

NILGOSC Policy Statement on the Exercise of Discretions relating to Former Employing Authorities

1 Introduction

- 1.1 Under the Regulations¹ there are a number of discretions for employers in respect of members' benefits. However, in some cases a member's employer in respect of the relevant membership may have ceased to be an employing authority – whether because the employer has ceased to exist or has ceased to participate in the Scheme. In this Policy Statement, we refer to such an employer as a 'former employing authority'.
- 1.2 The 2014 Regulations² and the Transitional Regulations³ require that NILGOSC take the place of a former employing authority for the purposes of deciding how to exercise certain discretions, as set out in Sections 2 and 3 below. This Policy Statement sets out how NILGOSC will exercise the discretion in these cases.
- 1.3 NILGOSC is required under the Regulations⁴ to prepare, publish and keep under review a written policy statement where it takes the place of a former employing authority, in relation to the exercise of the discretion under Regulation 31(8) (retirement benefits, waiving reduction) to waive actuarial reductions where a member has applied for early payment of benefits under Regulation 31(5) and an actuarial reduction would otherwise apply.
- 1.4 Paragraph 2(2) of Schedule 3 to the Transitional Regulations sets out that the requirement under Regulation 66 also applies to exercise of the discretion under Paragraph 1(1)(b)(ii) of that Schedule. This is the discretion to “switch on” the Rule of 85 for members aged 55 or over but not yet 60 when they apply for early payment of benefits under Regulation 31(5) of the 2014 Regulations.
- 1.5 This Policy Statement is intended to satisfy the requirements for a policy statement referred to at 1.4 and 1.5 above. It also sets out NILGOSC's policy for the exercise

¹ The 'Regulations' means the 2014 Regulations, the Transitional Regulations and any former regulations relating to the Scheme.

² The '2014 Regulations' means The Local Government Pension Scheme Regulations (NI) 2014

³ The 'Transitional Regulations' means the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (NI) 2014

⁴ Regulation 66 of the 2014 Regulations and Para 2(2) of Schedule 3 to the Transitional Regulations.

of the other discretions, where it is required under the Regulations to take the place of a former employing authority.

1.6 NILGOSC shall at all times

- exercise the discretions reasonably
- have regard to all relevant factors and no irrelevant factors
- record any decision taken in relation to the exercise of the discretions
- shall not act in a way that is likely to lead to a serious loss of confidence in the public sector

1.7 NILGOSC's discretion shall not be fettered by this Policy Statement. NILGOSC will consider each case on its merits and may take into account exceptional circumstances.

1.8 NILGOSC may request further information from a member who is applying for a discretion to be exercised in his or her favour. The member may refuse to provide the information, in which case NILGOSC may proceed to make the decision without that information.

2 Employer Discretion

2.1 Set out below are the discretions to be exercised by NILGOSC where the relevant employer is a former employing authority

Discretion 1 - Applying the 85 Year Rule for members voluntarily drawing benefits from age 55 and before age 60

(Transitional Regulations, Schedule 3, Paragraph 1(1)(aa), 1(1)(b)(ii) and 1(1)(e))

Explanation

There is a discretion in Schedule 3 to the Transitional Regulations, for an employing authority to decide to switch the 85 Year Rule back on in full for members who would otherwise be subject to it and who choose to voluntarily draw their benefits on or after age 55 and before age 60. The discretion is set out at

- Paragraph 1(1)(aa) for members applying for early payment under Regulation 30(1) of the 2009 Benefits Regulations⁵

⁵ The "2009 Benefits Regulations" means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (NI) 2009

- Paragraph 1(1)(b)(ii) for members applying for early payment under Regulation 31(5) of the 2014 Regulations
- Paragraph 1(1)(e) for members applying for early payment under Regulation 33(1) of the 2002 Regulations⁶

No ground is stipulated by the Regulations.

Where the member's employing authority is a former employing authority, NILGOSC takes the place of the former employing authority and may exercise this discretion in favour of the member.

