

To: Chief Executives  
 Salaries and Wages  
 Human Resources  
 Pension Contacts

Circular 01/2015  
 02 March 2015

At: All Employing Authorities

Dear Colleagues,

### **Local Government Pension Scheme 2015 – Discretionary Policies**

There are some situations where the regulations give employers the option to do certain things provided they are set out in a formal policy, these are known as discretions. At the recent employer training on employer discretions for the new Scheme we advised that we would provide a discretionary policy template. The aim of this template is to enable employers to consider the various options under each discretion and choose either the most appropriate option or insert their own wording, if preferred. We are grateful to the assistance of Terry Edwards, Director of PENTag Ltd, who has prepared this template. The template is attached to this circular.

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#### **1. Regulatory Background**

Employers are required to have policies on discretions under:

- the Local Government Pension Scheme Regulations (Northern Ireland) 2015 in respect of members of the 2015 Career Average Revalued Earnings (CARE) Scheme
- earlier Local Government Pension Scheme Regulations in respect of members who left before 1 April 2015, and
- the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2007 and earlier compensation regulations.

As a result of the introduction of the new Scheme employers are required to formulate, publish and send a copy of their Statement of Policy to NILGOSC no later

than 31 July 2015. This written Statement of Policy must cover certain discretions that the employer can exercise from 1 April 2015. It is preferable that employers have sent their policy to NILGOSC as soon as possible after 1 April 2015 in order to cover cases that may arise before 31 July 2015 e.g. redundancy or flexible retirement cases. NILGOSC cannot pay a benefit where a discretion is exercised if we do not have a copy of your policy on file.

Employers must also formulate, publish and keep under review a Statement of Policy on certain other discretions under earlier Scheme regulations and under the Discretionary Compensation Regulations.

In formulating and reviewing their policies under the Scheme regulations employers are required to consider whether and to what extent the policy might lead to a serious loss of confidence in the public service.

In formulating and reviewing their policies under the Discretionary Compensation Regulations employers are required to have regard to the extent to which the exercise of their discretionary powers could lead to a serious loss of confidence in the public service and must be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.

## **2. Discretionary Policy Template**

The template is laid out as described in Table 1 and is issued along with this circular.

Each of the tables within the template highlights the discretions where a policy is required or is recommended as well as noting the affected employers.

A number of potential options are listed under each discretion. Each employer should select the most appropriate option or insert its own wording if that is preferred.

Once the final policy is approved it should be forwarded to NILGOSC before 31 July 2015.

The template does not cater for members with protected rights (e.g. earlier payable ages) or councillor members, however, you may wish to also include them within your policy statement, where applicable.

**Table 1 - Discretionary Policy Template**

Page	Content
1-5	Draft letter for Committee or relevant decision maker
6	Information on fettering discretions
7-30	<p><b>Table A</b> – Discretions to be exercised under the LGPS (NI) 2015</p> <p><i>All employers <b>must</b> have a policy in respect of items 1 to 5 and are <b>recommended</b> to have a policy in place in respect of items 6 to 9</i></p>
31-33	<p><b>Table B</b> – Discretions to be exercised from 1 April 2015 in relation to Scheme members who left active membership between 1 April 2009 and 31 March 2015</p> <p><i>All employers participating in the Scheme on 31 March 2015 <b>must</b> have policy on all three items</i></p>
34-36	<p><b>Table C</b> – Discretions to be exercised from 1 April 2015 in relation to Scheme members who left active membership between 1 February 2003 and 31 March 2009</p> <p><i>Employers participating in the Scheme on 31 March 2009 <b>must</b> have policy on both items</i></p>
36-37	<p><b>Table D</b> – Discretions to be exercised from 1 April 2015 in relation to Scheme members who left active membership before 1 February 2003</p> <p><i>Employers participating in the Scheme on 31 January 2003 are <b>recommended</b> to have a policy on item 1</i></p>
37-40	<p><b>Table E</b> – Discretions to be exercised under the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2007</p> <p><i>Employers <b>must</b> have a policy on both items</i></p>
41-45	<p><b>Table F</b> - Discretions to be exercised under the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2003</p> <p><i>Employers <b>must</b> have a policy on all three items but only if they awarded compensatory added years under these or earlier regulations</i></p> <p>NB. The options under this section are written as though the final salary scheme continues as these regulations will need to be considered/amended by the Department of Environment to take account of the change in definition of pensionable pay i.e. now includes non-contractual overtime and additional hours payments.</p>

### 3. Contribution Banding

A few employers have highlighted the difficulties of banding employees when there is a unknown non-contractual element of overtime. They have considered reviewing the pensionable earnings on a quarterly basis and reassessing the individual if it appeared that their annual earnings would take them into a higher band or lower band.

We have reviewed the regulations and they only permit reattribution during a year in the following circumstances:

*11 (3)<sup>1</sup> Where there is a change in employment, or a material change **to the terms and conditions of a member's employment**, which affects the member's pensionable pay in the course of a financial year, the employing authority may determine that a contribution rate reflecting the different pay range should be applied and the employing authority shall inform the member of the contribution rate applicable and the date from which it is to be applied.*

Therefore, in light of the above difficulties and the potential for numerous appeals to employers, NILGOSC accepts that employers may choose to band employees taking into account contractual elements of pay only for the next year i.e. ignoring any potential non-contractual overtime. However, employees will still pay contributions on the non-contractual overtime at the contribution rate to which they have been attributed. A reassessment of contributions should only take place where an employer is satisfied that there is a change in employment or a material change to the terms and conditions of a member's employment during the course of a financial year. Employers may, of course, use another method such as one of those stated in page 6 of the HR Guide.

The new Scheme is designed to achieve average employee contributions of 6.4% of pensionable pay. The above approach will be reviewed as at 31 March 2016 when we can determine the average employee contributions received against pensionable pay (including non-contractual overtime) for each employer. The above approach will need reviewed if it is apparent that the average contributions have not been realised.

We have also asked the Department to consider the above mentioned regulation and whether it should be amended.

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<sup>1</sup> Local Government Pension Scheme Regulations (Northern Ireland) 2014 (SRNI 2014 No. 188)

I hope you find the attached template useful. Please do not hesitate to contact the Pensions Development Team or myself if you have any queries.

Yours sincerely

A handwritten signature in black ink that reads "Zena Kee". The letters are cursive and fluid, with the first letter of each word being capitalized and larger than the others.

Zena Kee  
Pensions Manager