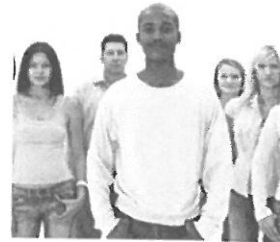
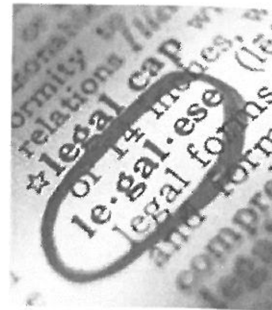
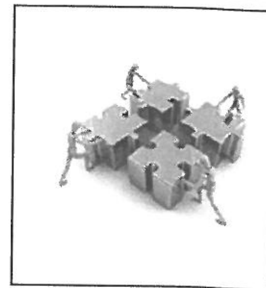
LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 2013







EMPLOYER'S GUIDE TO COMPLETING A STATEMENT OF POLICY WITH REGARD TO THE EXERCISE OF DISCRETIONARY FUNCTIONS

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INTRODUCTION

With effect from 1 April 2014 the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 came into force.

Under these Regulations, as with previous Regulations, Scheme employers are required to prepare, maintain and keep under review a statement of policy concerning a number of discretions made available to them throughout the Regulations. Scheme employers have many decisions to take with regard to numerous discretions and requirements made of them as outlined in the statutory legislation and it is important that each Scheme employer takes full responsibility for ensuring that their obligations are fulfilled appropriately and in accordance with the statutory instruments laid by Parliament.

Some statements of policy in respect of certain Scheme Regulations are compulsory as in the main they can carry significant cost implications for a Scheme employer and this is the minimum policy requirement made of Scheme employers. However, it is generally recognised that there is considerable value in Scheme employers making statements of policy in respect of other Scheme Regulations where discretion is available to them for ease of administration and consistency of approach even though it is not compulsory to do so.

This guide is intended to assist Scheme employers in completing a statement of policy. It is set out into three distinct sections:

1. Those policies that are compulsory;
2. Those policies that are recommended; and
3. Other Regulations that may require an employer decision.

Some policy examples are provided throughout this guide although these are for guidance only and are not to be perceived as the administering authority giving advice.

REGULATIONS FOR WHICH A STATEMENT OF POLICY IS COMPULSORY

LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 2013 (S.I. 2013 No. 2356)

In accordance with Regulation 60 of the Local Government Pension Scheme Regulations 2013 (*Statements of policy about exercise of discretionary functions*) a Scheme employer **must** prepare a written statement of its policy in relation to the exercise of its functions under regulations:

- 16(2)(e) and 16(4)(d) (funding of additional pension);
- 30(6) (flexible retirement);
- 30(8) (waiving of actuarial reduction); and
- 31 (award of additional pension).

STATUTORY INSTRUMENTS

2013 No. 2356

PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme Regulations 2013

LOCAL GOVERNMENT PENSION SCHEME (TRANSITIONAL PROVISIONS, SAVINGS & AMENDMENT) REGULATIONS 2014 (S.I. 2014 No. 525)

In accordance with Paragraph 2(2) of Schedule 2 to the Local Government Pension Scheme (Transitional Provisions, Savings & Amendment) Regulations 2014 a Scheme employer **must** prepare a written statement on whether, in respect of benefits relating to pre 1st April 2014 membership, to 'switch on' the 85 year rule for a member who voluntarily elects to draw their benefits on or after age 55 and before the age of 60.

LOCAL GOVERNMENT PENSION SCHEME (ADMINISTRATION) REGULATIONS 2008 (as amended) (S.I. 2008 No. 239)

Scheme employers will have previously produced a statement of policy in accordance with Regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008 in respect of a number of discretions available to them under those Regulations.

It is important that Scheme employers keep that statement of policy under review and refer to it when exercising those discretions on or after 1 April 2014 in relation to Scheme members who ceased active membership between 1 April 2008 and 31 March 2014.

LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997 (as amended) (S.I. 1997 No. 1612)

Scheme employers will have previously produced a statement of policy in accordance with Regulation 106 of the Local Government Pension Scheme Regulations 1997 in respect of a number of discretions available to them under those Regulations.

It is important that Scheme employers keep that statement of policy under review and refer to it when exercising those discretions on or after 1 April 2014 in relation to Scheme members who ceased active membership between 1 April 1998 and 31 March 2008.

It is important that Scheme employers maintain and review their statement to ensure that it is always up to date with their intended policy. The policy statement is likely to be referred to on a regular basis and so Scheme employers must be happy that the policies at stated reflect the decisions that they are wishing to take.

