Policy Statement on Employer’s Discretions

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## Discretions - Current Regulations

Discretions to be exercised on and after 1 April 2015 under the LGPS Regulations (NI) 2014, as amended, in relation to active scheme members and members who cease active membership after 31 March 2015

### 1.1 Employer Power to grant extra annual pension

(LGPS (NI) 2014, Regulations 18 and 32)

#### Explanation

Whether, at full cost to [name of employer], to grant extra annual pension of up to £7,163 (figure at 1 April 2021) to an active scheme member or within six months of leaving to a member who is dismissed by reason of redundancy or business efficiency or whose employment is terminated by mutual consent on the grounds of business efficiency.

#### Policy

##### Option 1

Carry forward the employer’s existing policy [the details of which should be inserted here].

##### Option 2

[Name of employer] will not make use of the discretion to grant extra annual pension of up to £7,163 (figure at 1 April 2021) to an active scheme member or within 6 months of leaving to a member who is dismissed by reason of redundancy or business efficiency or whose employment is terminated by mutual consent on the grounds of business efficiency.

[Note: option 2 may be open to challenge or complaint that it fetters the employer’s discretion]

##### Option 3

[Name of employer] will not make use of the discretion to grant extra annual pension of up to £7,163 (figure at 1 April 2021) to an active scheme member or within 6 months of leaving to a member who is dismissed by reason of redundancy or business efficiency or whose employment is terminated by mutual consent on the grounds of business efficiency except in exceptional circumstances where [name of employer] considers it is in its financial or operational interests to do so. Each case will be considered on the merits of the financial and / or operational business case put forward.

Note: option 3 does not fetter the employer’s discretion and leaves the option open for the employer to grant extra annual pension in exceptional circumstances e.g. where it is felt necessary in order to attract an employee who has the specialist skills and experience an employer needs, or where it is felt necessary in order to induce an employee with specialist skills and experience not to leave]

##### Option 4

[Name of employer] will not make use of the discretion to grant extra annual pension of up to £7,163 (figure at 1 April 2021) to an active Scheme member except in exceptional circumstances where [name of employer] considers it is in its financial or operational interests to do so. Each case will be considered on the merits of the financial and / or operational business case put forward.

However, [Name of employer] will make use of the discretion to grant extra annual pension to a member who is dismissed by reason of redundancy or business efficiency or whose employment is terminated by mutual consent on the grounds of business efficiency. [Employer to insert here the details of its policy including the criteria for deciding to whom to grant such pension and for determining the amount of extra annual pension to grant in each case.]

### **1.2 Employer discretion to contribute towards the costs of purchasing extra pension**

(LGPS (NI) 2014, Regulation 18)

#### Explanation

Whether, where an employee wishes to purchase extra annual pension of up to £7,163 (figure at 1 April 2021) by making Additional Pension Contributions (APCs), [name of employer] will voluntarily contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC). The employee must make an election to pay an APC within 30 calendar days of returning to work or any such longer period that the employer may permit.

#### Policy

##### Option 1.

[Name of employer] will not make use of the discretion to voluntarily contribute towards the cost of purchasing extra pension via a Shared Cost Additional Pension Contribution (SCAPC).

[Note: option 1 may be open to the challenge or complaint that it fetters the employer’s discretion]

##### Option 2.

[Name of employer] will only voluntarily contribute towards the cost of purchasing extra pension via a Shared Cost Additional Pension Contribution (SCAPC) where:

* an active scheme member returns from a period of authorised leave of absence, and
* the member does not, within 30 days of returning from the leave of absence, make an election to buy-back the amount of pension ‘lost’ during that period of leave of absence, and
* the member subsequently makes an election to do so and it can be demonstrated that the reason for the member missing the original 30 day deadline was because the member had not been made aware of that deadline, and
* the election is made no more than 6 months after the member returns from the period of leave of absence or such longer period as [name of employer] may deem reasonable in any individual case.

A decision on whether the member meets the above criteria (and on whether the 6 month period referred to should be extended in any individual case) will be taken by [enter appropriate details] and, where it is agreed that the conditions are met, [name of employer] will contribute 2/3rds of the cost of buying back the ‘lost’ pension via a SCAPC.

