



# **LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND) REGULATIONS 2018**

## **POLICY STATEMENT**

## **DISCRETIONARY PROVISIONS**

Approved Council Executive: 15 September 2015

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**DOCUMENT CONTROL**

**Policy**

<b>Title:</b>	Local Government Pension Scheme – Discretionary Provisions
<b>Owner:</b>	Human Resources

**History**

<b>Version</b>	<b>Revision Date</b>	<b>Summary of Changes</b>	<b>Future Review Date</b>
1.1	November 2019	Routine review required by Lothian Pension Fund	November 2024
2.0	February 2023	Revised Discretionary Provisions to support the introduction of Shared AVCs as part of the council's Employee Benefits Scheme.	February 2028

**Committee Approval**

<b>Version</b>	<b>Committee</b>	<b>Committee Date</b>
1.0	Council Executive	15 September 2015
2.0	Council Executive	13 February 2023

## **POLICY STATEMENT**

Regulation 58 of the Local Government Pension Scheme (Scotland) Regulations 2018 requires the council to publish a policy relating to the exercise of certain discretionary powers within the regulations. In determining its policy, the council has taken account of the need to maintain public confidence in the manner it exercises the discretionary powers available to it.

## **SCOPE**

The general discretionary powers stipulated within Part 1 of this policy statement apply to employees who are eligible to be members of the Local Government Pension Scheme.

The discretions set out in provisions 1 to 8 are mandatory elements for inclusion in an Employer's published Policy Statement. Provisions 9 to 14 are non-mandatory elements.

The specific discretionary powers stipulated within Part 2 of this policy statement apply to employees who are eligible to be members of the Local Government Pension Scheme and the Scottish Teachers Superannuation Scheme.

## PART 1: DISCRETIONARY PROVISIONS - GENERAL

### 1. ADDITIONAL PENSION CONTRIBUTIONS

Regulation 16 (2)(e) & 16(4)(d) of the Local Government Pension Scheme (Scotland) Regulations 2018

#### **Policy Statement**

**The council does not have a general policy of entering into an Additional Pension Contributions contract with a scheme member, but will consider individual cases on their merits.**

#### **Statutory Guidance**

The council may voluntarily enter into an APC contract with a Scheme member who is contributing to the MAIN section of the scheme in order to purchase additional pension of not more than the additional pension limit (currently £6,761 and subject to annual increase in line with the Pensions (Increase) Act 1971).

The council may resolve to fund in whole or in part any arrangement entered into by an active scheme member to pay additional pension contributions by way of regular contributions in accordance with Regulation 16(2)(e), or by way of a lump sum in accordance with Regulation 16(4)(d).

The amount of additional contribution to be paid is determined by reference to actuarial guidance issued by the Government Actuaries Department.

### 2. FLEXIBLE RETIREMENT

Regulation 29(7) of the Local Government Pension Scheme (Scotland) Regulations 2018

#### **Policy Statement**

**The council will not have a general policy of agreeing to requests for early payment of retirement benefits from a member who has attained age 55 and who with the council's consent, has also reduced his or her hours and/or grade. However, where the council considers that it can be demonstrated as being to their advantage or in its operational interests, it will consider such requests.**

**In considering requests for flexible retirement, the council will normally expect at least a 20% reduction in the employee's contractual weekly hours or alternatively, a minimum reduction of at least one full salary grade.**

**Should the council agree to the early payment of benefits under this regulation in any case, it will not have a general policy of waiving any reduction, which would normally be applied to the benefits.**

#### **Statutory Guidance**

Where certain conditions are met, the Scheme Regulations allow members to draw

some or their entire scheme benefits while still in employment. The conditions are:

- The member must apply for early payment in writing and be at least age 55
- The member, with the council's consent, reduces the hours they work or their grade of employment and,
- The council agrees to the early payment of their benefits

On flexible retirement, members must take all benefits in respect of membership before 1 April 2009. With regards to the following benefits, the member has the option to request payment as follows:

- All, part or none of the benefits in respect of membership between 1 April 2009 and 31 March 2015
- All, part or none of the benefits in respect of membership from 1 April 2015 onwards
- Any additional benefits such as added years contracts, additional pension contracts (APCs), additional voluntary contributions (AVCs) or additional pension or membership awarded by the council.

The council must confirm whether or not it agrees to the member's request. The benefits would be subject to the same level of reduction which would apply had the member retired from employment, but the council may, at their cost, waive the reduction.

Note that for members who have reached age 60, employer consent to early payment is not required.