It is important to take account of the following regulatory requirements:

1. A Scheme employer **must** send a copy of its statement of policy to the administering authority (Royal Borough of Windsor & Maidenhead) and must publish its statement.
2. A Scheme employer **must** keep its statement of policy under review and make such revisions as are appropriate following a change of its policy.
3. Where a revision to the statement of policy is made, a Scheme employer **must** send a copy of its revised statement to the administering authority before the expiry of one month beginning with the date that any such revision is made. A Scheme employer must also publish its revised statement.
4. In preparing, or reviewing and making revisions to its statement, a Scheme employer **must** have regard to the extent to which the exercise of its discretionary functions could lead to a serious loss of confidence in the public service.

5. Once completed, a Scheme employer **must** ensure that its statement of policy is published in a place that is easily accessible to all of its eligible Scheme employees and that any revisions made to the statement of policy are equally accessible.

6. A Scheme employer will be required to sign a declaration stating that their policies will not be used for any ulterior motive, will be exercised reasonably, will only be used when there is a real and substantial future benefit to the employer for incurring the extra costs that may arise and will be duly recorded when applied.

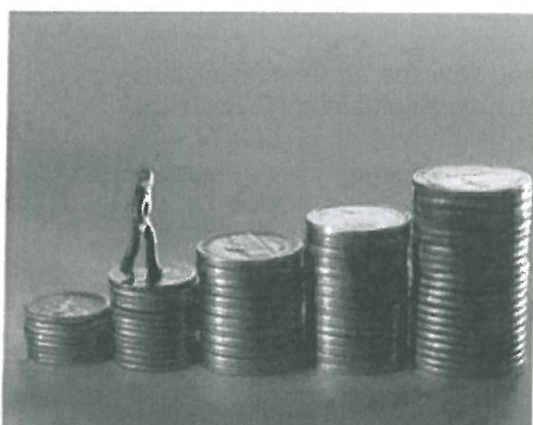
GUIDANCE NOTES FOR COMPLETION OF A POLICY STATEMENT UNDER THE LGPS 2014 REGULATIONS - COMPULSORY

Guidance Note 1 – Regulation 16(2)(e) and 16(4)(d) – Employer Funded APCs

Regulation 16 refers to Additional Pension Contributions (APCs) which an active member of the Scheme can elect to pay under certain circumstances. The options are:

Option 1 - To buy extra pension;
Option 2 - To buy 'lost' pension for unpaid leave of absence or unpaid child-related leave;
Option 3 - To buy 'lost' pension due to a trade dispute (strike).

Where the employee is contributing to the MAIN section of the Scheme they can enter into an APC contract in respect of all three options listed above. However, where an employee is contributing to the 50/50 section of the Scheme they can only enter into an APC contract in respect of options 2 and 3.



Options 1 and 3 are at full cost to the employee whereas option 2 is a shared cost contribution between the employee and their employer providing that the employee elects to enter into a Shared Cost APC (SCAPC) contract within the first 30 days of returning to work following the unpaid period of absence.

For the purposes of the employer policy statement it is only option 1 for which a policy has to be made. The employer must determine whether or not they would ever be likely to enter into a shared cost APC arrangement with an employee.

Paragraph 2(e) of regulation 16 states that where APCs are to be paid on a regular basis they may be funded in whole or in part by the member's Scheme employer i.e. at a reduced or no cost to the Scheme member.

Paragraph 4(d) of regulation 16 states that where APCs are to be paid as a lump sum they may be funded in whole or in part by the member's Scheme employer i.e. at a reduced or no cost to the Scheme member.

Where APCs are to be paid in line with paragraph (2)(e) the arrangement to pay those regular contributions must be entered into for a number of complete years (the minimum being one year). The amount of additional contributions to be paid each Scheme year must be specified and where the Scheme member has more than one pension account because of holding more than one post, the account to which the APCs are attached must also be specified.

Where APCs are to be paid in line with paragraph (4)(d) the arrangement to pay that lump sum must specify the amount to be paid and the account to which the APCs are attached should the Scheme member have more than one pension account.

There is a limit to the amount of additional pension that can be purchased which is set every 1st April and is increased in line with the Pensions (Increase) Act 1971. The initial limit, from 1st April 2014, is £6,500. Of course a member does not have to purchase the full £6,500 but every time an APC arrangement is entered into, either by payment of regular contributions or by payment of a lump sum, it must specify the amount to be credited to the member's pension account at the end of the Scheme year.

The amount of contribution to be paid is to be determined in accordance with actuarial guidance issued by the Secretary of State and is based on the age and gender of the member.

When making your policy decision you need to consider under what circumstances you, as a Scheme employer, may wish to use your discretion to pay in whole or in part an employee's APCs. Or perhaps you would consider never using this discretion. Or perhaps you would want to know the cost implications before making a decision.

Ultimately it is your decision but some examples of policy statements might be:

- Not to fund an employee's APCs.
- To consider funding an employee's APCs in exceptional circumstances and subject to the employee's difficult domestic circumstances.
- To consider funding an employee's APCs in circumstances where there is a financial or practical reason for doing so.