[Note: option 2 covers cases where it would be reasonable to contribute to a SCAPC to deal with an administrative error]

##### Option 3.

[Name of employer] will only voluntarily contribute towards the cost of purchasing extra pension via a Shared Cost Additional Pension Contribution (SCAPC) in two situations. Firstly, where:

* an active scheme member returns from a period of authorised leave of absence, and
* the member does not, within 30 days of returning from the leave of absence, make an election to buy-back the amount of pension ‘lost’ during that period of leave of absence, and
* the member subsequently makes an election to do so and it can be demonstrated that the reason for the member missing the original 30 day deadline was because the member had not been made aware of that deadline, and
* the election is made no more than 6 months after the member returns from the period of leave of absence or such longer period as [name of employer] may deem reasonable in any individual case.

A decision on whether the member meets the above criteria (and on whether the 6 month period referred to should be extended in any individual case) will be taken by [enter appropriate details] and, where it is agreed that the conditions are met, [name of employer] will contribute 2/3rds of the cost of buying back the ‘lost’ pension via a SCAPC.

Secondly, in exceptional circumstances where [name of employer] considers it is in its financial or operational interests to do so. Each case to contribute to a SCAPC (and a decision on the amount to be contributed) will be considered on the merits of the financial and / or operational business case put forward.

##### [Note: option 3 covers cases where it would be reasonable to contribute to a SCAPC to deal with an administrative error and any other exceptional cases that might arise]

### 1.3 Time limit for elections to cover lost pension due to a permitted absence

(LGPS (NI) 2014, Regulation 18)

#### Explanation

Whether to allow an employee longer than 30 days following return to work after a period of absence with permission (not due to illness, child-related leave or reserve forces service leave) to decide to apply to cover the lost pension through an Additional Pension Contract.

#### Policy

##### Option 1.

[Name of employer] will not extend the 30 day deadline following an active member’s return to work after a period of authorised absence where they can decide to apply to cover the lost pension through an Additional Pension Contract

##### Option 2

[Name of employer] will only extend the 30 day deadline following an active member’s return to work after period of authorised absence where they can decide to apply to cover the lost pension through an APC;

* In cases where it is in the interests of operational business efficiency that the 30 day deadline is extended.

[Note: option 2 covers cases where it would be for the benefit of the operations and functioning of the business to extend the deadline]

##### Option 3

[Name of employer] will only extend the 30 day deadline following an active member’s return to work after a period of authorised absence where they can decide to apply to cover the lost pension through an APC where;

* an active scheme member returns from a period of authorised leave of absence (other than illness, child related leave or reserve forces service leave), and
* the member does not, within 30 days of returning decide to apply to cover lost pension through an APC, and
* the member subsequently makes an application and it can be demonstrated the reason for the member missing the deadline was because they had not been made aware of that deadline

[Note: option 3 covers cases where it would be reasonable to extend the deadline in cases of administrative errors]

##### Option 4

[Name of employer] will only extend the 30-day deadline following an active member’s return to work after a period of authorised absence where they can decide to apply to cover the lost pension through an APC.

Firstly where;

* an active scheme member returns from a period of authorised leave of absence (other than illness, child related leave or reserve forces service leave), and
* the member does not, within 30 days of returning decide to apply to cover lost pension through an APC, and
* the member subsequently makes an application and it can be demonstrated the reason for the member missing the deadline was because they had not been made aware of that deadline

Secondly, in exceptional circumstances where [name of employer]considers it is in its financial or operational interests to do so. Each case will be considered on the merits of the financial and/or operational business case put forward.

[Note: option 4 covers cases where it would be reasonable to extend the deadline to deal with an administrative error and any other exceptional case that may arise]

### 1.4 Flexible retirement

(LGPS 2014, Regulation 31 and LGPS 2014 Transitional Regs. Regulation 10)

#### Explanation

Whether to pay flexible retirement benefits for staff aged 55 or over who, with the agreement of [name of employer], reduce their working hours or grade and, if so, as part of the agreement:

* whether, in addition to the benefits the employee has accrued prior to 1 April 2009 (which he/she must draw if flexible retirement is agreed), to permit him/her to choose to draw
	+ all, part or none of the pension benefits they accrued after 31 March 2009 and before 1 April 2015, and/or
	+ all, part or none of the pension benefits they accrued after 31 March 2015, and
* whether to waive, in whole or in part, any actuarial reduction which would otherwise be applied to the benefits taken on flexible retirement before Normal Pension Age (NPA).

