

# LOCAL GOVERNMENT PENSION SCHEME DISCRETIONS

## SCOPE

The discretionary policies set out in this document apply to all employees, who are employed under the terms and conditions of **Sunderland City Council** who are members of the Local Government Pension Scheme

## 1. Introduction

- 1.1 This document sets out below the discretions to be applied within **Sunderland City Council**.
- 1.2 In formulating and reviewing its policy, **Sunderland City Council** must have regard to the extent to which the exercise of its discretionary powers could lead to serious loss of confidence in the public service.
- 1.3 Whilst this Policy Statement sets out the general position, the Council must consider every application on its merit. Where there are extraordinary or justifiable circumstances, a departure from policy may be appropriate.
- 1.4 Where a discretion would not normally be exercised unless it was in the interest of the Council this could include, but is not limited to, the following considerations:
  - As an aid to recruitment and retention of key employees
  - For reasons of business efficiency
  - Where there are wider financial considerations for the Council (where a cost in one area may unlock savings in another area)
  - To aid in service delivery
  - Where applying the discretion would lead to a better outcome than all alternative courses of action
  - Having due regard to the Council's duty of care to current and former employees
  - Where applying the discretion is necessary to preserve confidence in the public service
  - Where communications were not received (for example, where a form was lost in the post)
  - Where a member was not given information in time to decide
- 1.5 References in the document below refer to the following legislation
  - R = LGPS Regulations 2013 (SI 2013/2356)
  - TP = LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525)
  - A = LGPS (Administration) Regulations 2008 (SI 2008/239)
  - B = LGPS (Benefits, Membership and Contributions) Regulations 2007 (as amended) (SI 2007/1166)
  - T = LGPS (Transitional Provisions) Regulations 2008 (SI 2008/238)
  - L = LGPS Regulations 1997 (as amended) (SI 1997/1612)
  - LGPS Regulation 1995 (SI 1995/1019)

- TL = LGPS (Transitional Provisions) Regulations 1997 (SI 1997/1613)

## **2. Mandatory Discretions under LGPS 2014**

- 2.1 Scheme employers, participating in the LGPS in England and Wales are required to formulate, publish, and maintain a written statement of policy on certain discretions set out in the Local Government Pension Scheme Regulations.

### **2.2 Funding of Additional Pension – R16(2)(e) & R16(4)(d)**

Employers will determine whether, how much, and in what circumstances to contribute to a Shared Cost Additional Pension Contribution (SCAPC).

#### **Policy**

This discretion will normally be exercised for authorised unpaid absence where the employee missed the 30-day deadline, through no fault of their own, to buy additional pension following a period of authorised unpaid leave. In such cases the Council will contribute 2/3rds of the cost on the same basis as the employee.

Otherwise, the Council will not normally establish a Shared Cost Additional Pension Contribution scheme for any of its employees unless there is a clear financial or operational advantage to be gained by so doing. Any amount contributed by the Council would not normally exceed 2/3rds of the cost and would be on the same basis as the employee.

### **2.3 Flexible Retirement – R30(6) & TP11(2)**

Employers will determine whether to permit an application for flexible retirement for an active LGPS member, age 55 or over who, reduces their working hours or grade.

#### **Policy**

Any application for flexible retirement will be considered on an individual basis.

- The employee must first make a successful application for a permanent reduction in hours or responsibility (grade) under the Council's flexible working policy.
- If the member is aged between 55 and 60 and qualifies for the "rule of 85" there will be a cost as certain benefits cannot be actuarially reduced. This will apply where age (in whole years) plus scheme membership (in whole years) adds up to 85 or greater.
- If there is no cost to the Council in releasing the pension, then permission would normally be granted.

- If there is a cost to the Council in releasing the pension and this is fully offset, within two years, by the savings under the flexible working request permission would normally be granted.
- If there is a cost to the Council in releasing the pension and this is not fully offset by the savings under the flexible working request permission would normally be withheld unless this was in the interest of the Council.
- If an application was accepted, the Council would not normally agree to waive any actuarial reduction unless it was in the interest of the Council to do so.