### **3. WAIVING ACTUARIAL REDUCTION ON EARLY RETIREMENT BETWEEN 55 AND 60**

Regulation 29(9) of the Local Government Pension Scheme (Scotland) Regulations 2018

#### **Policy Statement**

**Any active scheme member who has not attained Normal Pensionable Age (NPA) but has attained age 55 may elect to receive immediate payment of their benefits, providing they have left employment, but these benefits may be reduced for early payment.**

**The council will not have a general policy of agreeing to waive any reduction which would normally be applied to the member's benefits.**

#### **Statutory Guidance**

The council can agree to waive the reduction which would apply. To do so would mean the council would be liable for strain on fund costs to cover the cost of early retirement.

#### 4. TRANSITIONAL PROVISIONS

Schedule 2 – Paragraphs 2 & 3 of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014

##### **Policy Statement**

**The council will not have a general policy of agreeing to requests to apply the rule of 85 from a member who has attained age 55 and has elected for early payment. However, where the council considers it can be demonstrated as being to their advantage or in their operational interests to apply the rule of 85, it will consider such requests.**

##### **Statutory Guidance**

Other than on flexible retirement, the Rule of 85 does not automatically apply to members who would otherwise be subject to this and have chosen to voluntarily draw their benefits on or after age 55. As a result, the member's benefits will be actuarially reduced. To avoid the member incurring the full reduction to their benefits the council can 'switch on' the rule of 85 protections thereby allowing the member to receive fully or partly unreduced benefits but subject to the council paying a strain (capital) cost to the Pension Fund.

A further option would be for the council not to apply the Rule of 85 but to agree to waive part of the actuarial reduction which would apply. In these cases, the council would meet part of the cost for early payment by paying a strain cost, and the member would meet the balance of the cost by a reduction to their benefits.

#### 5. AWARD OF ADDITIONAL PENSION

Regulation 30 of the Local Government Pension Scheme (Scotland) Regulations 2018

##### **Policy Statement**

**The council will not have a general policy of awarding additional pension in this way, but will consider individual cases on their merits. The council may exercise this discretion in an individual case by written resolution where financial or operational advantages can be demonstrated.**

##### **Statutory Guidance**

The council may award a member additional pension which would become payable from the same date as the member's normal pension. The maximum extra pension which can be awarded is £5,200. Such awards can be made to active members, or within 6 months of leaving to members whose employment was terminated on the grounds of redundancy or the interest of efficiency. The employer must make an appropriate payment into the fund within one month of making a resolution.

The figure of £5,200 will be increased annually each April under the Pension (Increase) Act 1971.

## 6. VOLUNTARY EARLY RETIREMENT BETWEEN THE AGES OF 55 AND 60

Regulation 30 of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2018

### **Policy Statement**

**Any former scheme member who left prior to 1 April 2015 and is aged 55 or over, providing they are no longer in local government employment, may request unreduced payment of their deferred benefits on compassionate grounds.**

**The council will only exercise their discretion to waive the actuarial reduction in exceptional cases of hardship.**

### **Statutory Guidance**

This discretion applies to former employees with deferred benefits who left the Scheme before 1 April 2015. The Scheme Regulations allow former members to obtain access to their deferred benefits early; provided they are at least 55 years old. Benefits would be reduced for early payment and pension.

The reduction is calculated in accordance with guidance issued by the Government Actuary's department.

The council may resolve to waive any actuarial reduction applied to the member's benefits where there are compelling compassionate grounds for doing so. It should be borne in mind that decisions to waive any actuarial reduction under this regulation will put a strain on the pension fund, a cost which is passed on to the council.

## 7. SHARED COST ADDITIONAL VOLUNTARY CONTRIBUTIONS

Regulation 17(1) of the Local Government Pension Scheme (Scotland) Regulations 2018

### **Policy Statement**

**The council will pay shared cost AVCs where an employee has elected to pay AVCs by salary sacrifice. The amount of an employer shared cost AVC will not exceed the amount of salary sacrificed by the employee.**

**Payment of shared cost AVCs is at the council's discretion and subject to the employee meeting conditions for acceptance into the salary sacrifice shared cost AVC scheme and may be withdrawn or changed at any time.**

### **Statutory Guidance**

This regulation allows the council to set up an Additional Voluntary Contributions (AVC) scheme requiring a contribution from the council.