#### Policy

##### Option 1

Carry forward the employer’s existing policy [the details of which should be inserted here].

##### Option 2

[Name of employer] will not agree to requests for flexible retirement.

[Note: option 2 may be open to the challenge or complaint that it fetters the employer’s discretion]

##### Option 3

[Name of employer] will not agree to flexible retirement except in circumstances where [name of employer] considers it is in its financial or operational interests to do so. Each case

* will be considered on the merits of the financial and / or operational business case put forward,
* will set out whether, in additional to any pre 1 April 2009 benefits, the member will be permitted, as part of the flexible retirement agreement, to take

a) all, some or none of their 1 April 2009 to 31 March 2015 benefits, and /or

b) all, some or none of their post 31 March 2015 benefits, and

* will require the approval of [enter appropriate details].

[Note: employers might wish to include in their policy that where flexible retirement is being considered, there must be a reduction of at least one grade or, in the case of a flexible retirement due to a reduction in working hours, be a minimum reduction in hours of, say, 20% e.g. the equivalent of the hours for one working day].

Waiver of any actuarial reduction on flexible retirement

Where flexible retirement is agreed, the benefits payable will be subject to any actuarial reduction applicable under the Local Government Pension Scheme Regulations (Northern Ireland) 2014 and the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2014. [Name of employer] will only waive any such reduction, in whole or in part, where it considers it is in its financial or operational interests to do so. Each case will be considered on the merits of the financial and / or operational business case put forward and will require the approval of [enter appropriate details].

### 1.5 85 year rule for members voluntarily drawing benefits

(LGPS (NI) 2014 Transitional Regs, Schedule 3)

#### Explanation

Whether to switch the 85 year rule back on in full for employees who would otherwise be subject to it and who choose to voluntarily draw their benefits on or after age 55 and before age 60.

#### Policy

##### Option 1

[Name of employer] will not agree to switch the 85 year rule on in full where members choose to voluntarily draw their benefits on or after age 55 and before age 60.

[Note: option 1 may be open to the challenge or complaint that it fetters the employer’s discretion]

##### Option 2

[Name of employer] will not agree to switch the 85 year rule on in full where members choose to voluntarily draw their benefits on or after age 55 and before age 60 except in circumstances where [name of employer] considers it is in its financial or operational interests to do so. Each case

* will be considered on the merits of the financial and / or operational business case put forward, and
* will require the approval of [enter appropriate details].

### 1.6 Waiving reductions on benefits which a member voluntarily draws before normal pension age

(LGPS (NI) 2014, Regulation 31 and LGPS 2014 Transitional Regs, Schedule 3)

#### Explanation

Under Regulation 31(5) of the LGPS Regulations (NI) 2014, employees voluntarily retiring on or after age 55 and before Normal Pension Age (NPA) may elect to immediately draw benefits and deferred members to draw benefits (other than on ill health grounds) on or after age 55 and before NPA, in each case reduced by the amount shown in actuarial guidance issued by the Department.

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).

[Name of employer]:

* Under Regulation 31(8), may agree to waive any relevant reduction under Regulation 31(5) 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.

#### Policy

##### Option 1

[Name of employer] will not agree

* to waive on compassionate grounds any reduction on pre 1 April 2015 benefits for Group 3 or 4 members, on pre 1 April 2016 benefits for Group 1 members, or on pre 1 April 2020 benefits for Group 2 members, and / or
* to waive in whole or in part on any grounds (including compassionate grounds) any reduction on post 31 March 2015 benefits for Group 3 or 4 members, on post 31 March 2016 benefits for Group 1 members, or on post 31 March 2020 benefits for Group 2 members

where members choose to voluntarily draw their benefits on or after age 55 and before Normal Pension Age.