#### **2.4 Waiving of actuarial reduction – R30(8)**

Employers will determine whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age other than on the grounds of flexible retirement (where the member only has post 31 March 2014 membership).

- Whether, in addition to the benefits accrued prior to 1 April 2008 (which must be paid), to permit the member to choose to draw:
- All, part, or none of the pension benefits accrued after 31 March 2008 and before 1 April 2014 and/or
- All, part, or none of the pension benefits accrued after 31 March 2014

##### **Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

#### **2.5 Award of Additional Pension – R31**

Whether to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency (by up to £7,316 p.a. on 1 April 2021 - this figure is increased annually based on inflation).

##### **Policy**

The Council will award additional pension actuarially equivalent to the value of any lump sum termination payment foregone by the member (in excess of the statutory redundancy payment) if requested to do so by the member.

Otherwise, this discretion will not normally be exercised unless it was in the interest of the Council to do so.

#### **2.6 Switch back on the 85-year rule – TPSch 2 para 1(2) & 1(1)(c)**

Employers will determine whether to switch back on the 85-year rule for members voluntarily retiring on or after age 55 and before age 60.

##### **Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

**2.7 Whether to waive any actuarial reduction for a member voluntarily drawing benefits before normal pension age other than on the grounds of flexible retirement (where the member has both pre 1st April 2014 and post 31st March 2014 membership). TP3(1), TPSch 2, para 2(1), B30(5) & B30A(5)**

**Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- a) On compassionate grounds (pre 1<sup>st</sup> April 2014 membership) and in whole or in part on any grounds (post 31<sup>st</sup> March 2014 membership) if the member was not in the Scheme before 1<sup>st</sup> October 2016.

**Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- b) On compassionate grounds (pre 1<sup>st</sup> April 2014 membership) and in whole or in part on any grounds (post 21<sup>st</sup> March 2014 membership) if the member was in the scheme before 1<sup>st</sup> April 2006, will not be 60 by 31<sup>st</sup> March 2016 and will not attain 60 between 1<sup>st</sup> April 2016 and the 31<sup>st</sup> March 2020 inclusive.

**Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- c) On compassionate grounds (pre 1<sup>st</sup> April 2016 membership) and in whole or in part on any grounds (post 31<sup>st</sup> March 2016 membership) if the member was in the Scheme before 1<sup>st</sup> October 2006 and will be 60 by 31<sup>st</sup> March 2016.

**Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- d) On compassionate grounds (pre 1<sup>st</sup> April 2020 membership) and in whole or in part on any grounds (post 31<sup>st</sup> March 2020 membership) if the member was in the Scheme before 1<sup>st</sup> October 2006 and will not be 60 by 31<sup>st</sup> March 2016 and will attain 60 between 1<sup>st</sup> April 2016 and 31<sup>st</sup> March 2020 inclusive.

**Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

### **3. Optional Discretions under LGPS 2014**

- 3.1 There are a number of other discretions, which Scheme employers may exercise under the LGPS Regulations 2013, where a written policy is not required; however, it is appropriate that these are listed to ensure clarity on the employer's stance on these matters.

3.2 **Funding of Additional Voluntary Contributions – R17(1) & definition of SCAVC on RSch 1**

Employers will determine whether, how much, and in what circumstances to contribute to a Shared Cost Additional Voluntary Contribution (SCAVC).

**Policy**

The Council will pay SCAVC contributions where an employee has elected to pay AVCs by salary sacrifice. The amount of these employer SCAVC contributions will not exceed the amount of salary sacrificed by the employee.

This is a Council discretion which is subject to the employee meeting the Council's conditions for acceptance into the salary sacrifice shared cost AVC scheme and may be withdrawn or changed at any time.

Otherwise, the Council will not normally establish a Shared Cost Additional Voluntary Contribution scheme for any of its employees unless there is a clear financial or operational advantage to be gained by so doing.

3.3 **Permit a late transfer in of previous pension rights – R100(6)**

Employers, with the agreement of the Administering Authority, will determine whether to permit a Scheme member to elect to transfer other pension rights into the LGPS if the member has not made an election within 12 months of joining the Scheme.

**Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

3.4 **Permit a late election to retain separate LGPS benefits – R22(7)(b) & R22(8)(b).**

Employers will determine whether to permit an extension to the 12-month time limit within which a Scheme member may elect not to aggregate a previous deferred benefit with their new LGPS employment (or ongoing concurrent LGPS employment).

**Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so

3.5 **Allocation of pension contribution band – R9(1) & R9(3)**

Employers will determine how the pension contribution band to which an employee is to be allocated on joining the Scheme and at each subsequent April will be decided and the circumstances in which the contribution band will be reviewed in the course of a Scheme year

### **Policy**

The contribution rate will be assessed each pay period

## **3.6 Calculation of assumed pensionable pay R21(5)**

Employers will determine whether to include the amount of any 'regular lump sum payment', received by the member in the 12-months preceding the commencement of a period of absence or the date at which ill health retirement or death occurred, in the calculation for assumed pensionable pay. A 'regular lump sum payment' is a payment for which the member's employer determines there is a reasonable expectation that such a payment would be paid on a regular basis.

### **Policy**

The Council does not include any "regular lump sum" to determine Assumed Pensionable Pay for periods of absence, except when determining calculations for ill health retirement or death in service when the Council will consider each case on its merits.

In such cases, the primary criteria will be whether it could reasonably be expected that the member would have been likely to receive that regular payment for the foreseeable future.

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

4.1 Scheme employers are required to prepare, publish and review a written policy in relation to: -

4.2 **Whether to "switch on" the 85-year rule for a member voluntarily drawing benefits on or after age 55 and before age 60. TPSch 2, para 1(2) & 1(1)(c)**

### **Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

4.3 **Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30 (member). B30(5), TPSch 2, para 2(1)**

### **Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- 4.4 **Whether to “switch on” the 85 year rule for a pensioner member with deferred benefits voluntarily drawing benefits on or after age 55 and before age 60. TPSch 2, para 1(2) & 1(1)(c)**

**Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- 4.5 **Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early under B30A (pensioner member with deferred benefits). B30A(5), TPSch 2, para 2(1)**

**Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- 4.6 **Early payment of suspended tier 3 ill health pension – B31(7).**

Employers will determine whether a suspended ill health tier 3 member is permanently incapable of undertaking any gainful employment.

**Policy**

The Council will determine this in line with the medical assessment as stated on the ill health certificate

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

- 5.1 Scheme employers are required to prepare and keep under review a written policy in relation to: -

- 5.2 **Early payment of pension benefits – 31(2)**

Employers will determine whether to grant applications for the early payment of pension benefits on or after age 50 and before age 55.

**Policy**

The Council will consider each case on its merits, having regard to the facts of the particular case. This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- 5.3 **Waive actuarial reduction on compassionate grounds – 31(5) & TPSch2 Para 2(1).**

Employers will determine whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early.



### **Policy**

The Council will consider each case on its merits, having regard to the facts of the particular case. This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- 5.4 **Whether to “switch on” the 85-year rule for a member with deferred benefits voluntarily drawing benefits on or after age 55 and before age 60. TPSch 2, para 1(2) & 1(1)(f) & R60**

### **Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

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

- 6.1 Scheme employers are recommended to formulate, publish and keep under review a statement of policy in relation to: -
- 6.2 **Early payment of deferred pension benefits – TP3(5A)(vi), TL4, L106(1) & D11(2)(c)**

Grant application for early payment of deferred benefits on or after age 50 on compassionate grounds. Although the common provisions of the 1997 Transitional provisions regulations do not specify regulation D11 (2)(c), their intention was that it should apply to this regulation.

### **Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

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

- 7.1 Scheme employers are required to formulate, publish, and keep under review a statement of policy on two discretions under the above regulations and must be satisfied that the policy is workable, affordable, and reasonable having regard to the foreseeable costs.

The Council publishes, and keeps under review, a separate policy statement on the Discretionary Compensation Regulations. For convenience this is summarised below.

For the avoidance of doubt this does not replace the Council's Policy Statement on the Discretionary Compensation Regulations which will take precedence in any conflict.

