



LGPS Discretions Statement
(in respect of West Yorkshire
Pension Fund)



Policy	LGPS Discretions Statement
Date of review	February 2022 (updated)
Date of next review	October 2024
Lead professional	Chief Financial Officer
Status	Statutory

LGPS DISCRETIONS STATEMENT SCHEME EMPLOYERS

OVERVIEW

The Local Government Pension Scheme (LGPS) in England and Wales was amended from 1 April 2014. The provisions of the new LGPS, together with protections for members’ benefits accrued before 1 April 2014, are now contained in the Local Government Pension Scheme Regulations 2013 (the ‘**LGPS Regulations 2013**’), and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (the ‘**LGPS Transitional Regulations 2014**’) (as at 14 May 2018).

Therefore, this statement now relates to the application of discretions under:

- (a) The **LGPS Regulations 2013**
- (b) **LGPS Transitional Regulations 2014**, and
- (c) The Local Government Pension Scheme Regulations 1997 (**‘LGPS Regulations 1997’**) and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (**‘LGPS Benefits Regulations 2007’**), which continue to have effect in so far as is necessary under Regulation 3 (Membership before 1 April 2014) of the LGPS Transitional Regulations 2014

This statement is issued by West Yorkshire Pension Fund (the ‘**Fund**’) to assist Scheme Employers within any of the Fund’s that are administered in partnership with West Yorkshire Pension Fund.

Furthermore, this statement has been prepared on the Fund’s understanding of the above regulations; therefore whilst it represents the views of the Fund it should not be treated as a complete and authoritative statement of the law. Employers may wish, or will need, to take their own legal advice on the interpretation of any particular regulations. No responsibility whatsoever will be assumed by the Fund for any liability, financial or otherwise, incurred by employers relying on this statement. The Fund does not accept any responsibility for reliance on the contained, or referred to, in this statement.

INTRODUCTION

*Under Regulation 60 (statements of policy about exercise of discretionary functions) of the LGPS Regulations 2013 and paragraph 2(2) of Schedule 2 of the LGPS Transitional Regulations 2014, employers are required to make and publish policy statements on how they will exercise **five specific mandatory discretions**.*

In addition there are **two further discretions** relevant to employers, which relate to members who left before 1 April 2014. These are *under Regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008* (in respect of leavers between 1 April 2008 and 31 March 2014) and *under Regulation 106 of the LGPS Regulation 1997* (in respect of leavers between 1 April 1998 and 31 March 2008).

Any policy statements made must not limit, or 'fetter', how an employer uses any of the discretions afforded by the scheme.

The use of any discretion is likely to lead to immediate and potentially continuing increased pension costs for the employer, which could be considerable.

The employer is required to keep its statement under review and make such revisions as are appropriate following a change in its policy. Following any changes in its policy the employer must publish the revised policy and send a copy to the administering authority within one month of the date the policy is revised.

In formulating and revising the policy statements outlined below, the employer must have regard to the extent to which the exercise of its discretionary powers could lead to a serious loss of confidence in the public service.

The discretions listed below are those that require a written policy, however employers have further discretions under the regulations that they may wish to formulate a written policy on.

FURTHER GUIDANCE FROM THE LOCAL GOVERNMENT PENSION SCHEME SECRETARIAT

When formulating any policies Scheme Employers should also take into account information provided by the LGPC Secretariat which can be found [here](#).

SCHEME EMPLOYER DISCRETIONS

Specific discretions under the LGPS Regulations 2013 and the LGPS Transitional Regulations 2014

Details of the **five discretions** available are as follows:

1. Shared Cost Additional Pension Contribution (SCAPC) - Regulation 16 (2)(e) and 16 (4)(d)

Note: Where an active member pays Additional Pension Contributions by regular or lump sum contribution to purchase extra annual pension, an employer can choose to voluntarily contribute towards the cost of purchasing that extra pension through a SCAPC.

The employer does not consider contributions towards additional pension contributions to be an essential part of its employment strategy. However, **the employer** will consider applications made under these specific provisions having regard to **the employer's** general policy from time to time, on the employee pay strategy and the particular circumstances surrounding each case.