Guidance Note 2 – Regulation 30(6) – Flexible Retirement

An active member who has attained the age of 55 or over, and with the agreement of their employer reduces either their hours of work or grade of their employment may, with the further consent of their employer, elect to receive immediate payment of all or part of their retirement pension built up to the date that their hours or grade is reduced. The amount of pension payable would be adjusted in accordance with actuarial guidance issued by the Secretary of State (but see guidance note 3 regarding the waiving of actuarial reduction).

The purpose of flexible retirement is to allow an individual the opportunity to move gradually into retirement by reducing their hours of work or the level of responsibility required of them rather than facing the perceived 'cliff edge' of retirement. Although the employee's level of income will reduce this is in some part or wholly compensated for by the release of all or part of their accrued pension benefits.

As part of any agreement to permit flexible retirement a Scheme employer must consider whether, in addition to the benefits the member has accrued prior to 1 April 2008 (which the member must draw), to permit the member to choose to draw all, part or none of the pension benefits they built up after 31 March 2008 and before 1 April 2014 and all, part or none of the pension benefits they built up after 31 March 2014.

Flexible retirement can be used as a very good management tool although there can be cost implications for Scheme employers subject to the amount of actuarial reduction that may or may not be applied to the member's benefits (see guidance note 3).

When deciding upon the policy to be adopted Scheme employers need to be aware of the potential financial implications of allowing one of their employees to draw part or all of their retirement benefits earlier than their normal retirement age.

A Scheme employer may also as part of their policy statement wish to consider and define by how much an employee's hours or grade might need to be reduced before allowing any employee to take flexible retirement.

Unless your policy is to never grant flexible retirement, it is critical that before making any decision to allow an employee early access to any of their pension benefits that you contact the pension administration team requesting details of the employer costs that might be involved.

Some examples of policy statements might be:

- To consider each application on its merits subject to the financial implications for the employer.
- To accept any applications where there is no cost to the employer subject to there being no detrimental impact on the service.
- Applications will be considered with the decision being delegated to the appropriate officer or Committee.
- To only allow for the release of pension benefits built up before 1 April 2008.
- To allow for all pension benefits to be released regardless of the dates of Scheme membership.
- Not to accept any applications from Scheme members for flexible retirement.

Guidance Note 3 – Regulation 30(8) – Waiving of Actuarial Reduction

Paragraph 8 of regulation 30 provides a Scheme employer with the power to waive all or part of any actuarial reduction (percentage reduction to benefits to reflect their early payment) that may be applied to one of their employee's pension benefits as a result of them agreeing to take those benefits early in line with their employer's policy on flexible retirement.

The discretion available to a Scheme employer under this paragraph is linked very closely to the discretion available under Regulation 30(6) but whereas that discretion refers to a Scheme employer's policy to allow an employee to take all or part of their benefits due to flexible retirement, this policy relates purely to whether or not a Scheme employer will consider waiving all or part of any actuarial reduction applied to the employee's benefits thereby allowing the employee to enjoy the full or increased value of their accrued benefits.

The purpose of applying an actuarial reduction is to protect the Pension Fund against a loss of funding. All Scheme members will have a date from which their benefits are expected to be released (commonly referred to as their Eligible Retirement Date (ERD) or sometimes their Normal Retirement Date (NRD) or Critical Retirement Age (CRA)). This is a known event and as such the amount of contributions paid by both the employee and the employer plus the investment returns received by the Pension

Fund over the period that the employee is a member of the Scheme, should be sufficient to ensure that by the time the member's benefits become payable from their ERD, NRD or CRA, there is sufficient money in the Pension Fund to pay for those benefits for the rest of the member's lifetime (and the lifetimes of their entitled survivors).

Where benefits are paid from an earlier date than ERD, NRD or CRA, the pension benefits have to be paid for longer and in order to reflect this extended payment period, benefits are reduced so that less is paid over a longer time even though ultimately, an equivalent amount is expected to be paid from the Pension Fund. Of course, the unknown factor is how long the member is going to live but assumptions as to life expectancy are built into the reduction percentages applied to the pension benefits.

If the early reduction factors were not applied to the member's benefits the Pension Fund would not have sufficient funds to pay for the member's benefits over their lifetime. Therefore, if a Scheme employer takes a decision to waive or reduce that actuarial reduction, they have to pay an amount to the Pension Fund to ensure that the Pension Fund does have sufficient funds to pay those benefits to the member. This is often referred to as a capital or strain cost.

Scheme employer's have to be very careful when considering whether or not to waive any actuarial reduction and must always take into account the possible costs to be applied when deciding whether or not to allow an employee to receive their benefits early (whether this is due to flexible retirement, redundancy or business efficiency).

When deciding upon your statement of policy it is vital that you consider the implications identified above so that you do not risk receiving what can be quite sizeable invoices for capital costs without having first been made aware of what those costs could be.