[Note: option 1 may be open to the challenge or complaint that it fetters the employer’s discretion]

##### Option 2

[Name of employer] will not agree

* to waive on compassionate grounds any reduction on pre 1 April 2015 benefits for Group 3 or 4 members, on pre 1 April 2016 benefits for Group 1 members, or on pre 1 April 2020 benefits for Group 2 members, and / or
* to waive in whole or in part on any grounds any reduction on post 31 March 2015 benefits for Group 3 or 4 members, on post 31 March 2016 benefits for Group 1 members, or on post 31 March 2020 benefits for Group 2 members

where members choose to voluntarily draw their benefits on or after age 55 and before Normal Pension Age except in circumstances where [name of employer] considers it is in its financial or operational interests to do so or there are compelling compassionate[[1]](#footnote-2) reasons for doing so.

Each case

* will be considered on the merits of the financial and / or operational business case put forward, or
* will be considered on the merits of the compassionate case put forward, and
* will require the approval of [enter appropriate details] including, where the reduction is only to be waved in part, approval for the amount of reduction to be waived.

### 1.7 Shared cost AVC

(LGPS (NI) 2014, Regulation 19)

#### Explanation

Whether, how much, and in what circumstances to contribute to a shared cost Additional Voluntary Contribution (SCAVC) arrangement entered into on or after 1 April 2015 and whether, how much, and in what circumstances to continue to contribute to any shared cost Additional Voluntary Contribution (SCAVC) arrangement entered into before 1 April 2015.

#### Policy

##### Option 1

Carry forward the employer’s existing policy [the details of which should be inserted here].

##### Option 2

[Name of employer]will not enter into a shared cost AVC arrangement

[Note: option 2 may be open to the challenge or complaint that it fetters the employer’s discretion]

##### Option 3

[Name of employer]will not enter into a shared cost AVC arrangement other than:

* in exceptional circumstances in which case the decision to contribute, and the amount of the contribution, will be subject to the approval of [enter appropriate details], or
* where the scheme member enters into a SCAVC salary sacrifice arrangement[[2]](#footnote-3), or
* where the scheme member enters into a SCAVC to increase the death in service lump sum, in which case [name of employer] will contribute [enter appropriate amount or percentage] of the cost.

[Note: employer to delete any of the points above that are not appropriate.]

### 1.8 Aggregating benefits (concurrent employments and deferred benefits)

LGPS (NI) 2014, Regulation 24)

#### Aggregating benefits – concurrent employments

#### Explanation

Whether to extend the 12-month time limit which an employee with concurrent employments ceases an employment with an entitlement to a deferred pension may elect not to have the deferred benefits aggregated with those in their ongoing employment’s active member pension account.

#### Policy

##### Option 1

[Name of employer] will not extend the 12 month time limit within which;

A scheme member with concurrent employments ceases an employment with entitlement to a deferred pension may elect **not** to have their deferred benefits aggregated with those in their ongoing employment’s active member pension account.

[Note: option 1 may be open to the challenge or complaint that it fetters the employer’s discretion and it does not allow for circumstances where it may be reasonable to accept a late election to retain separate benefits]

##### Option 2

[Name of employer] will only extend the 12 month time limit within which;

A scheme member with concurrent employments ceases an employment with entitlement to a deferred pension may elect **not** to have their deferred benefits aggregated with those in their ongoing employment’s active member pension account.

* where [name of employer] agrees that the available evidence indicates the member had not been informed of the 12 month time limit due to maladministration;
* where [name of employer] agrees that the available evidence indicates the member had made an election within 12 months of ceasing the concurrent employment but the election was not received by the Northern Ireland Local Government Officers' Superannuation Committee (e.g. the election form was lost in the post); or
* where the member has pre 1 April 2015 membership and [name of employer] agrees the available evidence indicates that, due to maladministration, the member had not been informed of the implications of having separate benefits

##### [Option 2 allows for circumstances where it would be reasonable to accept a late election to retain separate benefits]

#### Aggregating deferred benefits

#### Explanation

Whether to extend the 12-month time limit within which an employee, who has a deferred LGPS benefit in Northern Ireland following the cessation of employment, may elect to have the deferred benefits aggregated with those in their new active member pension account.

#### Policy

##### Option 1

[name of employer] will not extend the 12 month time limit within which they may elect **to aggregate** the benefits in the deferred pensions account with those in the new active member pensions account.

[Note: option 1 may be open to challenge or complaint that it fetters the employer’s discretion and it does not allow for circumstances where it may be reasonable to accept a late election to retain separate benefits.]