It is likely that decisions will be made on the merits of each case having particular regard to factors such as:

- The employer's ability to meet the cost of granting such a request, and/or
- The member's personal circumstances

2. Awarding Additional Pension - Regulation 31

*Note: An employer can choose to grant additional pension up to the maximum allowed by the scheme rules provided that the member is active **or** is within 6 months of leaving **for reasons of** redundancy **or** business efficiency **or** whose employment was terminated by mutual consent on grounds of business efficiency.*

Employers may wish to use this Regulation as an aid to recruitment, an aid to retention or to compensate or reward an employee who is retiring.

Employers should also consider provisions of this Regulation, in particular Regulation 31(4), if they decide to exercise their power under **Section 1 (general power of competence) of the Localism Act 2011**.

The employer will consider applications made under this *Regulation* having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to the following:

- The member's personal circumstances
- The interests of **the employer**
- The additional contributions due to the Fund by **the employer** in respect of the exercise of this discretion
- Any potential benefits or savings to **the employer** arising from the exercise of this discretion
- Other options that are, from time to time, available under **the employer's** severance arrangements
- The funding position of **the employer** within the Fund
- The ability of **the employer** to meet the cost of granting such an award

3. Flexible Retirement - Regulation 30(6)

Note: An employer can decide whether to permit a member who has attained the age of 55 to draw all or part of their retirement benefits (both pension and lump sum) whilst continuing in employment and Fund membership provided that:

- *There has been a reduction in hours, or*
- *A reduction in grade.*

An employer may agree to waive in whole or in part any actuarial reductions that would be required (see below: Regulation 30(8)).

The employer will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- The operating requirements of the employing department
- The employer's ability to meet the cost of granting such a request
- Whether any demonstrable cost saving in excess of potential savings available under any severance arrangements in place from time to time can be made
- The member's personal circumstances
- Whether to permit the member to choose to draw all, part or none of the pension benefits they have built up after 1 April 2008. Your flexible retirement policy should set out your position on this matter

4. Waiving actuarial reductions - Regulation 30(8)

Note: An employer may agree to waive in whole or in part the actuarial reductions that would be required:

- *All of the reductions in respect of pre 1 April 2014 benefits but only on compassionate grounds (paragraph 2 of Schedule 2 of the LGPS Transitional Regulations 2014)*
- *All or some of the actuarial reduction in respect of post 1 April 2014 on any grounds*

Where 85 year rule protections exist and the member has full or tapered protection the employer can waive all of the reductions but only on compassionate grounds for the service up to the date the 85 year rule protection ends (31 March 2016 (full) or 31 March .2020 (tapered)).

The employer will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- **The employer's** ability to meet the cost of granting such a request
- Whether any demonstrable cost saving in excess of potential savings available under any severance arrangements in place from time to time can be made
- The member's personal circumstances

Applications for the payment of unreduced benefits for service before 1 April 2014 on the grounds of compassion will be granted if:

- In **the employer's** sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided justify approval and

- **The employer** can meet the cost of granting such a request

5. Switching on the 85 rule - Schedule 2 - 1(1)(c) of the LGPS Transitional Regulations 2014

Note: An employer can decide whether to “switch on” the 85 year rule to allow members who have protections under old regulations, and who choose to voluntarily draw their benefits on or after age 55 and before age 60 to receive benefits either unreduced or with a smaller reduction to their 85 year rule date. The employer will be responsible for meeting any strain costs relating to benefits being paid before age 60. If the employer does not “switch on” the 85 year rule the member’s benefits will be reduced to age 60 or the date they meet the 85 year rule if later.

The employer will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- The employer's ability to meet the cost of granting such a request
- Whether any demonstrable cost saving in excess of potential savings available under any severance arrangements in place from time to time can be made
- The member's personal circumstances

Further discretions under the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007

There are also two other mandatory discretions for employers but these relate specifically to members who left before 1 April 2014.