Some examples of policy statements might be:

- To consider each application on its merits subject to the financial implications for the employer.
- A decision to waive any actuarial reduction will only be considered where there will be a financial or other benefit to the employer.
- A decision to waive any actuarial reduction will be considered in exceptional circumstances subject to the employee's exceptionally difficult personal and domestic circumstances.
- An actuarial reduction will always be applied where relevant and a decision to waive such a reduction will not be considered.

Guidance Note 4 – Regulation 31 – Award of Additional Pension

Regulation 31 gives a Scheme employer the power to award an active member of the Scheme, or a member who was active but dismissed by reason of redundancy or business efficiency, additional pension up to a value of the additional pension limit as set out in Regulation 16 and as previously described in guidance note 1 i.e. £6,500 from 1st April 2014 subject to re-valuation each subsequent 1st April in line with the Pensions (Increase) Act 1971.

In the case of an active member (one who is currently contributing to the Scheme) a Scheme employer can award the additional pension at any time with the amount being credited to the relevant active member pension account in the Scheme year in which the resolution to award the additional pension is made.

In the case of a member who was an active member but has been dismissed due to redundancy or business efficiency, the resolution to award additional pension must be made within the period of 6 months of the date that the member's employment was terminated. The amount awarded is treated as being credited to the relevant active member pension account on the day before the date of termination of employment.

By awarding extra pension to a Scheme member there is potential for that Scheme member's benefits to exceed the permitted Annual or Lifetime Allowances resulting in a tax charge being made to the Scheme member. This is, however, solely the responsibility of the Scheme member to ascertain.

The cost of providing additional pension is to be determined in accordance with actuarial guidance issued by the Secretary of State and is based on the age and gender of the member.

As always, Scheme employers will need to be fully aware of the cost implications in awarding active members additional pension. Subject to that, however, this discretion could be a useful management tool when used as a recruitment or retention incentive. It could even perhaps be used as a reward system for exceptional performance.

Some examples of policy statements might be:

- To consider using this discretion in cases of redundancy and business efficiency subject to the financial implications for the employer.
- To consider using this discretion on compassionate grounds due to the member's exceptionally difficult personal or domestic circumstances.
- To consider using this discretion where a sufficient benefit to the employer can be justified.
- Not to apply this discretion.

Guidance Note 5 – Paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings & Amendment) Regulations 2014

In order to make a policy in respect of this particular Regulation, Scheme employers need to be somewhat aware of the 85 year rule that existed under former Scheme Regulations, a rule under which many employees will retain protected rights as carried forward into the LGPS 2013 Regulations.

In brief, the 85 year rule states that where a Scheme member's age in whole years when added to their Scheme membership in whole years equals 85 that is the point from which their pension benefits can be released without actuarial reduction being applied. So, for example, an employee aged 60 with 25 years of Scheme membership would meet their 85 year rule date. Whilst the Regulations governing the 85 year rule are complex for the purposes of producing a policy statement it is not deemed necessary to go into that level of detail.

Until the introduction of the LGPS 2013 Regulations it was not possible for a Scheme member to voluntarily elect to draw their pension benefits before the age of 60 – they had to have their employer's consent. With effect from 1 April 2014, however, any Scheme member can voluntarily elect to retire (leave their employment) from the age of 55 and draw their pension benefits without the need to have their employer's consent. Now clearly, in many cases this would result in a large actuarial reduction being applied to those benefits to reflect their early payment but if a Scheme member has protection under the 85 year rule it would appear, initially at least, that by voluntarily retiring they would be protected against that actuarial reduction thereby generating a capital or strain cost that the Scheme employer would be required to pay to the pension fund (see guidance note 3 which looks at employers' costs arising due to early release of benefits).

However, the LGPS (Transitional Provisions, Savings & Amendment) Regulations 2014 'switches off' the protections afforded to Scheme members who meet the 85 year rule before the age of 60 thereby requiring Scheme member benefits to be actuarially reduced irrespective of whether or not the member satisfies the conditions of the 85 year rule.

The purpose of this policy is to determine the circumstances under which a Scheme employer might consider 'switching back on' the 85 year rule protection for those affected employees thereby agreeing to reduce or waive entirely any actuarial reduction being applied to those pension benefits that would otherwise have been protected under the 85 year rule. This would generate a capital or strain cost for which the Scheme employer would become liable.

As a Scheme employer, therefore, you need to consider the circumstances, if any, where you might agree to 'switch on' the 85 year rule for any of your eligible employees a decision that you may not be in a position to take until you have received from the pension administration team, details of the impact that the actuarial reductions will have on various parts of a Scheme member's benefits and the resulting employer costs that may arise should you agree to waive in full or in part, the actuarial reduction to be applied to the various parts of the Scheme member's benefits.

