brought to Members for approval. A significant impact to any of the District Council's existing policies had been 'flagged' for the Committee's awareness and all other policies had been approved via delegated authority, by the Director of Customers, Digital & Workforce.

Members attention was drawn to Appendix 1 of the supplementary report, and based on continuation of the agreed criteria and process, the following policies that set out procedure and process were shared with the Committee for information only: Equal Opportunities, Additional Leave Purchase Scheme, Redeployment, and Sickness Absence (process only). Those policies had been reviewed, in the same way as others, to refresh and keep them flexible after collaborative work by the 5 HR teams.

There was a brief discussion about the purchase of additional leave including how it worked in practice work so that the cost could be spread and it was noted that although this was an option it had not been utilised by many staff. Regarding redeployment it was noted that this was explaining a process and was not part of employees contractual arrangements; suggestions were made about the process map that explained the policy.

It was noted that 2 policies deferred at the last meeting had been updated to include the comments and feedback from Members. Attention was drawn to the grievance policy and it was explained that the informal process had been amended to include the need to speak to the employee against whom a complaint is made and the sharing of notes. The formal process of the policy had been updated to include:

- The manager can proceed without an investigation based on the information they have to hand.
- A statement to clarify that at any time, if evidence supports, it may be appropriate to change to another policy, e.g. Evidence of bullying is discovered and therefore it becomes a disciplinary issue,
- 'Panel' has been replaced with 'grievance meeting' to be conducted by the line manager / manager's manager or appropriate senior manager with a HR Advisor.
- A streamlined process to be followed in the grievance meeting, and a link provided to available guidance.
- A statement to explain the responsibility of the manager to ensure the employee against whom a complaint is made has appropriate feedback about the grievance meeting.

Regarding the Appeals Policy and how the process would work the following updates were explained:

- Clarification of posts covered under the constitution and for whom advice must be sought from the Service Director – Workforce.
- Clarification that the Officer Appeals Committee hears dismissal appeals, and that Committee is made up of Members (removal of reference to the term Member Appeals).

- Removal of reference to 'panel' and replaced this with 'committee' when referring to appeals under the Officer Appeals Committee.
- Amendment of paragraph regarding the recording of hearings to state only in limited circumstances and our obligations to comply with data protection.
- References to days be changed to working days rather than calendar days, to align with other policies and clarify the process.

The Committee agreed to approve the grievance policy and the appeals policy for use in the new Somerset Council with effect from 1 April 2023.

### **37. Early Careers Strategy – Item 6**

The Chair invited the Young People's Strategy Lead to provide an overview of the Early Careers Strategy for the new Somerset Council, noting that it was an information item with comments from Members being welcomed.

Members heard that the new strategy had built on the current work ongoing within all 5 organisations to utilise the strong programmes already in place. There had been cross-organisation representation/involvement in the development process that had resulted in a change from the 'Young People Strategy' to an 'Early Careers Strategy'.

The Strategy linked with the local government business case as it would focus on improving outcomes for 16-24 year olds as it would see the Council continuing to invest in Somerset/the young people of Somerset. This would be important as when compared to the rest of the South West, the County underperformed against six major economic metrics.

An overview was provided of the timeline to progress the strategy which had included key stakeholders attending the Young Employees Conference and launching the new Somerset Council Young Employees Network. The 5 maintain priorities were explained as:

1. Improving engagement with schools – maximising impact;
2. Using data to drive our decision making – proactive succession planning;
3. Maximising the full range of opportunities to support young people;
  - Work Experience and T-Levels
  - Apprenticeships
  - Paid Internships
  - Graduate Programmes
  - Pathway to Employment (P2E)
4. Investing in retention initiatives, creating more than just jobs – such as the Young Employee Network;

5. Promoting inclusivity and diversity whilst championing young people's work – build on success of specific programmes.

The Strategy would be launched in April and there would be an information and awareness session for managers. It was noted there were over 300 apprentices employed within the Council across a broad spectrum of competences and this had proven to be a successful way of 'growing our own' talent and improving retention rates. It was confirmed that care leavers applying for a job were guaranteed an interview and the promotional work in Somerset schools was a good way of highlighting employment opportunities.

It was noted that 'journey cards' would be produced that would highlight to young people the variety of career and the variety of the jobs on offer and it was noted that a current District Council employee that had started on the Youth Training Scheme had recently secured a Tier 3 post.

The Chair thanked the Officer for the informative and interesting presentation and looked forward to the journey cards being produced.

### **38. LGR Update – Item 7**

The Committee received a verbal update from the Director of Customers, Digital and Workforce – Chris Squire as the Lead Officer of the LGR People Workstream:

- Following the culture workshops at which over 500 people had participated some of those members of staff had become culture navigators and this work would continue to develop programme activities to include diversity and inclusion activities and the digital culture.
- Support would continue to help with Equality Impact Assessments required for decision reports.
- Reviewing of training materials via e-learning platform, the Learning Centre.
- Equality Diversity report and requirements for the component organisations to be completed.
- Health and safety policies and training materials were being progressed to ensure high risk areas were adequately addressed and there would be a piece of work conducted in tandem with the internal auditors.
- Well being and supporting different ways of working and dynamic working strategy had been completed and the issue of staff parking was being considered to ensure alignment.
- Support would be provided for those at risk of redundancy from April onwards.

- Single Learning Management System would be ready from 1 April as were corporate induction materials.
- Following on from the Tier 2 and Tier 3 recruitment (involving over 300 people), work would begin on Tier 4 restructuring and recruitment in the Spring.
- The work on recruiting the single Tier 3 post yet to be filled would be progressed and would follow the same procedure/process and it was noted that the new Tier 3 cohort comprised 6 County Council employees and 7 from the District Councils.
- Payroll transfers had been successful, with other SAP structure and alignment issues being resolved. An interest-free loan would be available to support staff experiencing problems arising from a change of pay date.

The Committee commended the comprehensive work undertaken as part of local government reorganisation by all staff, especially those in the HR teams across all 5 councils.

#### **41. Dates of future meetings – Item 8**

Members noted the dates proposed for future meetings of the Committee in the Somerset Council, that would be held on Tuesdays at 2.00pm: 10 May 2023, 11 July 2023, 10 October 2023, 9 January 2024 and 9 April 2024.

#### **42. Any other urgent items of business – Item 9**

After ascertaining there were no items of urgent business the Chair thanked all those present for attending and reflecting that it might be her last meeting as Chair of the HR Committee said that she had greatly enjoyed working with all Members and Officers on a range of HR matters since May 2022. All of the many achievements and milestones reached to bring about local government change in Somerset would not have been possible without the considerate and effective HR teams of the 5 Councils and she formally recorded the thanks and admiration of the Committee.

The Director for Director of Customers, Digital and Workforce in response thanked Cllr Leyshon for her support of all local government staff during what had been a period of unprecedented change in preparation for the new Somerset Council.