##### Option 2

[name of employer] will only extend the 12-month time limit within which an employee, who becomes an active member again (i.e. who has a deferred LGPS benefit in NI), may elect to aggregate the benefits in their deferred pensions account with those in their new active member pensions account:

* where [name of employer] agrees that the available evidence indicates the employee had not been informed of the 12-month time limit due to maladministration;
* where [name of employer] agrees that the available evidence indicates the employee had made an election within 12 months of joining the LGPS but the election was not received by NILGOSC (as the scheme administrator) e.g. the election form was lost in the post; or
* where the employee has pre 1 April 2015 membership and [name of employer] agrees the available evidence indicates that, due to maladministration, the member had not been informed of the implications of having benefits aggregated and would, in consequence, suffer a detriment to their pension benefits (e.g. where an employee’s whole-time equivalent pensionable pay on commencing with [name of employer] is, in real terms after allowing for inflation, significantly more than the whole-time equivalent pensionable pay upon which the deferred benefits were calculated).

[Option 2 allows for circumstances where it would be reasonable to accept a late election to aggregate benefits]

### 1.9 Determining contribution rates for employees

(LGPS 2014, Regulations 11)

#### Explanation

How the pension contribution band/rate 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 (following a material change which affects pensionable pay in the course of a Scheme year (1 April to 31 March)) the pension contribution band/rate to which an employee has been allocated will be reviewed.

#### Policy

##### Your policy should address the following circumstances:

##### allocating a member to a contribution rate on joining the Scheme

##### reallocating a member to a new contribution rate during a Scheme year (1 April to 31 March) following a material change to the terms and conditions of a member’s employment which affects the member’s pensionable pay (e.g. on promotion, demotion, re-grading, variation to a member’s contractual hours, a change of job, or a move from a casual to a post with contractual hours)

##### reallocating a member to a new contribution rate each 1 April

### 1.10 Assumed Pensionable Pay and determination of whether a lump sum that was received by the member was a regular lump sum

(LGPS (NI) 2014, Regulation 23(5))

#### Explanation

Employers must provide NILGOSC with a member’s Assumed Pensionable Pay (APP) when a member:

* Is absent due to illness or injury and on reduced contractual pay or no pay
* Is absent on child related leave (as defined) and the actual pay received is not greater than APP would be for that period
* Is absent on reserve forces service leave
* Where an ill-health retirement or death has occurred

APP is calculated in accordance with Regulation 23. The annual rate of APP must include any regular lump sum payment received by the member in the 12 months prior to the relevant event, as set out above (Reg 23(4)(a)(iv) and 23 (5)(a)(iv)). Regulation 23(5) defines a regular lump sum payment as *“a payment for which the member’s employer determines there is an expectation that such a payment would be paid on a regular basis.”*

The employer must therefore determine in relation to any lump sum the member received in that 12-month period whether or not there was an expectation that that payment would be paid on a regular basis. Where is determines that there is such an expectation. The lump sum must be included in the calculation of the annual APP figure.

#### Policy

##### Option 1

When determining if there is an expectation that a lump sum payment would be paid on a regular basis [name of employer] will consider each case on its merits and any final decision will rest with [appropriate decision maker]

### 1.11 Whether to substitute a revised pensionable pay in calculating APP

(LGPS (NI) 2014, Regulations 23(5A) and (5B))

#### Explanation

Where the pensionable pay received by a member in the relevant reference period for the calculation of APP under Regulation 23 is materially different from the level of pensionable pay that member normally received (“normal pensionable pay”), the employer may substitute in the calculation of APP a revised level of pensionable pay that reflects the member’s normal pensionable pay. The employer must have regard to the level of pensionable pay received by the member in the previous 12 months.

#### Policy

##### Option 1

In calculating APP, [name of employer] will usually substitute a revised pensionable pay for the actual pensionable pay received in the reference period where it is materially different to the pay normally received by the member. The revised pensionable pay used will reflect the member’s normal pensionable pay.

In determining the member’s normal pensionable pay, [name of employer] will take into account the pensionable pay received by the member in the previous 12 months.

Each case will be determined on its merits and exceptional circumstances will be taken into account.

## Discretions – 2009 Regulations

Discretions to be exercised on and after 1 April 2015 under the LGPS Regulations in relation to scheme members who ceased active membership between 1 April 2009 and 31 March 2015

### **Waiving reductions to deferred benefits**

(LGPS (NI) 2009, Regulation 30)

#### Explanation

Whether, on compassionate grounds, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65.