NOTE: Subject to a Scheme member meeting the 85-year rule and the protections afforded to them under former Scheme Regulations, different actuarial reductions may apply to different parts of the Scheme member's benefits i.e. 80ths benefits built up before 1 April 2008, 60ths benefits built up after 31 March 2008 and before 1 April 2014 and 49ths benefits built up since 1 April 2014. Only the pension administrators will be able to provide this level of detail and so should be contacted as early as possible in order to understand the implications for a Scheme employer in agreeing to 'switch back on' the 85-year rule for any of their eligible Scheme members.

When deciding upon your statement of policy it is vital that you consider the implications identified above and take into account the potential employer costs that could arise and the circumstances under which the payment of those costs might be acceptable.

Some examples of policy statements might be:

- To consider each occurrence as it arises subject to the financial implications for the employer.
- Any decision to 'switch on' the 85 year rule will only be considered where there will be a financial or other benefit to the employer.
- Any decision to 'switch on' the 85 year rule will be considered on compassionate grounds in exceptional circumstances subject to the employee's exceptionally difficult personal and domestic circumstances.
- Under no circumstances will the Scheme employer agree to 'switch on' the 85 year rule.

GUIDANCE NOTES FOR COMPLETION OF A POLICY STATEMENT UNDER THE LGPS 2014 REGULATIONS - RECOMMENDED

Guidance Note 6 – Regulation 9(1) & (3) - Contributions

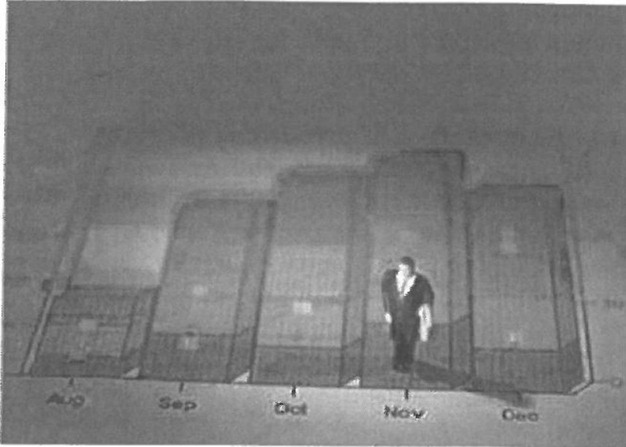
Paragraph 2 of Regulation 9 of the LGPS Regulations 2013 provides a table of contribution rates to be applied to all active Scheme members subject to the relevant pay range applicable to their employment. It is important to note that where an employee holds more than one job with a Scheme employer each job is to be treated separately when determining the

contribution rate to be applied (unless an employer determines that a single employment relationship exists).

The table as currently set out in Regulation 9 provides the pay ranges applicable from 1st April 2014.

Each year a Scheme employer is required to assess each of its Scheme members' actual pensionable pay as at 1st April, for every post that the employee may hold and apply the contribution rate in column 3 of the table as it relates to the pay ranges outlined in column 2.

It is important to note that from 1st April 2014 Scheme employers must assess their scheme members' contribution bandings based on their actual annual pensionable pay and not the full time equivalent (or term time equivalent) rate of pay as under former Regulations. This is particularly important as with effect from that date non-contractual overtime and pay received in respect of any additional hours worked became pensionable.



Paragraph 3 of Regulation 9, however, provides a Scheme employer with the opportunity to apply a different contribution rate from a different pay band at any time during the Scheme year where either the employee has a change in employment or has a material change which affects their pensionable pay during the financial year.

Clearly this could be as a result of either an increase or a decrease to the employee's rate of pay and so a Scheme employer needs to consider carefully under what circumstances, if any, they may wish to apply a change to a Scheme member's contribution rate from any date other than 1st April each year. As pension benefits are funded in the main by the amounts of employee and employer contributions paid, a certain amount of over or under funding could occur should adjustments to employee contribution rates not be made to reflect the change in levels of pay at the time that they arise. However, a Scheme employer may simply view this as immaterial and consider that for every one employee whose rate should have been increased there will one for whom the rate should have been decreased. In any event, the correct rate must be applied from 1st of April next.

Scheme employers should be particularly aware of changes in the rates of pay for large groups of employees who, for example, may be redeployed or whose pay may be re-assessed as part of a job evaluation exercise particularly where the rate of pay has been decreased. Scheme employers may wish to consider what risk there is in receiving a large number of disputes from employees who feel they are paying a higher rate of pension contribution than is necessary if the rates are not amended from the effective date of change. It is probably more unlikely that employees paying a lower rate than perhaps required will choose to raise such a dispute.

Some examples of policy statements might be:

- To set employee contribution rates at 1st April each year and make no changes throughout the year.
- To make changes to employee contribution rates throughout the year from the effective date of any change in employment or material change to the rate of pensionable pay received.
- To consider a change to an employee's rate of pay where the employee requests a review as a result of a change in employment or material change in pensionable pay.

