



# LGPS Discretions Policy

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## Document provenance

This policy was approved by Trustees as follows –

Personnel Committee and Finance Committee      Date: November 2018

Frequency of review: 3 years or in line with legislation changes.

ELT Owner: CFO

Author: CFO

Summary of changes at last review:

- The policy has been completely reviewed and is all new

Related documents:

- N/A

Summary of the policy:

**The LGPS discretions policy addresses certain areas where the employer (E-ACT) is able to exercise discretion over various situations that may arise for employees who are in the LGPS scheme.**

**In writing the policy a risk adverse approach has been taken.**

# Discretions Policy

## **1. Introduction and purpose**

- 1.1. The purpose of this policy is to document and set out what discretions E-ACT will exercise in various situations regarding employees Local Government Pension Scheme (LGPS) benefits.
- 1.2. As an employer E-ACT has a legal duty to prepare and publish a policy statement in relation to exercising a number of discretionary powers under the regulations which apply to the LGPS.
- 1.3. E-ACT has taken into consideration value for money, annual funding and overall financial stability in producing this document.
- 1.4. Irrespective of the particular LGPS an employee is a member of, the following discretions apply equally to all LGPS members in all schools within E-ACT and in all local authority areas.

## **2. Scope**

- 2.1. This policy applies to all staff who are in or who have been in an LGPS.

## **3. Legislation and regulation**

- 3.1. All employers who participate in the Local Government Pension Scheme are required to formulate a discretions policy in accordance with LGPS Regulations.

## **4. Policy statement**

- 4.1. E-ACT is committed to ensuring all non-teaching staff have the opportunity to be in a local government pension scheme. The discretions policy, whilst aiming to ensure E-ACT students gain the utmost benefit from our income, will help direct decisions in the futures around certain employees LGPS arrangements.

## **5. Training**

- 5.1. This policy will need to be communicated to all staff who may be approached regarding questions on LGPS entitlement and arrangements in a number of situations.

## **6. Responsibilities**

- 6.1. The following responsibilities apply in relation to this policy:
- 6.2. Board of Trustees – The Board of Trustees have overall responsibility for agreeing and authorizing the LGPS discretionary policy, hence any changes to the policy must be agreed by the trustees.
- 6.3. Director of Corporate Services – Ensuring this policy is embedded in E-ACT HR literature.
- 6.4. RODs / REDs – Ensure compliance with this policy and decisions are not made outside of this policy.

- 6.5. Headteachers – Refer LGPS decisions to RODs in the first instance and do not make them themselves.
- 6.6. Any complaints regarding this policy will be handled using the standard E-ACT complaints procedure (policy) which is available on the official E-ACT website.
- 6.7. Where this policy states discretion will be applied on a case by case basis, the decision must involve input from the CFO and Director of Corporate Services, prior to any communication being made to an employee.
- 6.8. E-ACT will apply a risk adverse approach with regard to protecting income in order to maximise spend on our educational services.

## **7. Monitoring and compliance**

- 7.1. The policy gives discretion to LGPS benefits, if a payment is agreed outside of the policy it will automatically be flagged to the central payroll team who will raise with the CFO.

## **8. Review**

- 8.1. The policy will be reviewed every three years or when legislative changes take place.
- 8.2. The following table details out E-ACT's policy in respect of the compulsory areas where E-ACT must have a policy and also areas as recommended by the regulation. Any areas that are not covered in the following table will be considered on a case by case basis and must in the first instance be raised with the relevant ROD who will in turn raise with the CFO and Director of Corporate Services.
- 8.3. The table is separated by the various time periods in-between regulation changes.