The Council's Policy Statement on the Discretionary Compensation Regulations also contains details of the scheme of authority for the exercise of these discretions.

## **7.2 Calculation of Redundancy Payment – 5**

Employers will determine whether to base a redundancy payment on an employee's actual week's pay where it exceeds the statutory weeks' pay limit.

### **Policy**

The Council will calculate redundancy payments based on an actual weeks' pay. The statutory weekly pay limit will therefore be disregarded in this respect.

## **7.3 Make a termination payment – 6**

To award lump sum compensation of up to 104 weeks' pay in cases of redundancy, termination of employment on efficiency grounds, or cessation of a joint appointment.

### **Policy**

The Council reserves the right to exercise this discretion in exceptional cases where, in the efficient exercise of its functions, it is considered to be in the best interests of the Council to pay a compensation payment to an employee upon termination of their employment. The exercise of this discretion will be considered on a case-by-case basis according to their individual merits.

In the event that an employee has already received a redundancy payment and a decision is taken to pay an additional lump sum compensation payment, the redundancy payment will be taken into account when calculating the compensation payment, so that the total payment will not exceed 104 weeks' pay.

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

8.1 Although the 2000 Compensation Regulations have been revoked, they still apply to any Compensatory Added Years previously awarded by a Scheme employer before 1 April 2007.

8.2 Scheme employers, who made awards of Compensatory Added Years are required to formulate, publish, and keep under review a statement of policy under the above regulations and must be satisfied that the policy is workable, affordable, and reasonable having regard to the foreseeable costs.

### **8.3 Apportionment of annual compensatory added years' payment for children's pensions - 25 (2)**

How it will decide to whom any children's annual compensatory added years payments are to be paid where children's pensions are not payable under the

LGPS (because the employee had not joined the LGPS) and, in such a case, how the annual added years will be apportioned amongst the eligible children.

**Policy**

The Council will consider each case on its merits, having regard to the facts of the particular case. This discretion will not normally be exercised unless it was in the interest of the Council to do so.

**8.4 Apportionment of annual compensatory added years - 21 (4)**

Employers will determine how any surviving spouses or civil partner's annual compensatory added years is to be apportioned where the deceased is survived by more than one spouse or civil partner.

**Policy**

The Council will consider each case on its merits, having regard to the facts of the particular case. This discretion will not normally be exercised unless it was in the interest of the Council to do so.

**8.5 Suspension of spouse's annual compensatory added years - 21 (7)**

Employers will determine whether the annual compensatory added years, paid to a spouse of a person who ceased employment before 1 April 1998, will continue to be paid if they remarry, enter into a civil partnership, or cohabit after 1 April 1998.

**Policy**

The Council will consider each case on its merits, having regard to the facts of the particular case. This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- 8.6** If, under the proceeding decision, the Council's policy is to apply the normal suspension rules, whether the spouses or civil partners annual compensatory added year's payment should be re-instated after the end of the re-marriage, new civil partnership, or co-habitation. – 21(5)

**Policy**

The Council will consider each case on its merits, having regard to the facts of the particular case. This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- 8.7** Whether, in respect of the spouse or civil partner of a person who ceased employment before 1<sup>st</sup> April 1998 and where the spouse or civil partner re-marries or co-habits or enters into a civil partnership on or after the 1<sup>st</sup> April 1998 with another person who is also entitled to a spouses or civil partners annual CAY payment, the normal rule requiring one of them to forego payment whilst the period of marriage, civil partnership or cohabitation lasts,

should be disapplied i.e. whether the spouses or civil partners' annual CAY payments should continue to be paid to both of them. – 21(7)

**Policy**

The Council will consider each case on its merits, having regard to the facts of the particular case. This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- 8.8 Whether and to what extent to reduce or suspend the members annual compensatory added year's payment during any period of re-employment within local government. - 17

**Policy**

The Council will consider each case on its merits, having regard to the facts of the particular case. This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- 8.9 How to reduce the member's annual compensatory added year's payment following the cessation of a period of re-employment in local government. - 19

**Policy**

The Council will consider each case on its merits, having regard to the facts of the particular case. This discretion will not normally be exercised unless it was in the interest of the Council to do so.