#### Policy

##### Option 1

Carry forward the employer’s existing policy [the details of which should be inserted here].

##### Option 2

[Name of employer] will not waive, on compassionate grounds, any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65.

[Note: option 2 may be open to the challenge or complaint that it fetters the employer’s discretion]

##### Option 3

[Name of employer] will consider an application to waive, on compassionate grounds[[3]](#footnote-4), any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65. Each case will be considered on its merits and will be subject to the approval of [enter appropriate details].

### Application of 85 year rule for deferred members

(LGPS (NI) 2014, Transitional Regs, Schedule 3)

#### Explanation

Whether, as the 85 year rule\* does not (other than on flexible retirement) automatically apply to former employees who would otherwise be subject to it, and who choose to voluntarily draw their deferred benefits on or after age 55 and before age 60, to switch the 85 year rule back on in full for such members.

*\*The 85 year rule is satisfied if the person was an LGPS member on 30 September 2006 and if the member’s age at the date they draw their benefits and their scheme membership (each in whole years) add up to 85 or more. If they are part-time, their membership counts towards the 85 year rule at its full calendar length.*

#### Policy

##### Option 1

[Name of employer] will not agree to switch on the 85 year rule on in full where deferred members choose to voluntarily draw their deferred benefits on or after age 55 and before age 60.

[Note: option 1 may be open to challenge or complaint that it fetters the employer’s discretion]

##### Option 2

[Name of employer] will not agree to switch the 85 year rule on in full where deferred members choose to voluntarily draw their deferred benefits on or after age 55 and before age 60 except in circumstances where [name of employer] considers it is in its financial or operational interests to do so. Each case

* will be considered on the merits of the financial and/or operational business case put forward, and
* will require the approval of [enter appropriate details]

## Discretions – 2002 Regulations

Discretions to be exercised on and after 1 April 2015 under the LGPS Regulations in relation to scheme members who ceased active membership between 1 February 2003 and 31 March 2009

### Waiving reductions to deferred benefits

(LGPS (NI) 2002, Regulation 5)

#### Explanation

Whether, on compassionate grounds, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65.

#### Policy

##### Option 1

Carry forward the employer’s existing policy [the details of which should be inserted here].

##### Option 2

[Name of employer] will not waive, on compassionate grounds, any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65.

[Note: option 2 may be open to the challenge or complaint that it fetters the employer’s discretion]

##### Option 3

[Name of employer] will consider an application to waive, on compassionate grounds, any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65. Each case will be considered on its merits and will be subject to the approval of [enter appropriate details].

### Application of 85 year rule for deferred members

(LGPS (NI) 2014, Transitional Regs, Schedule 3)

#### Explanation

Whether, as the 85 year rule\* does not (other than on flexible retirement) automatically apply to former employees who would otherwise be subject to it, and who choose to voluntarily draw their deferred benefits on or after age 55 and before age 60, to switch the 85 year rule back on in full for such members.

*\*The 85 year rule is satisfied if the person was an LGPS member on 30 September 2006 and if the member’s age at the date they draw their benefits and their scheme membership (each in whole years) add up to 85 or more. If they are part-time, their membership counts towards the 85 year rule at its full calendar length.*

#### Policy

##### Option 1

[Name of employer] will not agree to switch the 85 year rule on in full where deferred members choose to voluntarily draw their benefits on or after age 55 and before age 60.

[Note: option 1 may be open to the challenge or complaint that it fetters the employer’s discretion]

##### Option 2

[Name of employer] will not agree to switch the 85 year rule on in full where deferred members choose to voluntarily draw their deferred benefits on or after age 55 and before age 60 except in circumstances where [name of employer] considers it is in its financial or operational interests to do so. Each case

* will be considered on the merits of the financial and/or operational business case put forward, and
* will require the approval of [enter appropriate details]

## Discretions – 2007 Discretionary Compensation Regulations:

Discretions to be exercised under the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2007

### Redundancy payment

(LG (Early Termination of Employment) (Discretionary Compensation) Regulations (NI) 2007, Regulation 4)

#### Explanation

Whether to base a redundancy payment on an employee’s actual weeks’ pay where this exceeds the statutory week’s pay limit of, currently £566 per week (as at April 2021).