## 8. FORFEITURE OF PENSION RIGHTS AFTER CONVICTION FOR EMPLOYMENT RELATED OFFENCES

Regulation 86 of the Local Government Pension Scheme (Scotland) Regulations 2018

### Policy Statement

**In the interests of maintaining confidence in the public service, the council reserves the right to apply to the Scottish Ministers to forfeit all or part of a scheme member's pension benefits in the event that the member has been convicted of a serious offence which were either '*gravely injurious to the State or liable to lead to a serious loss of confidence in the public service*'.**

## 9. RECOVERY OR RETENTION WHERE FORMER MEMBER HAS MISCONDUCT OBLIGATION

Regulation 87 of the Local Government Pension Scheme ((Scotland) Regulations 2018

### Policy Statement

**Providing that all other efforts to recover monetary obligations have been exhausted, in the interests of maintaining confidence in public service, the council reserves the right to recover any loss arising from a criminal, negligent or fraudulent act by a former employee from his/her pension benefits should the need arise.**

### Statutory Guidance

This provision allows the council to recover monies from pension benefits (for example, the theft of a substantial sum of money could be recovered from a scheme member's total benefits in respect of acts of theft or fraud carried out by an employee. This provision can also apply to former employees (for example, the theft of a substantial sum of money could be recovered by deducting this amount from a member's transfer value and only the reduced benefit deferred until retirement age).

## 10. INWARD TRANSFER OF PENSION RIGHTS

Regulation 95 of the Local Government Pension Scheme (Scotland) Regulations 2018

### Policy Statement

**The council will not have a general policy of allowing a late transfer of previous pension rights into the Local Government Pension Scheme to proceed. Instead it will consider individual applications on their merits and may, in agreement with Lothian Pension Fund, exercise discretion to allow a late transfer to proceed where there is no financial impact on the council and Lothian Pension Fund.**

### Statutory Guidance

The Scheme Regulations allow members to transfer previous pension rights into the Local Government Pension Scheme. The Regulations state that all transfers must be requested within 12 months of the member joining the scheme. However, the council in conjunction with Lothian Pension Fund has the discretion to allow transfers to proceed after this time-limit has expired.

In considering whether a late transfer of pension rights is to be accepted, the council may consider any extenuating circumstances put forward as to why the transfer was not requested previously. In these circumstances the potential pension liabilities that could arise from future early retirement in terms of increased Strain on the Fund Costs will be a particular consideration.

## 11. MEMBER CONTRIBUTIONS

Regulation 9(4) of the Local Government Pension Scheme (Scotland) Regulations 2018

### Policy Statement

**Subject to ensuring that a consistent approach is taken and in the interests of maintaining confidence in the public service, the council reserves the right to adjust a member's contribution rate should a change in pay move them into a different pension contribution band during the financial year should the need arise.**

### Statutory Guidance

Where an employee's salary increases or decreases during the financial year, the council will make any adjustments to contribution rates effective from 1 April following the change in salary. However, where an employee's salary decreases during the financial year they may request to have their contribution rate amended accordingly at the time of the change in salary.

## 12. ADDITIONAL PENSION CONTRIBUTIONS

Regulation 16 (16) of the Local Government Pension Scheme (Scotland) Regulations 2018

### Policy Statement

**The council will not generally agree to extend the time limit of 30 days for members to make an election to buy back lost pension following a period of approved unpaid absence, but will do so exceptionally, where a member provides evidence of extenuating circumstances.**

### Statutory Guidance

Following a period of approved unpaid absence of more than 30 days, the member can elect to buy back the lost pension. If they make such an election within 30 days of their return to work, then the cost of buying back the lost pension can be shared with the employer. Elections made after 30 days would require the member to bear the full costs of the additional pension contract unless the council chose to extend the 30 day time limit.

## PART 2: DISCRETIONARY PROVISIONS – EARLY RETIREMENT & VOLUNTARY SEVERANCE

### 1. GENERAL

Decisions to award discretionary added years or enhanced lump sum compensation are delegated to the Chief Executive, in consultation with the Leader of the Council, and will be informed by the:

- demonstrable benefit(s) to the council, both in terms of total cost and service implications, based on a full assessment of these implications in each case;
- quality and relevance of the business case made, taking all relevant service and cost implications into account;
- the interests of the employee(s) concerned, balanced with the interests of the council.

### 2. AWARD OF ADDED YEARS

Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 1998

#### **Policy Statement**

**It is the policy of the council to exercise discretion as appropriate under the relevant regulations to award added years or purchase additional pension within the limits of affordability.**

#### **Statutory Provision – Local Government Pension Scheme**

Under the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 1998, members of the Local Government Pension Scheme have immediate payment of pension if they are:

- aged 55\* or over
- have two or more years membership; and
- their employer certifies that they are no longer in local government employment due to redundancy or in the interests of business efficiency.

Additionally, the employer has discretion to enhance such pensions for employees with at least five years scheme membership, by up to 10 'added years'.

\* Employees who were active members of the scheme before 6 April 2006 and have been in continuous membership since that date retain a minimum pension age of 50.