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

- 9.1 Scheme employers are required to formulate, publish, and keep under review a statement of policy under the above regulations and must be satisfied that the policy is workable, affordable, and reasonable having regard to the foreseeable costs.

**9.2 Injury Awards 3(1)**

Employers will determine whether to make an injury award to those who sustain an injury or contract a disease as a result of anything they were required to do in performing the duties of their job and, in consequence:

- Suffer a reduction in remuneration.
- Cease to be employed as a result of an incapacity which is likely to be determined and which was caused by the injury or disease.
- Die leaving a surviving spouse, civil partner, or dependant.

**Policy**

This discretion will not normally be exercised, the Council does not operate an injury allowance scheme

**9.3 Amount of Injury Award 3(4) & (8)**

Where a policy to make injury award payments exists, employers will determine the amount of injury allowance to be paid

- 9.4 To determine whether a person continues to be entitled to an injury allowance under regulation 3(1) (Reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carry out duties of the job). – 3(2)

**Policy**

This discretion will not normally be exercised, the Council does not operate an injury allowance scheme

- 9.5 Whether to grant an injury allowance following cessation of employment as a result of permanent incapacity caused by sustaining an injury or contracting a disease in the course of carrying out duties of the job. 4(1)

**Policy**

This discretion will not normally be exercised, the Council does not operate an injury allowance scheme

- 9.6 Amount of injury allowance following cessation of employment as a result of permanent incapacity caused by sustaining and injury or contracting a disease in the course of carrying out the duties of the job. 4(3) & 8

**Policy**

This discretion will not normally be exercised, the Council does not operate an injury allowance scheme

- 9.7 Determine whether a person continues to be entitled to an injury allowance awarded under regulation 4(1) (loss of employment through permanent incapacity). 4(2)

**Policy**

This discretion will not normally be exercised, the Council does not operate an injury allowance scheme

- 9.8 Whether to suspend or discontinue injury allowance awarded under regulation 4(1) (loss of employment through permanent incapacity). If person secures paid employment for not less than 30 hours per week for a period of not less than 12-months. 4(5)

**Policy**

This discretion will not normally be exercised, the Council does not operate an injury allowance scheme

- 9.9 Whether to grant an injury allowance following cessation of employment with entitlements to immediate LGPS pension where a regulation 3 payment (reduction in remuneration as a result of sustaining an injury or contracting a

disease in the course of carrying out duties of the job) was being made at date of cessation of employment but regulation 4 (loss of employment through permanent incapacity) does not apply. 6(1)

**Policy**

This discretion will not normally be exercised, the Council does not operate an injury allowance scheme

- 9.10 Determine amount of any injury allowance to be paid under regulation 6(1) (payment of injury allowance following the cessation of employment).

**Policy**

This discretion will not normally be exercised, the Council does not operate an injury allowance scheme

- 9.11 Determine whether and when to cease payment of an injury allowance payable under regulation 6(1) (payment of injury allowance following the cessation of employment). 6(1)

**Policy**

This discretion will not normally be exercised, the Council does not operate an injury allowance scheme

- 9.12 Whether to grant an injury allowance to the spouse, civil partner, cohabiting partner (the requirement to nominate a cohabiting partner has ceased entirely under these regulations due to the outcome of the Elmes v Essex high court judgement) or dependent of an employee who dies as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job. 7(1)

**Policy**

This discretion will not normally be exercised, the Council does not operate an injury allowance scheme

- 9.13 To determine an amount of any injury to be paid to the spouse, civil partner, nominated cohabiting partner (for awards made on or after the 1<sup>st</sup> April 2008 the requirement to nominate a cohabiting partner has ceased due to the outcome of the Elmes v Essex high court judgement) or dependent of an employee under regulation 7(1) (employee who dies as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job). 7(2) & 8

**Policy**

This discretion will not normally be exercised, the Council does not operate an injury allowance scheme

- 9.14 To determine whether and when to cease payment of any injury allowance payable under regulation 7(1) (employee who dies as a result of sustaining

an injury or contracting a disease in the course of carrying out duties of the job). 7(3)

**Policy**

This discretion will not normally be exercised, the Council does not operate an injury allowance scheme

**10 Further non-mandatory discretions**

10.1 This section lists further non-mandatory discretions under a variety of regulations that it is optional for the employer to maintain a policy.