#### Policy

##### Option 1

Carry forward the employer’s existing policy [the details of which should be inserted here].

##### Option 2

Any redundancy payment will be calculated on an employee’s weekly pay but limited to the statutory weeks’ pay limit where pay exceeds that limit.

##### Option 3

Any redundancy payment will be calculated on an employee’s weekly pay but, other than in exceptional circumstances, limited to the statutory weeks’ pay limit where pay exceeds that limit.

##### Option 4

Any redundancy payment will be calculated on an employee’s actual week’s pay and not limited to the statutory weeks’ pay limit where pay exceeds that limit.

##### Option 5

Any redundancy payment will normally be calculated on an employee’s actual week’s pay but may, in exceptional circumstances, may be limited to the statutory weeks’ pay limit where pay exceeds that limit.

Additional paragraph to add to the end of the above Options for those employers who are subject to the Modification Order or who, whilst not subject to the Modification Order, choose to recognise service with employers on the Modification Order for redundancy payment purposes.

Continuous local government service, as defined under the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order (Northern Ireland) 1999, will be taken into account in the calculation of redundancy payments.

### 4.2 Enhanced compensation

(LG (Early Termination of Employment) (Discretionary Compensation) Regs (NI) 2007, Regulation 5)

#### Explanation

#### Whether to make a termination payment (inclusive of any redundancy payment) of up to a maximum of 104 weeks’ pay to employees whose employment is terminated on the grounds of redundancy or efficiency of the service.

#### Policy

##### Option 1

Carry forward the employer’s existing policy [the details of which should be inserted here].

##### Option 2

[Name of employer] will not make a termination payment (inclusive of any redundancy payment) of up to a maximum of 104 weeks’ pay to employees whose employment is terminated on the grounds of redundancy or efficiency of the service.

##### Option3

Redundant staff will receive a termination payment (to incorporate redundancy pay) calculated using the statutory redundancy payment formula but limited to the statutory week’s pay where the employee’s pay exceeds the statutory weeks’ pay limit, enhanced by a multiplier of [enter an appropriate multiplier which cannot exceed 3.466].

A termination payment will not automatically be paid to employees whose employment is terminated on the grounds of efficiency of the service. Instead, [name of employer]will determine each case on its merits, taking into account business and operational factors (with the maximum severance payment being no greater than would have applied under the redundancy severance policy).

##### Option 4

Staff whose employment is terminated on the grounds of redundancy or business efficiency will receive a termination payment (to incorporate any redundancy pay) calculated using the statutory redundancy payment formula but limited to the statutory week’s pay where the employee’s pay exceeds the statutory weeks’ pay limit, enhanced by a multiplier of [enter an appropriate multiplier which cannot exceed 3.466].

##### Option 5

Redundant staff will receive a termination payment (to incorporate redundancy pay) calculated using the statutory redundancy payment formula but based on actual pay, enhanced by a multiplier of [enter an appropriate multiplier which cannot exceed 3.466].

A termination payment will not automatically be paid to employees whose employment is terminated on the grounds of efficiency of the service. Instead, [name of employer]will determine each case on its merits, taking into account business and operational factors (with the maximum severance payment being no greater than would have applied under the redundancy severance policy).

##### Option 6

Staff whose employment is terminated on the grounds of redundancy or business efficiency will receive a termination payment (to incorporate any redundancy pay) calculated using the statutory redundancy payment formula but based on actual pay, enhanced by a multiplier of [enter an appropriate multiplier which cannot exceed 3.466].

## Discretions – 2003 Discretionary Compensation Regulations:

Discretions to be exercised under the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2003

### Abatement of annual compensatory added years pension

(LG (Early Termination of Employment) (Discretionary Compensation) Regulations (NI) 2003, Regulations 16 and 18)

#### Explanation

How a person’s annual compensatory added years pension is to be abated during, and following the cessation of, any period of re-employment by NILGOSC, regardless of whether or not the employee chooses to join the LGPS (except where the employer is an Admitted Body, in which case abatement only applies if the person is in, or eligible to be in, the LGPS in the new employment).