**The final Committee meeting held by Somerset County Council closed at 15.50.**

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**Somerset Council**

**Human Resources Committee**

**July 11<sup>th</sup> 2023**



**Somerset  
Council**

## **Somerset Council Employment Policies for Approval**

**Executive Member:** Theo Butt Philip, Lead Member on Human Resources

**Lead Officer:** Chris Squire, Service Director, Workforce

**Authors:** Sarah Welland – Service Manager HR Policy & Projects & Sari Brice,  
Strategic Manager - HR Practice

**Contact Details:** 01823 359882 sarah.welland@somerset.gov.uk

<i>Please complete sign off boxes below prior to submission to Community Governance</i>			
<b>Report Sign off</b>	<b>Seen by:</b>	<b>Name</b>	<b>Date</b>
	Legal	Jill Byron	
	Corporate Finance	Jason Vaughan	
	Human Resources	Chris Squire	
	Executive Member	Theo Butt Philip	
	Monitoring Officer	David Clarke	
<b>Summary:</b>	This report provides details of the policies for the new Somerset Council which are ready for consideration and if appropriate, approval, by the HR Committee. As agreed previously at HR Committee, policies meeting certain criteria (these are detailed below) would be presented to this Committee for consideration. Policies not meeting the criteria would be approved via delegated authority to the Service Director - Workforce.		
<b>Recommendations:</b>	<b>The members of the HR Committee are asked to: Formally approve the new Pensions Discretions Policy.</b>		
<b>Reasons for Recommendations:</b>	To ensure that a pre-agreed list of key employment policies are in place for the new Somerset Council.		
<b>Links to Priorities and Impact on Service Plans:</b>	Part of the People Workstream for Local Government Reorganisation.		
<b>Financial, Legal and HR Implications:</b>	<b>Financial</b> – there are a handful of employment policies that have clear financial implications. As previously agreed therefore, any		

	<p>employment policies that have potential financial implications are being brought to HR Committee.</p> <p><b>HR</b> – one clear set of employment policies, terms and conditions for new and existing staff. The new policies will apply to transferring staff where such policies are not contractual (i.e., have not been incorporated into the contracts of employment) and so do not fall within the protection provided under the Transfer of Undertakings Protection of Employment (TUPE) Regulations. Having a single set of HR policies will greatly assist line managers and staff and help define the organisation’s culture and values regarding our workforce.</p> <p><b>Legal</b> – Where a contract of employment transfers to a new employer by virtue of the TUPE Regulations the employee’s terms and conditions of employment are protected despite the change of employer. This can sometimes result in a workforce where several different sets of terms and conditions apply.</p> <p>Changing terms and conditions can create risks of legal challenges particularly where employees are affected who have transferred under TUPE due to the protection afforded by the TUPE Regulations. To mitigate any such risks, consultation and negotiations will be carried out with Trade Unions to seek agreement to any changes.</p>
<p><b>Equalities Implications:</b></p>	<p>The Council’s duty under Section 149 of the Equality Act 2010 is to have “due regard” to the matters set out in relation to equalities when considering and making decisions. A full Equality Impact Assessment is being completed for each of the new employment policies.</p>
<p><b>Risk Assessment:</b></p>	<p>N/A</p>
<p><b>Scrutiny comments / recommendation (if any):</b></p>	<p>N/A</p>

**1 Background**



- 1.1 As agreed previously, any employment policy which meets one or more of the criteria below would be brought to the HR Committee for approval.
- a) Where there is a significant/notable change to the former SCC policy
  - b) Something is contractual / is a term or condition.
  - c) Where there is a cost implication – for example redundancy compensation scheme, sick pay, annual leave entitlement determination.
  - d) Anything that the unions will not agree on/sign-off.
- 1.2 It was also agreed that any significant impact to any District Council partner's former policy is 'flagged' for the HR Committee's awareness.
- 1.3 All other policies will be approved via delegated authority, by the Service Director, Workforce.
- 1.4 Based on the criteria above, the policy now ready for the HR Committee's consideration and if appropriate, approval, is:
- Pensions Discretions
- 1.5 This report should be read in conjunction with the HR Committee report circulated alongside and regarding two additional non-mandatory pension discretions.
- 1.6 It should be noted that the decision of the HR Committee in respect of the two additional non-mandatory discretions as outlined in the report circulated alongside this one, will be incorporated into the new Pensions Discretions policy.

## **2 Options Considered**

- 2.1 An alternative option would have been to have not made any changes to partners' former policies and with effect from 1<sup>st</sup> April 2023, to operate under five different sets of employment policies. This option was discounted, and the current approach agreed for the reasons set out in HR implications above.

## **3 Consultations Undertaken**

- 3.1 This policy has been consulted upon informally with trade union representatives in weekly working group meetings and has been approved subject to the decision made in the report circulated alongside (regarding the two additional non-mandatory discretions). If the recommendations in the report circulated alongside are not approved, this policy will require further consultation with trade unions.

#### **4 Implications**

- 4.1 The recommendations are made to ensure that Somerset Council has a set of employment policies in place which are legally compliant, fair, affordable and consistent with the values and culture of the new Council. If the Committee does not approve this policy, the former Somerset County Council's policy will continue to be used post vesting day, due to SCC being the continuing authority.

#### **5 Background Papers**

- 5.1 Appendix 1 Summary table  
Appendix 2 – Pensions Discretions Policy

**Somerset Council Employment Policies for Approval**

**Executive Member:** Cllr Theo Butt Philip Lead Member on Human Resources

**Lead Officer:** Chris Squire, Service Director, Workforce

**Authors:** Sari Brice, Strategic Manager, HR Practice

**Contact Details:** sari.brice@somerset.gov.uk

<i>Please complete sign off boxes below prior to submission to Community Governance</i>			
	<b>Seen by:</b>	<b>Name</b>	<b>Date</b>
<b>Report Sign off</b>	Legal	Jill Byron	
	Corporate Finance	Jason Vaughan	
	Human Resources	Chris Squire	
	Executive Member	Theo Butt Philip	
	Monitoring Officer	David Clark	
	<b>Summary:</b>	This report provides details of two additional non-mandatory pension discretions under the Local Government Pension Scheme (LGPS) which it is recommended by LGPS that employer's state their position on and include in their Pensions Discretions Policy. The Pensions Discretions policy is due to be brought to the HR Committee on 11 July 2023.	
<b>Recommendations:</b>	<p><b>The members of the HR Committee are asked to:</b></p> <ol style="list-style-type: none"> <li><b>1) Consider whether to apply the LGPS Pensions Discretion R21(4)(a)(iv), 21(4)(b)(iv) and 21(5) under the Council's Pensions Discretions Policy.</b></li> <li><b>2) Consider whether to apply the LGPS Pensions Discretion R21(5A) and 21(5B) under the Council's Pensions Discretions Policy.</b></li> </ol> <p><b>It is recommended that both discretions are applied as set</b></p>		