**Discretions from 1.4.14 in relation to post 31.3.14 active members and post 31.3.14 leavers**

Section	Discretion	Regulation (LGPS 2013)	Exercised by	E-ACT Policy
Granting additional pension	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 £6,822 p.a - figure at 1 April 2018)	R31	Employer [E-ACT]	This may be considered on a case by case basis in very exceptional circumstances where a sound business case is made.
Shared cost APC's	Whether, where an active Scheme member wishes to purchase extra annual pension of up to £6,822 (figure at 1 April 2018) by making Additional Pension Contributions (APCs), to (voluntarily) contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC)	R16(2)(e) & R16(4)(d)	Employer [E-ACT]	This may be considered on a case by case basis in very exceptional circumstances where a sound business case is made.
	Whether to extend 30 day deadline for member to elect for a shared cost APC upon return from a period of absence from work with permission with no pensionable pay (otherwise than because of illness or injury, relevant child-related leave or reserve forces service leave)	R16(16)	Employer [E-ACT]	E-ACT will extend the deadline to 60 days.
Flexible retirement	Whether all or some benefits can be paid if an active member aged 55 or over and with at least 2 years qualifying service reduces their hours or grade (flexible retirement)	R30(6) & TP11(2)	Employer [E-ACT]	This may be considered on a case by case basis in very exceptional circumstances where a sound business case is made.

	Whether to waive, in whole or in part, actuarial reduction to benefits paid on flexible retirement	R30 (8)	Employer [E-ACT]	E-ACT will not generally waive the actuarial reduction but this may be considered if a sound business case is made.
	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)	R30 (8)	Employer [E-ACT]	E-ACT will not generally waive the actuarial reduction but this may be considered if a sound business case is made.
85 Year Rule	Whether to “switch on” the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60 (other than on the grounds of flexible retirement).	TPSch 2, para, 1(2) & 1(1)(c)	Employer [E-ACT]	E-ACT will not switch on the 85 year rule for members voluntarily drawing benefits on or after age 55.
Waive Reduction	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 1/4/14 and post 31/3/14 membership) on  a) compassionate grounds (pre 1/4/14 membership) and in whole or in part on any grounds (post 31/3/14 membership) if the member was not in the Scheme before 1/10/06,  b) compassionate grounds (pre 1/4/14 membership) and in whole or in part on any grounds (post 31/3/14	TP3(1), TPsch 2 para 2(1), B30(5) & B30A(5)	Employer [E-ACT]	E-ACT will not generally waive the actuarial reduction but this may be considered if a sound business case is made.

	<p>membership) if the member was in the Scheme before 1/10/06, will not be 60 by 31/3/16 and will not attain 60 between 1/4/16 and 31/3/20</p> <p>c) compassionate grounds (pre 1/4/16 membership) and in whole or in part on any grounds (post 31/3/16 membership) if the member was in the Scheme before 1/10/06 and will be 60 by 31/3/16</p> <p>d) compassionate grounds (pre 1/4/20 membership) and in whole or in part on any grounds (post 31/3/20 membership) if the member was in the Scheme before 1/10/06, will not be 60 by 31/3/16 and will attain 60 between 1/4/16 and 31/3/20</p>			
	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 31/3/14 membership)	R30(8)	Employer [E-ACT]	E-ACT will not generally waive the actuarial reduction but this may be considered if a sound business case is made.
Extend APC deadline	Whether to extend 30 day deadline for member to elect for a shared cost APC upon return from a period of absence from work with permission with no pensionable pay (otherwise than because of illness or injury, relevant child-related leave or	R16(16)	Employer [E-ACT]	E-ACT will extend the deadline to 60 days

	reserve forces service leave)			
Variable APC employer contributions	Whether, how much, and in what circumstances to contribute to a share cost APC scheme	R16(2)(e) & R16(4)(d)	Employer [E-ACT]	E-ACT will not generally contribute to a share cost APC but this may be considered if a sound business case is made.
Shared cost AVCs	Whether, how much, and in what circumstances to contribute to shared cost AVC arrangements.	R17(1) & definition of SCAVC in RSch 1	Employer [E-ACT]	E-ACT will not generally contribute to a share cost AVC but this may be considered if a sound business case is made.
Transferring in non LGPS pension rights	Extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS	R100(6)	Employer [E-ACT]	E-ACT will not generally extend the time limit but this may be considered in exceptional circumstances when a sound business case is made.
Joining LGPS membership	Whether to extend the 12 month option period for a member to elect that post 31 March 2014 deferred benefits should not be aggregated with a new employment	R22(8)(b)	Employer [E-ACT]	E-ACT will not generally extend the time limit but this may be considered in exceptional circumstances when a sound business case is made.
	Whether to extend the 12 month option period for a member to elect that post 31 March 2014 deferred benefits should not be aggregated with an ongoing concurrent employment	R22(7)(b)	Employer [E-ACT]	
Employee contribution rate	How the pension contribution band to which an employee is to be allocated on joining the Scheme, and at each subsequent April, will be determined and the circumstances in which the employer will, in addition to the review each April, review the pension	R9(1) & R9(3)	Employer [E-ACT]	E-ACT will apply the published bands and will not exercise any further discretion.