Guidance Note 7 – Regulation 17(1) – Shared Cost AVCs

Regulation 17 of the LGPS Regulations 2013 allows an active member to contribute to an Additional Voluntary Contribution (AVC) scheme established between the administering authority (Royal Borough of Windsor & Maidenhead) and a body approved for the purposes under the Finance Act 2004.

Paragraph 1 of Regulation 17 states that an active member can also contribute to a Shared Cost Additional Voluntary Contribution Scheme (SCAVC). By its very definition, a SCAVC Scheme means that the cost of contributing to an AVC scheme is shared between the employee and the employer and whilst a Scheme employer is not required to make a policy decision in this regard, it is highly recommended that for clarity and administrative ease, such a policy statement is made.

A Scheme employer may wish to consider under what circumstances, if any, it may wish to contribute on behalf of its employees and if a decision to make contributions is agreed, what contribution limit will be applied. For example, a Scheme employer may consider using this discretion as a management tool when used as a recruitment or retention incentive. It could even be used as a reward system for exceptional performance perhaps.

Some examples of policy statements might be:

- To consider using this discretion where a sufficient benefit to the employer can be justified.
- Not to apply this discretion.

Guidance Note 8 – Regulation 22(7) and 22(8) – Merging of Deferred Member Pension Accounts with Active Member Pension Account

Where a person with a deferred member's pension account becomes an active member (or continues to be an active member in a concurrent employment), the benefits in the deferred member's pension account must be aggregated with those in the active member's pension account within 12 months (or such longer time as the Scheme employer in relation to that active member's pension account permits) from the date on which the member again became an active member of the Scheme (or continues to be an active member in a concurrent employment) unless within 12 months of the new active member pension account being opened (or the concurrent active member's pension account being available) the member makes an election to the appropriate administering authority to retain the deferred member's pension account.

The purpose of this statement is to state the Scheme employer's policy on whether or not to extend the 12-month deadline set out in the Scheme regulations.

It is possible that a Scheme employer will deem 12 months to be a long enough period for a Scheme member to elect not to have a deferred member's pension account aggregated with their active member's pension account but there may be certain circumstances under which a Scheme employer may wish to consider extending that deadline where perhaps there may be a benefit to the individual and no detriment to the employer e.g. where the member has pre 1 April 2014 membership and the final pay in their former job is higher (in real terms, after adding inflation) than in the new job.

Some examples of policy statements might be:

- Each case will be examined at the appropriate time.
- To extend the 12-month deadline to 18 months.
- To allow an active member to elect not to aggregate a deferred member's pension account with an active member's pension account beyond the 12-month deadline.
- To allow an active member to elect not to aggregate a deferred member's pension account to an active member's pension account beyond the 12-month deadline only where there is no financial risk to the employer and it is of benefit to the member.

Guidance Note 9 – Regulation 74 – Applications for Adjudication of Disagreements

Whilst not an employer discretion, it would seem appropriate for a Scheme employer to include details relating to this Regulation as part of their policy statement.

Each Scheme employer is required to appoint an adjudicator who will consider applications from any person whose rights or liabilities under the Scheme are disputed and to make a decision regarding such applications.

The Internal Disputes Resolution Procedure (IDRP) is a three-stage appeal process enabling a Scheme member, or representative of a scheme member, to raise a complaint with regard to a decision that may have been taken which impacts on the level of pension benefits that the Scheme member ultimately receives.

Of course, before invoking the IDRP process a Scheme member is encouraged to contact the Pension Fund in an effort to resolve any issue that they may have but where a suitable resolution cannot be found, the member has a right to apply under stage 1 of IDRP to the adjudicator appointed by the member's Scheme employer or former Scheme employer as the case may be.

If the member remains dissatisfied once stage 1 has been completed they can apply to the administering authority at stage 2 for a further review of the appeal to take place. Ultimately, if the member is not satisfied with the outcome, The Pensions Ombudsman will make a final and binding determination at stage 3 although the Pensions Advisory Service (tPAS) monitors all disputes prior to The Pensions Ombudsman's involvement.

For the purpose of the statement of policy each Scheme employer is asked to complete the details of their appointed adjudicator and to keep the administering authority up to date with any change that may be made. Part of the Adjudicator's responsibilities will be, under Regulation 74(4), to agree under what circumstances to extend the time for making an application under this Regulation and under Regulation 74(6), to determine the procedure to be followed when exercising functions under this Regulation and the manner is which those functions are to be exercised.

For clarity, the appointed adjudicator is normally a senior officer such as a Head of Finance or Head of HR or perhaps a Head of Legal Services, Headteacher or Chairman of the Governors.