NILGOSC Policy

NILGOSC will not agree to switch the 85 Year Rule on in full where deferred members who were employed by former employing authorities choose to voluntarily draw their benefits on or after age 55 and before age 60 except where there are compelling compassionate reasons for doing so (in accordance with the criteria specified in section 3 below – page 4). The cost to the Fund will be taken into consideration.

Discretion 2 - Waiving reduction on benefits which a member voluntarily draws before normal pension age

(2014 Regulations, Regulation 31(8) and Transitional Regulations, Schedule 3, Paragraph 2(1))

Explanation

Members may elect under regulation 31(5) of the 2014 Regulations to receive immediate payment of a retirement pension on or after age 55 and before Normal Pension Age, reduced by the amount shown in actuarial guidance issued by the Department. There are similar provisions at Regulation 30(1) of the 2009 Benefits Regulations and Regulation 33(1) of the 2002 Regulations.

The amount of the reduction will vary in accordance with the age of the member, membership in the Scheme and the extent to which the transitional provisions with regard to the 85 Year Rule (Schedule 3 to the Transitional Regulations) apply to the individual member (if at all).

⁶ The "2002 Regulations" means the Local Government Pension Scheme Regulations (NI) 2002

Where the member's employer or former employer is a former employing authority, NILGOSC

- Under Regulation 31(8), may agree to waive any relevant reduction under where the member applies for early payment of pension under Regulation 31(5) of the 2014 Regulations in whole or in part in respect of membership from 1 April 2015. No ground is stipulated by the Regulations.
- Under Paragraph 2(1) of Schedule 3 to the Transitional Regulations, may determine on compassionate grounds to waive in full any relevant reduction calculated in accordance with Schedule 3, which would otherwise apply under Paragraphs 1(4), 9(2) or 1(3)(b).

NILGOSC Policy

NILGOSC will not

- agree under Regulation 31(8) to waive in whole or in part any reduction in benefits as described above
- determine on compassionate grounds under Paragraph 2(1) of Schedule 3 to waive in whole any reduction in benefits as described above

except in circumstances where NILGOSC considers there are compelling compassionate grounds (please see Section 3 for further details).

Each case will be considered on the merits of the compassionate case put forward.

As NILGOSC is exercising the discretion in place of the former employing authority, the cost of the strain resulting from any waiver in actuarial reduction will be met from the Fund. The cost to the Fund will be taken into consideration.

3 Consideration of requests on compelling compassionate grounds

3.1 Each request on compelling compassionate grounds will be considered on its own merits

3.2 The main criteria NILGOSC will consider as compelling compassionate grounds are:

- to allow former employees to care for a sick spouse, civil partner, co-habiting partner, parent, child, sibling or other dependant as that person's sole or main carer; **and/or**
- on grounds of long-term severe financial hardship.

- 3.3 Proven long-term severe financial hardship means that the member's long-term expenditure on basic living requirements (e.g. food, heat, electricity, rent or mortgage, clothing) exceeds the member's income from all sources and the member has either no or minimal savings. Long-term means greater than 12 months.
- 3.4 The member must provide NILGOSC with relevant information and evidence supporting his or her application. If the member refuses to provide information to NILGOSC, then NILGOSC may proceed to make a decision without that information.
- 3.5 Relevant information and documents may include (without limitation):

Where the member wishes long-term severe financial hardship to be considered:

- Full details of long-term severe financial hardship.
- Details of all employments held since leaving the employment of the former employing authority.
- Details of all income, pensions deferred or in payment and any other benefits receivable including state benefits and crisis loans.
- Details of savings accounts or savings-type insurance policies.
- Copies of bank statements.
- Detailed list of expenditure.

Where the member wishes caring responsibilities to be considered:

- Medical reports, if appropriate, to support a case of retirement to look after an elderly or infirm spouse, civil partner, co-habiting partner, child, parent, sibling or other dependant.
- Evidence that the member is the sole or main carer.

The Committee may also request any such other information and evidence as may be relevant to the decision, where it is reasonable to request same from the member.

4 Policy Review

- 4.1 Committee's Policy Statement on Former Employer's Discretions was approved in February 2018, updated for accessibility in April 2021. The next review will be due in April 2024 or earlier if there are amending regulations.