	<b>out in 4.6 and 5.7 below.</b>
<b>Reasons for Recommendations:</b>	All employers who participate in the Local Government Pension Scheme (LGPS) 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 discretions include mandatory and non-mandatory. Scheme employers <u>must</u> have a written policy on all mandatory discretions but are not required to have a written policy on the non-mandatory discretions. However, there are 8 non-mandatory discretions that Scheme employers are advised to have a written policy on so that members can be clear on the Council's policy on these matters. Of the 8 non-mandatory discretions the two set out in this report are the only ones that are not incorporated into the Pensions Discretions Policy that is being brought to HR Committee on 11 July 2023 for approval.
<b>Links to Priorities and Impact on Service Plans:</b>	Part of the People Workstream for Local Government Reorganisation.
<b>Financial, Legal and HR Implications:</b>	<p><b>Financial</b> – the financial implications of applying the two further pensions discretions are impossible to calculate or model. However, it is considered that any financial impact would be negligible as the discretions would only be considered for application in a very small number of instances.</p> <p><b>HR</b> – The decision taken on the additional discretions would be incorporated into the Pensions Discretions Policy that is before the HR Committee on 11 July 2023. The Council would therefore have a written policy on the 8 non-mandatory discretions that the LGPS recommends are included in any discretions policy.</p> <p><b>Legal</b> – there is no legal requirement to have a stated position on non-mandatory pensions discretions under the Local Government Pension Scheme Regulations.</p> <p>Changing terms and conditions can create risks of legal challenges particularly where employees are affected who have transferred under TUPE due to the protection afforded by the TUPE Regulations. To mitigate any such risks, consultation and</p>

	negotiations will be carried out with Trade Unions to seek agreement to any changes.
<b>Equalities Implications:</b>	The Council's duty under Section 149 of the Equality Act 2010 is to have "due regard" to the matters set out in relation to equalities when considering and making decisions. It is impossible to complete an Equality Impact Assessment for the two additional discretions as there is no data available by which to complete an assessment.
<b>Risk Assessment:</b>	N/A
<b>Scrutiny comments / recommendation (if any):</b>	N/A

## 1 Background

- 1.1 Two additional non-mandatory discretions (details below) have existed within the LGPS Regulations for some years; however, these were brought to the attention of Somerset County Council (prior to Vesting Day) following a change to one of the standard forms used by Peninsula Pensions.
- 1.2 Whilst there is a requirement under the LGPS Regulations for an employer to have a Pensions Discretions Policy, there is no requirement for an employer to set out its position in relation to all the non-mandatory discretions within the LGPS.
- 1.3 However, there are eight non-mandatory discretions where it is recommended for Scheme members to have a written policy in order that both members and the Pension Fund administering authority (Peninsula Pensions) can be clear on the Scheme employer's policy on these matters. The Council's position on six of the eight non-mandatory discretions are already set out in the Pensions Discretions Policy that is being brought to HR Committee on 11 July 2023.
- 1.4 Discussions have taken place with the trade unions on whether Somerset Council applies or makes a formal declaration with regards to the two additional non-mandatory discretions.
- Discretion 1** - Reg 21(4)(a)(iv), 21(4)(b)(iv) and 21(5) and

**Discretion 2** - R21(5A) and 21(5B) in Somerset Council's Pensions Discretion Policy.

- 1.5 The trade unions have requested that a decision is taken by the HR Committee on whether to apply and include these two additional non-mandatory discretions in the Pensions Discretions Policy.

## **2 Pensions Discretions Policy**

- 2.1 Under the Local Government Pension Scheme 2014, all employers who participate in the LGPS are required to formulate, publish, and keep under review a discretions policy. The LGPS is largely governed by statutory 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 with Peninsula Pensions who administer the LGPS on behalf of Somerset Council. There are mandatory and non-mandatory discretions.

- 2.2 The Pensions Discretions Policy for Somerset Council is being brought before the HR Committee on 11 July 2023.

- 2.3 The decision taken by the HR Committee on these two additional discretions will be incorporated into the finalised and published Pensions Discretions Policy (subject to the approval of the Policy by the HR Committee).

## **3 Additional Pensions Discretions**

- 3.1 This report covers two non-mandatory pensions discretions that Somerset County Council and all, apart from South Somerset District Council have **not** considered before. Both relate to the calculation of assumed pensionable pay and are non-mandatory.

- 3.2 South Somerset District Council had taken the decision **not** to apply either of the two discretions that are covered in this paper. It is not known why or when this decision was taken by South Somerset District Council.

- 3.3 Assumed pensionable pay is a notional pay figure that is used to ensure that an individual's pension is not affected if their pensionable pay reduces due to an absence from work. Normally the calculation is based on the average of the pensionable pay received in the three months before the pay reduced.

3.4 The details of the two additional discretions for consideration are set out below.

**4. Discretion 1 - Reg 21(4)(a)(iv), 21(4)(b)(iv) and 21(5)**

Whether to include a regular lump sum payment when calculating assumed pensionable pay.

4.1 When calculating assumed pensionable pay, employers can decide to include 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.

4.2 A 'regular lump sum payment' is a payment for which the employer determines there is a reasonable expectation that such a payment would be paid on a regular basis.

4.3 All regular lump sum payments will usually be included in the assumed pensionable pay calculations.

4.4 The advice is to state that Somerset Council will apply this discretion where there is evidence that someone will suffer a detriment due to a protected characteristic, to allow flexibility and so as not to fetter the discretion (i.e., policies should not be so rigid or restrictive as to prevent flexibility where a (possibly unanticipated) situation requires it).

4.5 Costs – it is difficult to estimate the costs of applying this discretion as it is impossible to report on those that the discretion might affect. Our assumption is that the monetary cost to the Council would not be great. However, to calculate such costs, it would cause more administration a) to identify individuals it applies to and b) to calculate average total earnings. It is worth noting that the total cost to the Council would not be as significant as the potential impact on the individual and the amount of pension they might receive.

4.6 Recommendation – based on the advice provided by LGPS it is recommended that the Council applies the discretion (Reg 21(4)(a)(iv), 21(4)(b)(iv) and 21(5)) and include a regular lump sum payment when calculating assumed

pensionable pay where there is evidence that someone will suffer a detriment due to a protected characteristic as defined under the Equality Act, 2010.

**5 Discretion 2 - R21(5A) and 21(5B) backdated to 1 April 2014 by A7 2018**

Whether to substitute a higher level of pensionable pay when calculating assumed pensionable pay.

- 5.1 When calculating assumed pensionable pay, an employer can decide to substitute a higher level of pensionable pay if, in their opinion, the pensionable pay received in the 3 months/12 weeks before the commencement of assumed pensionable pay, is materially lower than the level of pensionable pay the member would have normally received.
- 5.2 Situations where this may apply could include where an employee is in a no pay situation for example because of a long-term sickness absence. In this situation any additional payments earned through additional hours, bank holiday or unsocial hours enhancements or overtime, etc that the employee would have been able to claim had they been at work would not be included in the assumed pensionable pay calculation.
- 5.3 It is reasonable to assume that those that claim overtime and other additional payments are generally on lower salaries. In addition, those on long-term sickness absence may also have a disability as defined under the Equality Act, 2010.
- 5.4 This discretion could also be applied to employees on the unpaid part of family leave (maternity, adoption, and shared parental leave).
- 5.5 Therefore, to not apply this discretion could potentially disadvantage lower earners and groups with a protected characteristic under the Equality Act, 2010.
- 5.6 Costs – it is difficult to estimate the costs of applying this discretion as it is impossible to report on those that the discretion might affect. The assumption is that the monetary cost to the Council would not be great. However, to calculate such costs, it would cause more administration a) to identify individuals it applies to and b) to calculate average total earnings. It is worth noting that the total cost to the Council would not be as significant as the potential impact on the individual and the amount of pension they might receive.