Whilst the LGPS Regulations 2013 repeals the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007 (in so far as they had not already been repealed), Regulation 3(1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 allows for the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007 to still have effect in so far as they relate to certain member benefits before 1 April 2014. As such, the other discretions still available for certain members only, are as follows:

1. Early Payment of Deferred Pensions for members who left before 1st April 2014 - Regulation 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation 30(2) and 30(5) of the LGPS Benefits Regulations 2007 & Regulation 31(2) and Regulation 31(5) of the LGPS Regulations 1997

Note: From 14 May 2018, all deferred members may voluntarily elect for early payment of their deferred benefits prior to their Normal Retirement Date. An employer can decide on compassionate grounds whether to waive any actuarial reduction to benefits paid before age 65. An employer can decide whether to ‘switch on’ the 85 year rule where a member has taken voluntarily early payment of deferred benefits from age 55.

The employer will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- **The employer's** ability to meet the cost of granting such a request
- The member's personal circumstances

Applications for the payment of unreduced benefits on the grounds of compassion will be granted if:

- In **the employer's** sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided justify approval, and
- The employer can meet the cost of granting such a request

N.B. Deferred members who left the Scheme before 1 April 2008 can still make application for the early payment of their deferred benefits after age 50 under LGPS rules. However, under HMRC rules such payments would be classed as 'unauthorised' and would be subject to a punitive tax charge.

2. **Early Payment of Deferred Pensions for members who left before 1st April 2014 and have ceased to be entitled to a tier 3 ill health benefit - Regulation 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation 30A(3) and 30A(5) of the LGPS Benefits Regulations 2007.**

An employer can decide whether to grant early payment to members who have ceased to be entitled to a tier 3 ill health benefit and who are over the age of 55. An employer may on compassionate grounds agree to waive any actuarial reduction to. An employer can decide whether to 'switch on' the 85 year rule where voluntary early payment of suspended tier 3 ill health pension is taken.

The employer, will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- **The employer's** ability to meet the cost of granting such a request
- The member's personal circumstances

Applications for the payment of unreduced benefits on the grounds of compassion will be granted if:

- In **the employer's** sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided justify approval, and
- **The employer** can meet the cost of granting such a request.

Recommended (non-mandatory) LGPS 2013 & 2014 discretions

There is no requirement to have a written policy in respect of non-mandatory discretions. However, we would also recommend you consider a written policy on the following so that both members and the Fund are clear on the employer's policy.

1. **Extending the 12-month time limit for transfer of pension rights - Regulation 100 (6) LGPS Regulations 2013**

Note: An employer can decide to extend the 12-month time limit to permit a member to transfer their previous pension rights from another scheme, if an election had not been made within 12 months of joining the LGPS.

The employer will only consider applications made under this Regulation in the most exceptional circumstances and if:

- Evidence indicates that the Fund had not informed the member about the transfer within the 12 month time limit, or
- Verifiable evidence indicates that the member made an election to transfer within 12 months of joining the LGPS, but the election form was not received by the Fund.

2. Extending the time limit for a member to elect for a Shared Cost Additional Pension Contributions (SCAPCs) - Regulation 16 (16) LGPS Regulations 2013

Note: An employer can decide to extend the 30-day deadline for a member to purchase additional pension by SCAPCs upon return from a period of unpaid absence (other than because of illness or injury, relevant child-related leave or reserve forces leave).

The employer will exercise its discretion to allow late payment and decide each case on its individual merits.

3. Determining and reviewing an employee's contribution band - Regulation 9 and Regulation 10 LGPS Regulations 2013

Note: An employer must decide how to allocate the pension contribution band for a new employee, and review at each subsequent April.

The employer will determine and review the rate of employee contributions in accordance with Regulation 9 and Regulation 10 of the LGPS Regulations 2013.

4. Whether to include a regular lump sum payment when calculating Assumed Pensionable Pay - Regulation 21 (4)(a)(iv), Regulation 21 (4)(b)(iv), and Regulation 21 (5)

Note: An employer can, when calculating Assumed Pensionable Pay, 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.

The employer will/will not include any regular lump sum payment received by the member in the 12 months preceding the date the absence began or the ill health retirement occurred.

5. Shared Cost Additional Voluntary Contributions Arrangement (SCAVC) - Regulation 17 (1) and TP 15 (2A) and A 25(3) and definition of SCAVC in R Sch1

Note: An employer can choose to pay for or contribute towards a member's Additional Voluntary Contribution through a SCAVC arrangement.

The employer will not/will exercise its discretion to contribute towards a SCAVC arrangement.