	contribution band to which an employee has been allocated following a material change which affects the member's pensionable pay in the course of a Scheme year (1 April to 31 March)			
Regular lump sum payments	In determining Assumed Pensionable Pay, whether a lump sum payment made in the previous 12 months is a "regular lump sum"	R21(5)	Employer [E-ACT]	E-ACT considers a lump sum paid in the previous 12 months is a regular lump sum.
Pensionable Pay	Where in the Employer's opinion, the pensionable pay received in relation to an employment (adjusted to reflect any lump sum payments) in the 3 months (or 12 weeks if not paid monthly) preceding the commencement of Assumed Pensionable Pay (APP), is materially lower than the level of pensionable pay the member would have normally received, decide whether to substitute a higher level of pensionable pay having had regard to the level of pensionable pay received by the member in the previous 12 months.	R21(5A) & R21(5B)	Employer [E-ACT]	E-ACT may consider a substitute on the basis of a sound business case
Deferred benefits	Whether to extend the 12 month option period for a member (who did not become a member of the 2014 Scheme by virtue of TP5(1)) to elect that pre 1 April 2014 deferred benefits should be aggregated with a new employment	TP10(6)	Employer [E-ACT]	E-ACT will not extend the 12 month period.

**Discretions in relation to Scheme Members (excluding Councillor Members) who ceased active membership on or after 1.4.08 and before 1.4.14. B = LGPS (Benefits, Memberships and Contributions) Regulations 2007**

Waive reduction	Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30	B30(5)	Employer [E-ACT]	E-ACT will not generally waive the actuarial reduction but this may be considered if a sound business case is made.
85 year rule	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, para1(2) & 1(1)C)	Employer [E-ACT]	E-ACT will not switch on the 85 year rule for members voluntarily drawing benefits on or after age 55.
Waive reduction	Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early under B30A	B30A(5), TPSch 2, para 2(1)	Employer [E-ACT]	E-ACT will not generally waive the actuarial reduction but this may be considered if a sound business case is made.

**Discretions under the Local Government Pension Scheme Regulations 1997 (as amended) in relation to:**

- a) active councillor members, and**
- b) councillor members who ceased active membership on or after 1.4.98., and**
- c) any other scheme members who ceased active membership on or after 1.4.98. and before 1.4.08.**

Employer consent retirement	Grant an application for early payment of deferred benefits on or after age 50 and before age 55.	31(2)	Employer [E-ACT]	E-ACT will not generally grant an application but this may be considered if a sound business case is made.
85 year rule	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	Employer [E-ACT]	E-ACT will not switch on the 85 year rule for members voluntarily drawing benefits on or after age 55.
Waive reduction	Waive, on compassionate grounds, the actuarial	31(5)	Employer [E-ACT]	E-ACT will not generally waive the actuarial reduction but this

	reduction applied to deferred benefits paid early			may be considered if a sound business case is made.
Employer consent at NRD for optant out	Optants out only to get benefits paid from Normal Retirement Date if employer agrees	31(7A)	Employer [E-ACT]	Optants out will receive benefits paid from normal retirement date.

**Discretions under the Local Government Pension Scheme Regulations 1995 (as amended) in relation to scheme members who ceased active membership before 1.4.98.**

Employer consent retirement	Grant an application for early payment of deferred benefits on or after age 50 on compassionate grounds. Note: 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	D11(2)(c)	Employer [E-ACT]	E-ACT will not generally grant an application but this may be considered if a sound business case is made.
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**Discretions under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (as amended)**

Redundancy Pay on actual weeks pay	To base redundancy payments on an actual weeks pay where this exceeds the statutory weeks pay limit.	5	Employer [E-ACT]	E-ACT will base redundancy on actual weeks pay where this exceeds the statutory weeks pay limit.
Lump sum compensation	To award lump sum compensation of up to 104 weeks pay in cases of redundancy, termination of	6	Employer [E-ACT]	E-ACT will not generally award lump sum compensation but this may be considered if a sound business case is made.

	employment on efficiency grounds, or cessation of a joint appointment.			
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**Discretions under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 (as amended)**