- 5.7 Recommendation - it is recommended that the Council applies the discretion R21(5A) and 21(5B) to substitute a higher level of pensionable pay when calculating assumed pensionable pay, where an employee has been absent from work because of a long-term sickness or family leave prior to retirement and would have normally claimed additional hours, overtime, and other additional payments had they been at work.

## **6 Consultations Undertaken**

- 6.1 Consultations have taken place informally with trade union representatives.
- 6.2 Trade union representatives requested that the Council through the HR Committee took a decision on the two non-mandatory discretions detailed above.

## **7 Implications**

- 7.1 The recommendations are made to ensure that Somerset Council has a set of employment policies in place which are legally compliant, fair, affordable, and consistent with the values and culture of the new Council. In the event that approval is not achieved for an employment policy, Somerset County Council's existing policy would be used post vesting day, due to Somerset County Council being the continuing authority. This is with the exception of employees who TUPE transfer in from the District Councils and for whom existing terms and conditions are protected under the TUPE Regulations.

## **5 Background Papers**

- 5.1 Appendix A - Summary table of the existing Council's Pension Discretions  
Appendix B - Somerset Council Pensions Discretions Policy  
Appendix C - Somerset Council Pension Policy and Process.

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## Comparison of Council's existing Pension Discretions

Pension Regulation	MDC	SDC	SCC	SWT	SSDC
<b>Mandatory Pension Regulation</b>					
<p><b>Regulation R31</b>  <b>Power of employing authority to grant additional pension.</b>                      An employer can choose to grant extra annual pension* (at full cost to themselves) to:</p> <ul style="list-style-type: none"> <li>a) an active member; or</li> <li>b) to a member, within 6 months of leaving, whose employment was terminated on the grounds of redundancy or business efficiency</li> </ul>	No	Yes Only discretionary element of redundancy pay. No employer contribution	Yes In exceptional circumstances	Yes Only allow compensation element of redundancy payment.	No
<p><b>Regulation R16 (2) (e) and R16 (4) (d)</b>                      Shared Cost Additional Pension Scheme                      Where an active member wishes to purchase extra annual pension by making additional pension contributions (APCs)*, an employer can choose to voluntarily contribute towards the cost of purchasing that extra pension through a Shared Cost Additional Pension Contribution (SCAPC)</p>	No	No	Yes Through Shared Cost Salary Sacrifice AVC scheme	No	Yes Only for authorised unpaid leave

## Comparison of Council's existing Pension Discretions

Pension Regulation	MDC	SDC	SCC	SWT	SSDC
<p><b>Switch on' the 85-year rule</b> The 85-year rule does not automatically fully apply to members who would otherwise be subject to it and who choose to voluntarily draw their benefits on or after age 55 and before age 60. An employer can therefore choose whether to switch on the 85-year rule for members.</p>	<p>Yes Financial interests of the Council or compassionate reasons</p>	<p>Yes Case by case</p>	<p>Yes In exceptional circumstances</p>	<p>Yes Case by case in exceptional circumstances</p>	<p>Yes In the interests of efficiency and compassionate grounds</p>
<p><b>Regulation R30 (6) and TP11(2)Flexible Retirement</b>An employer can decide whether to permit flexible retirement for staff aged 55 or over who reduce their working hours and/or grade and wish to access their pension benefits. In such cases, pension benefits may be reduced in accordance with actuarial tables unless the employer waives reduction on compassionate grounds. The employee must reduce either their hours, and/or their grade and the employer must agree to the release of the pension. You will need to consider: 1. The minimum reduction in hours or grade required. (The specific</p>	<p>Yes Case by case basis in line with Flexible Retirement Policy</p>	<p>Yes Case by case basis</p>	<p>Yes Business case in accordance with SSC's Flexible Retirement Policy. Others on compassionate grounds</p>	<p>Yes Business case in accordance with SWT Flexible Working Policy,</p>	<p>Yes Depends on operational viability and impact of costs to SSDC.</p>

## Comparison of Council's existing Pension Discretions

Pension Regulation	MDC	SDC	SCC	SWT	SSDC
<p>reduction required is not set out in the regulations, but instead must be determined by the employer and specified in this flexible retirement policy). 2. Whether the employee should commit to a reduction in hours or grade for a minimum period.3. Whether the employee should commit to remaining in employment with the employer for a minimum period.You must also state whether, in addition to the benefits the member has accrued prior to 1st April 2008 (which the member must draw), you permit the member to choose to draw: • All, part, or none of the benefits they accrued after 31st March 2008 and before 1st April 2014 and/or,• All, part, or none of the benefits accrued after 31st March 2014, and,• Whether to waive, on compassionate grounds, the actuarial reduction (in whole or part) applied to members' benefits paid on the grounds of flexible retirement before normal retirement age (R30(8)).</p>					

## Comparison of Council's existing Pension Discretions

Pension Regulation	MDC	SDC	SCC	SWT	SSDC
<p><b>Regulation R30 (8) , TP3 (1), TPSch2, Para 2(1), B30 (5) and B30 (A) (5)Waiving of actuarial reduction</b> An employer can decide whether to waive in whole or in part any actuarial reduction for a member voluntarily drawing benefits before normal pension age other than on the grounds of flexible retirement.This applies to:• active members voluntarily retiring on or after age 55 and before Normal Pension Age, who elect to immediately draw benefits, and• deferred members and suspended tier 3 ill health pensioners who elect to draw benefits (other than on ill health grounds) on or after age 55 and before Normal Pension Age.</p>	<p>Yes Exceptional circumstances considering financial interest of the Council or compassionate reasons.</p>	<p>Yes Case by case in exceptional circumstances</p>	<p>Yes In exceptional circumstances</p>	<p>Yes Exceptional compassionate grounds</p>	<p>Yes Case by case exceptional circumstances</p>

## Comparison of Council's existing Pension Discretions

Pension Regulation	MDC	SDC	SCC	SWT	SSDC
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Non-mandatory policies but recommended by Peninsula Pensions Recommended LGPS 2013 & 2014 discretions					
<p><b>Regulation R17 (1) and TP15(1)(d) and A25(3) and definition of SCAVC in R Sch 1</b></p> <p><b>Shared Cost Additional Voluntary Contribution Arrangement (SCAVC)</b></p> <p>An employer can choose to pay for or contribute towards a member's Additional Voluntary Contribution through a shared cost arrangement (SCAVC). An employer will also need to decide how much, and in what circumstances to contribute to a SCAVC arrangement.</p>	No	No	Yes In certain circumstances. In accordance with Shared Cost salary sacrifice AVC scheme	No	No
<p><b>Reg 16 (16)Extend the time limit for member to elect for a SCAPC</b></p> <p>An employer can extend the 30-day deadline for a member to elect for a SCAPC upon return from a period of absence from work with permission with no pensionable pay (otherwise than because of illness or injury, relevant child</p>	No	No	Yes In certain circumstances.	No	No

## Comparison of Council's existing Pension Discretions

Pension Regulation	MDC	SDC	SCC	SWT	SSDC
- related leave or reserve forces service leave).					
<b>R100(6)</b> - Extend normal time limit for acceptance of a transfer of value beyond 12 months from joining the LGPS.	No	No	Yes Evidence of maladministration or life changing event	No	No
<b>Reg 22(7) and (8)</b> <b>Extend the 12-month time limit for a member to elect not to aggregate Post 31 March 2014 deferred benefits.</b> Whether to extend the 12-month time limit for a member to elect not to aggregate post 31 <sup>st</sup> March 2014 (or combinations of pre-April 2014 and post March 2014) deferred benefits.	No	Yes If member has not received required information in time.	Yes Exceptional circumstances, maladministration or life changing event.	No	No



## Comparison of Council's existing Pension Discretions

Pension Regulation	MDC	SDC	SCC	SWT	SSDC
<p><b>Reg 27 of the LGPS (Amendment) Regs 2018</b>  <b>Extend the 12-month option period for a member to elect to aggregate pre-1<sup>st</sup> April 2014 deferred benefits.</b></p>	No	No	Yes Exceptional circumstances, maladministration or life changing event.	No	No
<p><b>R9(1) &amp; R9(3)</b>  <b>How an employee's contribution band will be initially determined and thereafter reviewed</b>            Determine rate of employees' contributions and when the contribution rate will be assessed.</p>	Every April and when there is a material change in contractual pay	Contractual change to employee's salary	SAP automatically calculates	As changes occur	Material change in contractual pay.