Guidance Note 10 – Regulation 100(6) – Inward Transfers of Pension Rights

A request from an active member to transfer former pension rights from a previous pension arrangement into the Local Government Pension Scheme must be made in writing to the administering authority and the Scheme employer before the expiry of the period of 12 months beginning with the date on which the employee first became an active member in an

employment (or such longer period as the Scheme employer and (since 1 April 2014) the administering authority may allow).

The purpose of this statement is to set out the Scheme employer's policy on whether or not to extend the 12-month deadline set out in the Scheme regulations having regard to the administering authority's agreement.

It is possible that a Scheme employer will deem 12 months to be a long enough period for a Scheme member to elect to have former pension rights transferred into the Scheme but there may be certain circumstances under which a Scheme employer may wish to consider extending that deadline.

If a Scheme employer does choose to use its discretion to extend the 12-month deadline it is important any potential financial implications for the employer are identified. An example of this could be where an employee is perhaps due to be made redundant in the coming months and is aged 55 or over. All pension benefits are released immediately without actuarial reduction in such circumstances including any benefits 'purchased' by the transfer in of former pension rights. As explained previously in guidance note 3 the Scheme employer is responsible for paying a capital or strain cost to the Pension Fund when an employer decision is taken to release a Scheme member's benefits early and if a transfer of former pension rights is received shortly before the termination of a Scheme member's employment this will increase the employer's cost. So the Scheme employer must seek further guidance from the administering authority on each occasion that it may consider extending the 12-month deadline and to obtain from the administering authority their agreement for the transfer to proceed.

Some examples of policy statements might be:

- Each case will be examined at the appropriate time.
- To extend the 12-month deadline to 18 months subject to the administering authority's agreement.
- To accept transfers in beyond the 12-month deadline subject to administering authority's agreement.
- To accept transfers in beyond the 12-month deadline where there is no financial risk to the employer subject to the administering authority's agreement.
- Not to extend the 12-month deadline.

Guidance Note 11 – Regulation 21(5) – Assumed Pensionable Pay

Assumed pensionable pay is calculated when a member:

- enters a period of reduced contractual pay or no pay due to sickness or injury; or
- is absent during a period of paid child-related leave; or
- is absent on reserve forces service leave; or
- retires with an entitlement to a Tier 1 or Tier 2 ill health retirement; or
- dies in service.

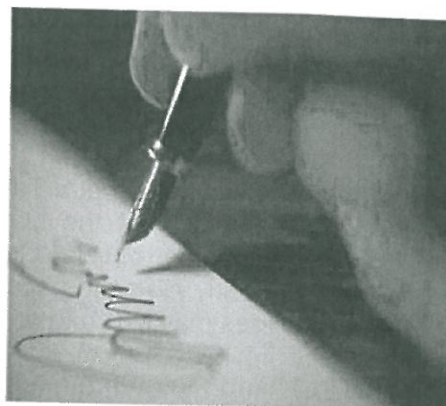
A Scheme employer needs to determine whether or not to include in the calculation of assumed pensionable pay, any 'regular lump sum payment' received by the member in the 12 months preceding the date that any of the circumstances listed above occurred.

A 'regular lump sum payment' is a payment for which the Scheme employer determines there is a reasonable expectation that such a payment would be received on a regular basis. Any decision to include a 'regular lump sum payment' in the calculation of assumed pensionable pay needs to be fair, equitable and justifiable.

Some examples of policy statements might be:

- Each case will be examined at the appropriate time.
- No 'regular lump sum payments' will ever be included in the calculation of assumed pensionable pay.
- 'Regular lump sum payments' will always be included in the calculation of assumed pensionable pay.

SIGNING OFF THE STATEMENT OF POLICY



Once all of the Scheme employer statements of policy have been agreed and inserted at the relevant sections of the document the Scheme employer must sign a declaration to confirm that the statement of policy will be maintained and kept regularly under review.

In addition the Scheme employer is confirming that where any changes are made to the statement of policy, a copy will be sent to the administering authority and that the statement of policy is published in a place where it is freely accessible to all of its employees.

Finally, the Scheme employer must ensure that, however it chooses to adopt the discretions available to it, no decision or action will be taken that could lead to a serious loss of confidence in the public service that the Scheme employer provides.

The statement of policy must be signed by an authorised person who is in a position to ensure that the requirements of the statement of policy are maintained and adhered to.

OTHER SCHEME REGULATIONS WHERE A SCHEME EMPLOYER DECISION MAY BE REQUIRED

Local Government Pension Scheme Regulations 2013

Regulation 3(1)(b) and Part 2 of Schedule 2 – Whom to offer membership of the LGPS (Designated Bodies)

A person is eligible to become an active member of the Scheme in an employment if they are employed by a 'Scheme employer'. In general this covers the vast majority of Local Government employees who will be contractually admitted to the LGPS at the start of their employment if they are under the age of 75 and have a contract of employment of at least three months' duration.