10.2 Where a member leaves with less than two years membership they are entitled, when that active membership ceases, to be repaid by the administering authority. There is no right to a return of contributions where a member left their employment due to an offence of a fraudulent character or grave misconduct in connection with that employment, unless the employer directs a total or partial refund is to be made. (Regulation 19 of the 2013 Regulations and Regulation 47 of the Administration Regulations).

**Policy**

The Council will consider each case on its merits, having regard to the facts of the particular case. This discretion will not normally be exercised unless it was in the interest of the Council to do so.

10.3 Determine whether person in receipt of Tier 3 ill health pension has started gainful employment. (Regulation 37 of the 2013 Regulations).

**Policy**

The Council will determine gainful employment as employment expected to last at least 12 months, paid at, or above, the current Living Wage rate published by the Resolution Foundation, for at least 30 hours per week.

10.4 Whether to recover any overpaid Tier 3 pension following commencement of gainful employment. (Regulation 38 of the 2013 Regulations).

**Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

10.5 Decide whether deferred beneficiary meets criteria of being permanently incapable of former job because of ill health and is unlikely to be capable of undertaking gainful employment before normal pension age or for at least three years, whichever is the sooner. (Regulation 38 of the 2013 Regulations).

**Policy**

The Council will determine this in line with the medical assessment as stated on the ill health certificate.

- 10.6 Decide whether a suspended ill health tier 3 member is unlikely to be capable of undertaking gainful employment before normal pension age because of ill health. (Regulation 37 of the 2013 Regulations).

**Policy**

The Council will determine this in line with the medical assessment as stated on the ill health certificate.

- 10.7 Whether to apply to Secretary of State for a forfeiture certificate where member is convicted of a relevant offence (a relevant offence is an offence committed in connection with an employment in which the person convicted is a member, and because of which the member left the employment).

Where a forfeiture certificate is issued, whether to direct that benefits are to be forfeited (other than rights to GMP – but see R95). (Regulations 91 and 95 of the 2013 Regulations and 72 of the Administration Regulations).

**Policy**

The Council will consider each case on its merits, having regard to the facts of the particular case. This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- 10.8 Whether to recover from Fund any monetary obligation or, if less, the value of the member's benefits (other than benefits from transferred in pension rights or APCs or AVCs/ SCAVCs or, subject to R95, in respect of any GMP) where the obligation was incurred as a result of a grave misconduct or a criminal, negligent or fraudulent act or omission in connection with the employment and as a result of which the person has left employment. (Regulation 93 of the 2013 Regulations and Regulation 74 of the Administration Regulations).

**Policy**

The Council will consider each case on its merits, having regard to the facts of the particular case. This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- 10.9 Whether, if the member has committed treason or been imprisoned for at least 10 years for one or more offences under the Official Secrets Acts, forfeiture under R91 or recovery of a monetary obligation under R93 should deprive the member or the member's surviving spouse or civil partner of any GMP entitlement.

**Policy**

The Council will consider each case on its merits, having regard to the facts of the particular case. This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- 10.10 Where forfeiture certificate is issued, whether to direct interim payments out of Pension Fund until decision is taken to either apply the certificate or to pay



benefits. (Regulation 91 of the 2013 Regulations and Regulation 73 of the Administration Regulations).

**Policy**

The Council will consider each case on its merits, having regard to the facts of the particular case. This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- 10.11 Allow late application to convert scheme AVCs / SCAVCs into membership credit i.e., allow application more than 30 days after cessation of active membership. (Regulation 15 of the TP Regulations).

**Policy**

This discretion will not normally be exercised unless it was in the interest of the Council to do so.

- 10.12 Decide, in the absence of an election from the member within 3 months of being able to elect, which benefit is to be paid where the member would be entitled to a pension or retirement grant under 2 or more regulations in respect of the same period of Scheme membership.