## Comparison of Council's existing Pension Discretions

Pension Regulation	MDC	SDC	SCC	SWT	SSDC
<p><b>Whether to include a regular lump sum payment when calculating assumed pensionable pay (APP) (Reg 21(4)(a)(iv), 21(4)(b)(iv) and 21(5))</b></p> <p>When calculating assumed pensionable pay, employers can decide to include 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 employer determines there is a reasonable expectation that such a payment would be paid on a regular basis.</p>	No	No	No	No	No

## Comparison of Council's existing Pension Discretions

Pension Regulation	MDC	SDC	SCC	SWT	SSDC
<p><b>Whether to substitute a higher level of pensionable pay when calculating assumed pensionable pay (R21(5A) and 21(5B) backdated to 1 April 2014 by A7 2018)</b></p> <p>When calculating assumed pensionable pay (APP), an employer can decide to substitute a higher level of pensionable pay if, in their opinion, the pensionable pay received in the 3 months/12 weeks before the commencement of APP, is materially lower than the level of pensionable pay the member would have normally received.</p>	No	No	No	No	No

## Comparison of Council's existing Pension Discretions

Pension Regulation	MDC	SDC	SCC	SWT	SSDC
<b>Pre LGPS 2014 discretions</b> <b>To cover scheme members who ceased active membership on or after 1 April 2008 and before 1 April 2014 (no need to complete if not applicable).</b>					

## Comparison of Council's existing Pension Discretions

Pension Regulation	MDC	SDC	SCC	SWT	SSDC
<p><b>Switch on' the 85-year rule TPSch 2, para 1(1)(c) &amp; 1(2)</b></p> <p>The 85-year rule does not automatically fully apply to members who would have had the protection under old regulations, and who choose to voluntarily draw their benefits on or after age 55 and before age 60. An employer can decide to switch the 85-year rule back on in full for such members.</p> <p>This also applies to members with deferred benefits or a suspended tier 3 ill health pension who choose to voluntarily draw their deferred benefits (on or after 14 May 2018) on or after age 55 and before age 60.</p>	No	No	No	No	No

## Comparison of Council's existing Pension Discretions

Pension Regulation	MDC	SDC	SCC	SWT	SSDC
<b>Reg 30(5, TP2(1) Sch2 Reg 30A(5) TP2(1) Sch2</b> <b>Early payment of benefits</b> Whether on compassionate grounds, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65. Whether on compassionate grounds, 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.	Yes Exceptional circumstances, compassionate grounds	No	Yes Exceptional circumstances	No	No
<b>To cover scheme members who ceased active membership between 1 April 1998 and 31 March 2008 (no need to complete if not applicable)</b>					
<b>Switch on' the 85-year rule upon the voluntary early payment of deferred benefits</b> <b>TPSch 2, para 1(2) &amp; 1(1)(f) &amp; R60</b>	No	No	Yes Exceptional circumstances	Yes Case by case basis	No

## Comparison of Council's existing Pension Discretions

Pension Regulation	MDC	SDC	SCC	SWT	SSDC
<p><b>Regulation 32(2), 31(7A) of the LGPS Regulations 1997 and paragraph 2(1) of Schedule 2 to the LGPS (TP) Regs 2014</b></p> <p><b>Early payment of benefits</b></p> <p>Employers can allow the early payment of deferred benefits to former members of the LGPS between the ages of 50 and 55.</p> <p>Employers can also choose, on compassionate grounds, to waive any actuarial reduction that would normally be applied to benefits which are paid before age 65.</p>	No	No	No	No	No
<p><b><u>Regulation D11(2)(c) of the LGPS Regulations 1995. In relation to members who ceased active membership before April 1998:</u></b></p> <p>Whether to grant applications for the early payment of deferred pension benefits on or after age 50 and before NRD on compassionate grounds</p>	No	No	Yes Compassionate grounds	No	No

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## Somerset Council Pensions Discretions Policy

**The LGPS Regulations 2013**

**and**

**The LGPS Regulations 2014**

(Transitional Provisions and

Savings) **and**

**The LGPS Regulations 2008**

(Benefits, Membership and

Contributions) **(as at 14<sup>th</sup> May**

**2018)**

**Employer name: Somerset Council**

**Policy effective from:**

These policies may be subject to review from time to time. Affected employees will be notified of any subsequent change to this Policy Statement.

**Print name of authorised officer:**

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**Job title:**

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**Date:**

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**Signature of authorised officer:**

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## Mandatory LGPS 2013 & 2014 discretions

Discretionary policies from 1 April 2014 in relation to post 31 March 2014 active members and post 31 March 2014 leavers (excluding councillor members).



**Somerset**  
Council

<p><b>Power of employing authority to grant additional pension (Regulation R31)</b></p>	<p><b>Policy Decision:</b></p>
<p>An employer can choose to grant extra annual pension* (at full cost to themselves) to:</p> <ul style="list-style-type: none"> <li>a) an active member; or</li> <li>b) to a member, within 6 months of leaving, whose employment was terminated on the grounds of redundancy or business efficiency.</li> </ul> <p><i>*(Please see Peninsula Pensions website for the maximum additional pension purchase limit for the current year)</i></p>	<p>The Council will not normally exercise this discretion on the grounds of cost, except in the most exceptional of circumstances where there is clear merit and where the cost to the Council is not considered to be significant or material.</p>
<p><b>Shared Cost Additional Pension Scheme Regulation R16 (2) (e) and R16 (4) (d)</b></p>	<p><b>Policy Decision:</b></p>
<p>Where an active member wishes to purchase extra annual pension by making additional pension contributions (APCs)*, an employer can choose to voluntarily contribute towards the cost of purchasing that extra pension through a Shared Cost Additional Pension Contribution (SCAPC).</p> <p><i>*(Please see Peninsula Pensions website for the maximum additional pension purchase limit for the current year)</i></p> <p><b>Please note:</b> this 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 (or such a longer period as the Scheme employer may allow) to pay a SCAPC to cover the amount of pension 'lost' during that period of absence. That is because, in those cases, an employer <u>must</u> contribute 2/3rds of the cost to a SCAPC; there is no discretion [regulation 15(5) of the LGPS Regulations 2013].</p>	<p>The Council will apply this discretion only in certain circumstances.</p> <p>The Council will only apply this discretion in accordance with its published guidance on salary sacrifice Shared Cost Additional Voluntary Contributions with effect from 1<sup>st</sup> February 2018.</p> <p>Where the employee has elected to pay contributions for a period of unpaid or child related leave within 30 days of receipt of written communication of this option or within 30 days of returning to work whichever is the later, the payment has to be made via an SCAPC. In these circumstances the Council is required to make employer contributions as required by the regulations.</p>
<p><b>'Switch on' the 85-year rule</b> TPSch 2, para 1(2) &amp; 1(1)(c)</p>	<p><b>Policy decision</b></p>