Abatement during re-employment	Whether and to what extent to reduce or suspend the member's annual compensatory added years payment during any period of re-employment in local government	17	Employer [E-ACT]	E-ACT will seek to reduce added years during any period of re-employment in local government.
Reduction following cessation of re-employment	How to reduce the member's annual compensatory added years payment following the cessation of a period of re-employment in local government	19	Employer [E-ACT]	E-ACT will seek to ensure this is a pro-rated reduction in line with the re-employment period.
Apportionment of survivor benefit	How to apportion any surviving spouse's or civil partner's annual compensatory added years payment where the deceased person is survived by more than one spouse or civil partner	21(4)	Employer [E-ACT]	E-ACT will seek to ensure that the apportionment is divided equally pending any further information from the LGPS member or from any legal representative of the legal spouse.
Effects of remarriage, new civil partnership or co-habitation on survivor's compensation payments	Whether, in respect of the spouse of a person who ceased employment before 1 April 1998 and where the spouse or civil partner remarries, enters into a new civil	21(7)	Employer [E-ACT]	E-ACT will take the most risk adverse approach regarding decisions in this area.

	partnership or cohabits after 1 April 1998, the normal pension suspension rules should be disapplied i.e. whether the spouse's or civil partner's annual compensatory added years payments should continue to be paid			
	If, under the preceding decision, the authority's policy is to apply the normal suspension rules, whether the spouse's or civil partner's annual compensatory added years payment should be reinstated after the end of the remarriage, new civil partnership or cohabitation	21(5)	Employer [E-ACT]	E-ACT will take the most risk adverse approach regarding decisions in this area.

**Discretions under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011**

Injury Allowances	Whether to grant an injury allowance following reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job.	3(1)	Employer [E-ACT]	E-ACT will grant an injury allowance in these circumstances on the basis the injury or contraction of disease was contracted whilst in E-ACT employment, and was not due to the employees own negligence.
	Amount of injury allowance following reduction in remuneration as a	3(4) and 8	Employer [E-ACT]	E-ACT will grant an allowance to cover the monthly shortfall in income due to injury or the contraction of a disease in the

	result of sustaining an injury or contracting a disease in the course of carrying out duties of the job.			course of carrying out duties in their employment with E-ACT.
	Determine whether a person continues to be entitled to an injury allowance awarded under regulation 3(1) (reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job).	3(2)	Employer [E-ACT]	E-ACT will continue to grant an allowance for a reasonable period in line with a persons expected tenure of their position.
	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)	Employer [E-ACT]	E-ACT will grant an injury allowance in these circumstances in line with the principle outlined in 3(1) above.
	Amount of 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(3) and 8	Employer [E-ACT]	E-ACT will continue to grant an allowance for a reasonable period in line with a persons expected tenure of their position.
	Amend to "Determine whether person continues to be entitled to an	4(2)	Employer [E-ACT]	E-ACT will decide this based on the circumstances and a sound business case.

	injury allowance awarded under regulation 4(1) (loss of employment through permanent incapacity)"			
	Amend to "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)	Employer [E-ACT]	As per 4(2)
	Amend to "Whether to grant an injury allowance following cessation of employment with entitlement 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)	Employer [E-ACT]	As per 4(2)

	Amend to "Determine amount of any injury allowance to be paid under regulation 6(1) (payment of injury allowance following the cessation of employment)	6(1)	Employer [E-ACT]	As per 4(2)
	Amend to " 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(2)	Employer [E-ACT]	As per 4(2)
	Amend to "Whether to grant an injury allowance to the spouse, civil partner, co-habiting partner 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."  The requirement to nominate a cohabiting partner has ceased entirely under these regulations due to the outcome of Elmes v Essex CC high court judgement	7(1)	Employer [E-ACT]	As per 4(2)
	Amend to "Determine amount of any injury allowance to be paid to the spouse, civil	7(2) and 8	Employer [E-ACT]	As per 4(2)



	<p>partner, nominated co-habiting partner (for awards made on or after 1 April 2008 the requirement to nominate a cohabiting partner has ceased due to the outcome of Elmes v Essex CC high court judgement) or dependent 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."</p>			
	<p>Amend to "Determine whether and when to cease payment of an 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."</p>	7(3)	Employer [E-ACT]	As per 4(2)