- Councillor members who ceased active membership on or after 1 April 1998, and any other scheme members who ceased active membership on or after 1 April 1998 and before 1 April 2008
- Scheme members who ceased active membership before 01 April 1998

(Regulation 34(1)(b) Local Government Pension Scheme Regulations 1997).

**Policy**

The Council will consult with the relevant Administering Authority in the event of benefits being due under different regulations to achieve the best outcome.

- 10.13 An Employer who is an Admission or Schedule 2 Part 2 (previously known as Resolution) body may determine that only specified employees, or classes of employee, should be eligible for membership of the Scheme (Regulations 3 and Schedule 2 Part 2 of the 2013 Regulations, and Regulations 4,7 and 8 of the Local Government Pension Scheme (Administration) Regulations 2008 “the Administration Regulations).

**Policy**

This discretion does not apply to the Council.

- 10.14 The Employer may approve a bulk transfer of liabilities out of the Fund to a new scheme, but only if the Administering Authority also agrees, and the employer must pay the costs of calculating the transfer (Regulation 98 of the 2013 Regulations and Regulations 81 and 82 of the Administration Regulations).

**Policy**

The Council will consult with the relevant Administering Authority in the event of any potential bulk transfer to achieve the best value outcome.

- 10.15 The Employer may consent to a member's final pensionable pay being calculated by reference to fees earned over a period of three consecutive years within the final ten years of their membership of the Scheme (Regulations 3,4,8,10 and 17 of the TP Regulations and Regulation 11 of the Benefits, Regulations).

**Policy**

The Council identifies the average of the best three consecutive scheme years from the 10 years prior to leaving.

- 10.16 The Employer may specify in an employer's contract of employment that a benefit that is not already specified as being included in the definition of pensionable pay and is not specifically disallowed within the definition of pensionable pay, should be included within pensionable pay (Regulation 20 of the 2013 Regulations).

**Policy**

The Council will not normally exercise this discretion.

- 10.17 The Employer may decide to allow a certificate produced by an Independent Registered Medical Practitioner under the 2008 Scheme for the purposes of making an ill health determination under the 2014 Scheme (Regulation 12 of the TP Regulations).

**Policy**

The Council will not normally exercise this discretion.

## **11 Superseded Discretions**

- 11.1 Discretions in this section have been superseded by amending legislation or further changes and are included only for reference.
- 11.2 Contribution Equivalent Premium (CEP) in excess of the Certified Amount (CA) recovered from a refund of contributions can be recovered from the Pension Fund. Under revoked regulation 52(1) of the OPS (Contracting-out) Regulations 1996 (SI 1996/1172) and regulation 12 of the OPS (Schemes that were Contracted-out) (No.2) Regulations a CEP must have been paid to the commissioner within 6 months after the date of termination of contracted-out employment, or one month after the Commissioner's notifies the administering authority that a CEP is payable.

Following the end of the contracted-out reconciliation exercise, this discretionary policy should be spent entirely as all premiums will have been paid and no further notifications will be issued by the commissioners. (Regulation 49 of the Administration Regulations).

**Policy**

This discretion no longer applies but is included for reference.

- 10.18 For leavers on or before 31st March 2014 only, the Employer may consent to the early payment of pension to a member who has left service and is aged between 55 and 60 (Regulation 30 of the Benefits Regulations). This was

amended in the Local Government Pension Scheme (Amendment) Regulations 2018 and these members no longer require the consent of their former employer to access their pension.

**Policy**

This discretion no longer applies but is included for reference.

**12 Miscellaneous**

- 12.1 Any change to the discretions exercised under the LGPS Regulations can take immediate effect from the date the changes to the policies are agreed.
- 12.2 Any change to the discretions exercised under the Discretionary Compensation Regulations 2000, the Discretionary Compensation Regulations 2006 or the Injury Allowances Regulations 2011 cannot take effect until one month after the date the statement of the amended policy is published.
- 12.3 A copy of any revised policy should also be sent to the Administering Authority within one month of its revision.

**Signed**.....

**Date**.....