<p>The 85-year rule does not automatically fully apply to members who would have had the protection under old regulations, and who choose to voluntarily draw their benefits on or after age 55 and before age 60. An employer can decide to switch the 85-year rule back on in full for such members.</p> <p>Where the Scheme employer does not switch back on the 85-year rule, the member's benefits will be actuarially reduced. However, the Scheme employer can exercise a discretion to waive any actuarial reductions (at cost to the Scheme employer).</p>	<p>The Council will apply this discretion only in exceptional circumstances.</p> <p>The Council will apply this discretion in accordance with its policy on Premature Retirement under 85 year rule, see below for further details.</p>
<p><b>Flexible Retirement Regulation R30 (6) and TP11(2)</b></p>	<p><b>Policy Decision:</b></p>
<p>An employer can decide whether to permit flexible retirement for staff aged 55 or over who reduce their working hours and/or grade and wish to access their pension benefits.</p> <p>In such cases, pension benefits may be reduced in accordance with actuarial tables unless the employer waives reduction on compassionate grounds.</p> <p>The employee must reduce either their hours, and/or their grade and the employer must agree to the release of the pension.</p> <p>You will need to consider:</p> <ol style="list-style-type: none"><li>1. <i>The minimum reduction in hours or grade required.</i> (The specific reduction required is not set out in the regulations, but instead must be determined by the employer and specified in this flexible retirement policy).</li><li>2. Whether the employee should commit to a reduction in hours or grade for a minimum period.</li><li>3. Whether the employee should commit to remaining in employment with the employer for a minimum period.</li></ol>	<p>The Council will apply this discretion but only in accordance with its Flexible Retirement Policy.</p> <p>The Council will apply this discretion only in exceptional circumstances where there are compassionate grounds.</p> <ol style="list-style-type: none"><li>1. A minimum 20% reduction in hours or 1 grade below existing and reduction of hours equivalent to 20%*</li><li>2. New arrangements must be permanent</li><li>3. A minimum of 1 year*</li></ol> <p>*In exceptional cases, where there are compassionate grounds or a clear business case the minimums may be less.</p>



You must also state whether, in addition to the benefits the member has accrued prior to 1st April 2008 (which the member must draw), you permit the member to choose to draw:

- All, part, or none of the benefits they accrued after 31st March 2008 and before 1st April 2014 and/or,
- All, part, or none of the benefits accrued after 31st March 2014, and,
- Whether to waive, on compassionate grounds, the actuarial reduction (in whole or part) applied to members' benefits paid on the grounds of flexible retirement before normal retirement age (R30(8)).

Note: If flexible retirement is agreed for a member aged between 55 and 60, there could be a Strain cost to be paid to the Pension Fund by the employer in respect of the pension benefits paid. There would also be a Strain cost payable by the employer where you have waived any actuarial reduction, in whole or in part.

**Please note:** If flexible retirement is permitted, you will need to publish a Flexible Retirement Policy and send us a copy or you can include in this policy – see final section of this template.

The Council will apply this discretion only in exceptional circumstances where there are compassionate grounds or a clear business case. In most instances employees will be required to draw **all** accrued benefits.

The Council will apply this discretion only in exceptional circumstances.

The Council will apply this discretion in accordance with the Council's Flexible Retirement Policy on the following grounds:

- Compassionate reasons
- Member has protected rights
- The Council is satisfied there is a clear business case.

**Waiving of actuarial reduction**

**Regulation R30(8), TP3(1), TPSch2, Para 2(1), B30(5) and B30(A)(5)**

**Policy Decision:**

An employer can decide whether to waive in whole or in part any actuarial reduction for a member voluntarily drawing benefits before normal pension age other than on the grounds of flexible retirement.

The Council will apply this discretion only in exceptional circumstances.

Where pension benefits are reduced in accordance with actuarial tables the



<p>This applies to:</p> <ul style="list-style-type: none"> <li>• active members voluntarily retiring on or after age 55 and before Normal Pension Age, who elect to immediately draw benefits, and</li> <li>• deferred members and suspended tier 3 ill health pensioners who elect to draw benefits (other than on ill health grounds) on or after age 55 and before Normal Pension Age.</li> </ul>	<p>Council will use its discretion to waive the actuarial reduction on the following grounds only:</p> <ul style="list-style-type: none"> <li>• Compassionate reasons</li> <li>• Member has protected rights</li> <li>• Exceptional cases where the Council is satisfied there is a clear business case.</li> </ul> <p>Deferred/Suspended Tier 3 – The Council will apply this discretion only in exceptional cases in accordance with the Council’s Pension Policy i.e. in the interests of efficiency in the service or on compassionate grounds.</p>
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**Recommended LGPS 2013 & 2014 discretions (non-mandatory)**

<p><b>Shared Cost Additional Voluntary Contribution Arrangement (SCAVC)</b> R17 (1) and TP15(1)(d) and A25(3) and definition of SCAVC in RSch 1</p>	<p><b>Policy decision</b></p>
<p>An employer can choose to pay for or contribute towards a member’s Additional Voluntary Contribution through a shared cost arrangement (SCAVC).</p> <p>An employer will also need to decide how much, and in what circumstances to contribute to a SCAVC arrangement.</p>	<p>The Council will apply this discretion only in certain circumstances.</p> <p>The Council will apply this discretion in accordance with its published guidance on salary sacrifice Shared Cost Additional Voluntary Contributions.</p>
<p><b>Extend the time limit for member to elect for a Shared Cost Additional Pension Contribution (R16(16))</b></p>	<p><b>Policy decision</b></p>
<p>An employer can decide to extend the 30 day deadline for a member to elect to purchase additional pension by way of a Shared Cost Additional Pension Contribution (SCAPC) upon return from a period of unpaid absence (other than because of illness or injury, relevant child-related leave or reserve forces service leave).</p>	<p>The Council will apply this discretion only in certain circumstances.</p> <p>Applying this discretion in these circumstances allows the Council to extend the time limit in cases where there is a delay in the process of advising payroll.</p>