However, a few employers listed in Part 2 of Schedule 2 to the LGPS 2013 Regulations (such as Town, Parish and Community Councils) are required to 'designate' employees or certain groups of employees as being eligible for membership of the Scheme. These employers are referred to as 'Designated Bodies'.

What this means is, for example, that a Town Council could designate just the Town Clerk as being eligible for membership of the LGPS but not any other people that they employ. Subject to the requirements of the Government's 'Workplace Pensions' initiative any designated bodies currently restricting access to the LGPS as a qualifying pension scheme for any of their employees may which to re-consider their position.

Regulation 3(1)(c) and Regulation 4(2)(b) – Which employees to designate for membership (Admitted Bodies)

From time to time non-Local Government employers or associated employers apply to gain 'Admission Body' status in the LGPS. This could be a charity, a non-profit making company with links to a local authority or a private company as a successful bidder to undertake a contract in respect of a Local Authority service being outsourced.

In order to gain 'Admission Body' status an admission agreement has to be completed part of which is to identify and designate those employees who will be granted access to the LGPS from the point at which the 'Admission Body' begins its membership of the Pension Fund and to consider whether future employees working in that contract should be allowed access to the Scheme.

Regulation 19(2) – Exclusion of rights to return of contributions

Under certain circumstances Scheme members are entitled to a refund of their contributions when they leave their employment. However, where a person leaves an employment because of an offence of a fraudulent character or because of grave misconduct in connection with that employment the Scheme employer may direct payment out of the Pension Fund of a sum equal to all or part of the member's contributions to the member, the member's spouse, civil partner, cohabiting partner or any of the member's dependants.

Regulation 20(1)(b) – Meaning of pensionable pay

Regulation 20 sets out the meaning of pay with regard to what is pensionable and what is not pensionable.

Regulation 20(1)(a) states that all the salary, wages, fees and other payments paid to the employee are pensionable and that under Regulation 20(1)(b) so is any benefit specified in the employee's contract of employment as being a pensionable emolument.

Subject to the exclusions from pensionable pay set out in Regulation 20(2), Scheme employers may wish to consider what payments, if any, they should include as being pensionable emoluments in their employees' contracts of employment.

Regulation 37(3) & (4) – Special provisions in respect of members receiving Tier 3 ill health benefits

When a Scheme member becomes permanently incapable of undertaking the duties of their employment and the Independent Registered Medical Practitioner (IRMP) certifies a Tier 3 ill health retirement, the member's accrued benefits come into payment immediately, without enhancement, for up to a maximum period of three years, with a review taking place after 18 months.

The Scheme member is required to inform the Scheme employer upon starting any employment whilst those benefits are in payment and to answer any reasonable questions about the employment status including details of pay and hours worked.

If the Scheme employer determines that the Scheme member has entered into gainful employment or the Scheme member fails to answer the questions raised by the Scheme employer, the Scheme employer may determine to cease payment of the Tier 3 benefit and to recover any payment made in respect of any period it determines that the member has been in gainful employment.

Gainful employment means paid employment for not less than 30 hours in each week for a period of not less than 12 months

Regulation 38(3) & (6) – Early payment of retirement pension on ill health grounds: deferred and deferred pensioner members

A deferred member (or deferred pensioner member) who, because of ill health or infirmity of mind or body, becomes permanently incapable of discharging efficiently the duties of the employment they were engaged in at the date they became a deferred member and who is unlikely to be capable of undertaking gainful employment before normal pension age, or for at least three years, whichever is sooner, may ask to receive immediate payment of their deferred benefits regardless of their age.

Under these circumstances the deferred member must make a request in writing to their former Scheme employer who, having obtained a certificate from their Independent Registered Medical Practitioner (IRMP) setting out their opinion as to whether or not the former employee meets the qualifying conditions for 'ill health retirement', may agree to the release of the deferred benefits

This is a Scheme employer decision and not one required of the administering authority.

Regulations 91, 92, 93 & 95 – Forfeiture of pension rights after conviction for employment-related offences etc

If a person who is a member of the Scheme is convicted of a relevant offence committed in connection with an employment because of which the person has left that employment, a Scheme employer may apply to the Secretary of State for the issue of a forfeiture certificate.

Where such a forfeiture certificate is issued, the member's former Scheme employer may direct that any of the member's rights under the LGPS Regulations are forfeited. The former Scheme employer must serve a notice of its decision to make a direction on the member. The Scheme employer can also decide whether to direct interim payments out of the Pension Fund to anyone that they consider to be entitled to receive payment of a benefit from the Scheme as if no forfeiture direction was given. They can also consider whether or not to recover from the Pension Fund any monetary obligation or, if less, the value of the member's benefits, where the obligation was incurred as a result of a grave misconduct or a criminal, negligent of fraudulent act or omission in connection with the employment.

Disclaimer

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