Spouses are entitled to survivor benefits in respect of credited 'added years' (benefits based on membership accrued after 5 April 1988). The Local Government Pension etc (Civil Partnership) (Scotland) Amendment Regulations 2005 similarly provide for the payment of survivor benefits to civil partners where the former employee ceased employment after 5 April 1988

## Statutory Provision – Scottish Teachers Superannuation Scheme

Under the Teachers Superannuation (Scotland) Regulations 2005 (as amended), an employer may apply two early retirement options.

In accordance with the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996 (as amended), an employer may at its discretion, credit a member of the Teachers Superannuation Scheme with an additional period of service (discretionary compensation) provided that the member has:

- attained age 55;
- completed qualifying service amounting to not less than 5 years; and
- their employer certifies that they are no longer in local government employment due to redundancy or in the interests of business efficiency

Alternatively, an employer may grant an Actuarially Reduced Pension (ARP) provided that a member is aged 55 to 59 and has completed qualifying service of not less than 2 years.

It is further open to an employer to compensate for an actuarial reduction in pension benefits by opting to purchase additional pension on behalf of a teacher.

Spouses', civil partners' and surviving nominated partners' compensation pensions that are payable in respect of scheme members whose premature retirement benefits commenced on or after 1 April 2007 are payable for the lifetime of the recipient.

### **3. ILL HEALTH GRATUITIES**

Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009.

#### **Policy Statement**

**The council has resolved not to exercise discretion to award third tier ill-health gratuities under Regulation 49B of the 2009 Regulations on the grounds of affordability.**

### **4. PAYMENT OF ENHANCED LUMP SUM COMPENSATION**

Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2006 and the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1997 (as amended)

#### **Policy Statement**

**The council will consider the award of enhanced lump sum compensation up to a maximum of 40 week's pay to eligible employees who have at least 2 years continuous service and who cease employment with the council on the grounds of voluntary redundancy or in the interests of business efficiency.**

**The amount of enhanced lump sum compensation payable in any individual case will be determined with reference to the formula for calculating statutory**

**redundancy payments, proportionately enhanced to provide for up to a maximum of 40 week's pay.**

**The council will apply discretion to disregard the statutory maximum limit and calculate redundancy payments with reference to an employee's actual week's pay.**

**On request the council will consider a reduction in the enhanced lump sum compensation due to an eligible employee calculated under the terms of the policy, subject to the reduced enhanced lump sum compensation being no less than the appropriate amount of statutory redundancy payment to which an employee is entitled under the Employment Rights Act 1996 calculated at an employee's actual week's pay.**

**Enhanced lump sum compensation will not be payable where additional pension benefits are being awarded under Paragraph 2 of this policy.**

**The council has further resolved that payment of compensation to a widow/widower or registered civil partner should continue to be paid after remarriage or co-habitation where the original retirement took place before 1 April 1998.**

#### Statutory Provision

Under the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2006 and the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1997 (as amended), discretionary lump sum compensation can be paid to certain local government employees who cease to hold employment on grounds of redundancy or in the interests of business efficiency.

The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009 and the Teachers' Superannuation (Scotland) Amendment Regulations 2008 provide for compensation in these circumstances of up to a maximum of 104 week's pay. This limit is inclusive of any statutory redundancy payment to which the employee is entitled under the Employment Rights Act 1996 and any additional compensation paid in connection with the statutory redundancy payment under Part II of the 1998 Regulations.

Under Regulation 4 of Part II of the 1998 Discretionary Payments Regulations, authorities have discretion to disregard the statutory maximum limit and calculate redundancy payments with reference to an employee's actual week's pay.

#### **Administrative Arrangements**

The discretionary award of added years or enhanced lump sum compensation will be implemented through an agreed procedure, which will adhere to the following principles:

- all cases of proposed early retirement and voluntary severance will, in the first instance, be submitted through the appropriate Depute Chief Executive;
- the Depute Chief Executive will ensure that all relevant details, including full costs, net savings and any service implications are provided in each case;

- the Chief Executive, in consultation with the Leader of the Council will consider each case in the context of the requirements of the policy;
- full monitoring information on numbers and costs of early retirements and severance payments will be submitted on a six-monthly basis to the Council Executive.

## **5. POLICY REVIEW**

In formulating this policy the council has referred to the relevant statutory provisions and to advice from the City of Edinburgh Council as the Pension Scheme administering authority and the Scottish Public Pensions Agency (SPPA).

This policy statement will be kept under review and will be revised as and when necessary to reflect any changes in regulations or policy. Any changes to this policy will be advised to the administering authority and scheme members in writing within one month of the change taking effect.