<p><b>Extend the 12-month time limit for transfer of pension rights (R100(6))</b></p>	<p><b>Policy decision</b></p>
<p>An employer can decide to extend the 12-month time limit for a member to elect to transfer pension rights from another registered pension scheme into the LGPS, if an election has not been made within 12 months of joining the LGPS in that employment.</p>	<p>The Council will apply this discretion only in exceptional circumstances where there is evidence of maladministration or evidence of a life changing event.</p>
<p><b>Extend the 12-month time limit for a member to elect not to aggregate Post 31 March 2014 deferred benefits</b> Reg 22(7) and (8)</p>	<p><b>Policy decision</b></p>
<p>An employer can extend the 12 month time limit for a member to elect <b>not</b> to aggregate their Post 31 March 2014 (or combinations of Pre &amp; Post 2014) deferred benefits with their new LGPS employment (or ongoing concurrent LGPS employment), if an election has not been made within 12 months of joining the LGPS in that employment (or within 12 months of ceasing the concurrent membership).</p>	<p>The Council will apply this discretion only in exceptional circumstances where there is evidence of maladministration or evidence of a life changing event.</p>
<p><b>Extend the 12-month time limit for a member to elect to aggregate Pre 1 April 2014 deferred benefits</b> (TP 10(6) as amended by A27 (2018))</p>	<p><b>Policy decision</b></p>
<p>Employers can decide whether to extend the 12-month time limit for a member to elect to aggregate their Pre 1 April 2014 deferred benefits with their new LGPS employment that commenced on or after 14 May 2018 in order to purchase earned pension.</p>	<p>The Council will apply this discretion only in exceptional circumstances where there is evidence of maladministration or evidence of a life changing event.</p>
<p><b>How an employee's contribution band will be initially determined and thereafter reviewed</b> (R9 and R10)</p>	<p><b>Policy decision</b></p>
<p>Employers must decide how the pension contribution band to which an employee is to be allocated on joining the Scheme will be determined and reviewed at each subsequent April.</p> <p>Circumstances in which the employer will review the pension contribution band will also need to be</p>	<p>SAP automatically recalculates the pension contribution % if there is a contractual change and will recalculate each month if it is backdated. If temporary pensionable allowances are paid they will be considered in the month of payment and the band</p>



<p>determined. For example, following a material change which affects the member's pensionable pay during the Scheme year (1 April to 31 March).</p>	<p>changed if necessary. Please note for example, 5 months of additional hours all paid in one month may change the band whereas if they were paid over 5 months they may not have done so.</p>
<p><b>Whether to include a regular lump sum payment when calculating assumed pensionable pay (APP)</b> (Reg 21(4)(a)(iv), 21(4)(b)(iv) and 21(5))</p>	<p><b>Policy decision</b></p>
<p>When calculating assumed pensionable pay, employers can decide to include 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.</p> <p>A 'regular lump sum payment' is a payment for which the employer determines there is a reasonable expectation that such a payment would be paid on a regular basis.</p>	
<p><b>Whether to substitute a higher level of pensionable pay when calculating assumed pensionable pay</b> (R21(5A) and 21(5B) backdated to 1 April 2014 by A7 2018)</p>	<p><b>Policy decision</b></p>
<p>When calculating assumed pensionable pay (APP), an employer can decide to substitute a higher level of pensionable pay if, in their opinion, the pensionable pay received in the 3 months/12 weeks before the commencement of APP, is materially lower than the level of pensionable pay the member would have normally received.</p>	

**Pre LGPS 2014 discretions**

**Discretions to be exercised on and after 1 April 2014 in relation to scheme members who ceased active membership between 1 April 2008 and 31 March 2014.**

<p><b>'Switch on' the 85-year rule</b> TPSch 2, para 1(1)(c) &amp; 1(2)</p>	<p><b>Policy decision</b></p>
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<p>The 85-year rule does not automatically fully apply to members who would have had the protection under old regulations, and who choose to voluntarily draw their benefits on or after age 55 and before age 60. An employer can decide to switch the 85-year rule back on in full for such members.</p> <p>This also applies to members with deferred benefits or a suspended tier 3 ill health pension who choose to voluntarily draw their deferred benefits (on or after 14 May 2018) on or after age 55 and before age 60.</p>	<p>The Council will not apply this discretion.</p> <p>The Council will not apply this discretion.</p>
<p><b>Waive actuarial reductions to members benefits</b> B30(5), TPSch 2, para 2(1) B30A(5)</p>	<p><b>Policy decision</b></p>
<p>An employer can decide whether, on compassionate grounds, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65.</p> <p>This also applies to members with deferred benefits or a suspended tier 3 ill health pension who choose to voluntarily draw their deferred benefits (on or after 14 May 2018) on or after age 55 and before age 60.</p>	<p>The Council will apply this discretion only in exceptional circumstances. The Council will apply this discretion only where there are compassionate grounds.</p>

**Discretions to be exercised on and after 1 April 2014 in relation to scheme members who ceased active membership between 1 April 1998 and 31 March 2008.**

<p><b>Grant application for early payment of deferred benefits</b> R31(2) LGPS Regulations 1997</p>	<p><b>Policy decision</b></p>
<p>Employers can decide whether to grant applications for the early payment of pension benefits on or after age 50 and before age 55.</p>	<p>The Council will apply this discretion only in exceptional circumstances. The Council will apply this discretion only where there is no cost to the Somerset Fund and where the ex-employee is willing to suffer an actuarial reduction.</p>





<p><b>‘Switch on’ the 85-year rule upon the voluntary early payment of deferred benefits</b> TPSch 2, para 1(2) &amp; 1(1)(f) &amp; R60</p>	
<p>The 85-year rule does not automatically fully apply to members who would have had the protection under old regulations. An employer can decide to “switch on” the 85-year rule in full for a member with deferred benefits voluntarily drawing benefits (on or after 14 May 2018) on or after age 55 and before age 60.</p>	<p>The Council will not apply this discretion.</p>

**Discretions to be exercised on and after 1 April 2014 in relation to members who ceased active membership before 1 April 1998.**

<p><b>Grant application for early payment of deferred benefits</b> (TP3(5A)(vi), TL4, L106(1) 1997 Transitional &amp; D11(2)(c) 1995 Regs)</p>	<p><b>Policy decision</b></p>
<p>Employers can decide whether to grant applications early payment of deferred pension benefits on or after age 50 and before normal retirement age on compassionate grounds.</p>	<p>The Council will apply this discretion only in exceptional circumstances and only where there are compassionate grounds.</p>

**Somerset Council Premature Retirement Under the 85 year rule.**

The 85 year rule does not apply to employees joining the scheme after 30<sup>th</sup> September 2006. Employees are able to apply for early retirement between age 55 and under 60 but with reduced pension benefits.

For all existing members who were in the scheme on the 30<sup>th</sup> September 2006, there is protection of benefits built up in the scheme up to 31<sup>st</sup> March 2008.

Full protection of benefits has been granted to existing scheme members at 30<sup>th</sup> September 2006 who were 60 or over on 31<sup>st</sup> March 2016.

There are transitional protection arrangements for existing scheme members at 30<sup>th</sup> September 2006 who were 60 or over and meet the 85 year rule between 1<sup>st</sup> April 2016 and 31 March 2020, using tapering reduction factors i.e. full protection for service up to 31<sup>st</sup> March 2008 but tapered protection to 2020.

The 85 Year rule allows employees who are members of the Local Government Pension Scheme aged between 55 and under 60 and whose age and length of scheme membership add up to at least 85 years (for example, a member has 30 years of service and is age 55) to apply for early retirement without reduction of pension benefits.



Authorisation of such requests is at the 'discretion' of the Council and a full consideration of the operational and financial viability is required. The Chief Executive or Corporate Director, as appropriate, and the Director of HR & OD must approve Premature Retirement under the 85-year rule.



**Somerset**  
Council

# **Pensions Policy and Processes**

<b>Organisation</b>	Somerset Council
<b>Title</b>	Pensions Policy and Processes
<b>Owner</b>	HR Policy Team
<b>Primary Legislation</b>	

## 1. Policy Statement

- 1.1. 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.
- 1.2. This policy is predominately focused on the Local Government Pension Scheme.
- 1.3. It covers:
  - Auto enrolment
  - Non-pensionable absences; e.g. unpaid leave
  - Retirement
  - Early retirement with an unreduced pension
  - Flexible Retirement
  - Ill health retirement
- 1.4. The Local Government Pension Scheme 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 Local Government Pension Scheme on behalf of Somerset Council.
- 1.5. This policy does not form part of the Somerset Council Terms and Conditions and may be subject to change.

## 2. Process

### 2.1. Auto-enrolment

- 2.2. 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 here for current threshold [Workplace pensions: Joining a workplace pension - GOV.UK \(www.gov.uk\)](https://www.gov.uk/workplace-pensions-joining-a-workplace-pension).
- 2.3. 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.

- 2.4. 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.
- 2.5. 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.
- 2.6. If they are a non-teaching employee, they will be enrolled into the Local Government Pension Scheme.
- 2.7. 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).
- 2.8. If they are paid via a fee arrangement they will be enrolled into the Nest scheme.

### **3. Pension opt out**

- 3.1. 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.
- 3.2. 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.
- 3.3. 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.
- 3.4. 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.

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

- 4.1. 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](#).
- 4.2. 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.

## **5. Redundancy**

- 5.1. 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 pays the costs of the early withdrawal of pension.

## **6. Retirement**

- 6.1. 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.
- 6.2. Members of the Local Government Pension Scheme 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.
- 6.3. 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 Local Government Pension Scheme 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.

## **7. Reductions in Pay**

- 7.1. For benefits accrued before the 31<sup>st</sup> March 2014, if a member has restricted pay (either voluntarily or compulsorily), 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 10 years before the 31<sup>st</sup> March 2014 (plus RPI from the end of the 3 year period) as their final pensionable pay for the calculation of pre 2014 benefits only.

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

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

- 8.1.1. 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.

- 8.1.2. The authority to agree a retirement in the interests of efficiency of the service sits with Service Directors.

- 8.1.3. 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.

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

### **8.2. Compassionate grounds**

- 8.2.1. 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 Local Government Pension Scheme 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.

- 8.2.2. 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.
- 8.2.3. The authority to agree an early retirement or deferred early retirement on compassionate grounds, with or without costs, resides with an Executive Director.
- 8.2.4. 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.

## **9. Flexible Retirement**

- 9.1. Employees aged 55 and over who are members of the Local Government Pension Scheme 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 Executive Leadership Team Member and the Service Director of Workforce.
- 9.2. 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/government/publications/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.
- 9.3. 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.
- 9.4. 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.
- 9.5. 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
- 9.6. 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.

## **10. Points of Note**

- 10.1. 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.
- 10.2. 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 correct assumed pensionable pay to Peninsula Pensions to enable them to calculate the Career Average Revalued Earnings (CARE) pension scheme benefits, as set out in the Local Government Pension Scheme Regulations.
- 10.3. Payment of the lump sum is made by Peninsula Pensions and the monthly pension is administered by HR Admin and Payroll.
- 10.4. 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).
- 10.5. 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
- 10.6. 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.
- 10.7. 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.

- 10.8. 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.
- 10.9. 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).
- 10.10. **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.**

## **11. Ill Health Retirement**

- 11.1. For a Local Government Pension Scheme member with at least two years' continuous contributory membership in the pension scheme, an ill health retirement may be available if either:
- there is permanent incapacity to discharge efficiently the duties of the relevant employment by reason of ill health, or,
  - the ill health condition is likely to restrict the member from undertaking gainful employment before normal retirement age
- 11.2. 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.
- 11.3. In the circumstances above, the Local Government Pension Scheme 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.

#### **11.4. Tier 1 Arrangements**

- 11.4.1. 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.

#### **11.5. Tier 2 Arrangements**

- 11.5.1. 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.
- 11.5.2. 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.
- 11.5.3. 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.

#### **11.6. Tier 3 Arrangements**

- 11.6.1. 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.

#### **11.7. Tier 3 Definitions**

- 11.7.1. 'Reasonable period' means a period of three years.
- 11.7.2. 'Gainful employment' means any paid employment for not fewer than 30 hours in each week for a period of not fewer than 12 months.
- 11.7.3. 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.'
- 11.7.4. If payments have continued when gainful employment has been found, the

Council has powers to recover any overpayment from the 3rd tier member.

- 11.7.5. 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.
- 11.7.6. 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.
- 11.7.7. In this situation, if the "pensioner member with deferred benefits" subsequently becomes an active member of the Local Government Pension Scheme again, the earlier period of membership, which resulted in ill health benefits, should not be aggregated with the later active membership.

#### **11.8. Tier 3 Review**

- 11.8.1. The Council will undertake a review when payments have been made for 18 months if payments are still continuing at that point.
- 11.8.2. 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.
- 11.8.3. The Pensions Section must be notified without delay when payments should be discontinued.
- 11.8.4. 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 Independent Registered Medical Practitioner 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.
- 11.8.5. The Independent Registered Medical Practitioner should be asked
  - 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
  - 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.
- 11.8.6. If the Independent Registered Medical Practitioner 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 Independent Registered Medical Practitioner.
- 11.8.7. If the Independent Registered Medical Practitioner 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 History

Revision Date	Author	Version	Description of Revision
		1	New Somerset Policy

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**Summary Table for HR Committee July 2023**

<b>Policy</b>	<b>Points to Note</b>	<b>Suggested Approval Route</b>
Pensions Discretions Policy	<p>While the Local Government Pension Scheme (LGPS) is largely governed by statutory regulations set out in legislation, 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 with Peninsula Pensions who administer the LGPS on behalf of Somerset Council. There are mandatory and non-mandatory discretions. The Council is required to have a written policy on all of the mandatory discretions. However, whilst there is no requirement for the Council to have a written policy in respect of the non-mandatory discretions, there are eight non-mandatory discretions where it is recommended for Scheme employers to have a written policy. This is in order that both members and the Pension Fund administering authority (Peninsula Pensions) can be clear on the Council's policy on these.</p> <p>The new policy is based on the former Somerset County Council policy. This policy was more favourable to pension scheme members as it permitted application of a greater number of the discretionary regulations than the former District Councils' policies. That said, the approach taken when determining which discretions to apply has always been to ensure that the costs to the Council are controlled while providing flexibility for scheme members as allowed by the Regulations.</p> <p>Continuing to apply this same approach could have a financial impact on Somerset Council simply on the basis that the new Council is a larger organisation with more pension scheme members. It is not possible to predict the cost as any request to apply a discretion is on a case-by-case basis and cannot be predicted.</p>	<p>Requires HR Committee approval as there is the potential for financial implications now more pension scheme members are covered by the policy.</p> <p>Flagged to HR Committee for information and awareness as a positive change to former District Council policies.</p>

	<p>The HR Committee’s decision on the two additional discretions outlined in the report circulated alongside this one will be incorporated into the Pensions Discretions Policy.</p>	
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