#### Policy

[Name of employer] will, during any period of re-employment in local government (see note below), abate a person's annual compensatory added years’ payment by the 'excess' if the aggregate of:

- the annual compensation, and

- the annual pension from the LGPS, and

- the annual rate of pay from the new employment

exceeds the pay the person would have received from the employment in respect of which the compensatory added years were granted, based on the annual rate of pay at the date of ceasing the former employment as increased by the relevant cost of living increases (i.e. as increased by the rate at which an ‘official pension’ is increased under the Pensions (Increase) Act 1971). Index.

Where compensatory added years were awarded on or after 24 March 2003, [name of employer] will reduce a person's annual compensatory added years’ payment following the cessation of a period of re-employment in local government (see note below) to the extent necessary to secure that if:

the period of compensatory added years granted in respect of the former employment,

plus

 the period of membership the person has accrued in the LGPS (or would have accrued had he / she joined the scheme when first eligible to do so) during the period of re-employment in local government, counted at its part-time length, if the person was part-time,

exceeds

 the period of membership the person would have accrued during the period from the cessation of the former employment until age 65 on the assumption that he / she had continued in that former employment to age 65 (again counted at its part-time length if the person was part-time at the date of cessation of the former employment),

then

* the annual pension and lump sum from the first job combined with the annual pension and lump sum from the second job (based on the assumption that the employee joined the LGPS when first eligible to do so), plus the annual compensation and lump sum compensation, shall not in aggregate exceed the pension and lump sum the person would have achieved if he / she had remained in the first job through to age 65.

Where there is an excess, the annual compensation will be reduced by the excess pension and, if the annual compensation is not reduced to nil, the amount of the remaining (reduced) basic annual compensation will then be suspended until the excess lump sum (if any) is recovered.

In calculating whether or not, in aggregate, the annual pension and lump sum from the first job, plus the annual pension and lump sum (if any) from the second job (based on the assumption that the employee joined the LGPS at the first opportunity), plus the annual compensation and lump sum compensation, exceeds the pension and lump sum the person would have achieved if he/she had remained in the first job through to age 65 it will be necessary to compare:

1. the actual LGPSpre 1 April 2009 1/80th pension and 3/80ths lump sum, plus the actual LGPS post 31 March 2009 1/60th pension (ignoring any commutation for a lump sum), plus the actual 1/80th annual compensation and 3/80ths lump sum compensation, with
2. the 1/80th LGPS pension and 3/80ths lump sum the member would have achieved in their first job to 31 March 2009, plus the 1/60th LGPSpension the member would have achieved in their first job (ignoring any potential commutation for a lump sum), if the member had stayed in the first job through to age 65.

In determining the benefits the employee could have achieved had he / she remained in the first employment through to age 65 it will be necessary to determine the pensionable pay to be used in the calculation. For this purpose, the pensionable pay figure used in the calculation of the pension benefits in the first job will be used as brought up to date by increasing it in line with the Pensions Increase (Review) Orders.

If a person has been awarded more than one previous period of compensatory added years, e.g. as a result of being made redundant more than once, the abatement / claw back provisions are modified. In such a case, the rules under the former Local Government (Discretionary Payments) Regulations (Northern Ireland) 2001 will be applied where a person ceases a period of re-employment in local government and has previously been granted more than one period of compensatory added years, but using the pay in the first job as increased in line with inflation (i.e. ignoring regulations 17(5)(a)(ii), 17(6) and 17(7) of the Local Government (Discretionary Payments) Regulations (Northern Ireland) 2001.

Where compensatory added years were awarded before 24 March 2003, [name of employer] will reduce a person's annual compensatory added years’ payment following the cessation of a period of re-employment in local government (see note below) in accordance with the Local Government (Discretionary Payments) Regulations (Northern Ireland) 2001.

**Note:** 'local government' means employment with an employer who offers membership of the LGPS to its employees, regardless of whether or not the employee chooses to join the LGPS (except where the employer is an Admitted Body). Technically, an employee of an Admitted Body (i.e. a body that has applied to the administering authority to allow its employees to join the LGPS and has entered into a formal admission agreement) is only employed in 'local government' if he / she is a member of the LGPS.

### Survivor compensatory added years apportionment

(LG (Early Termination of Employment) (Discretionary Compensation) Regulations (NI) 2003, Regulations 20(4))

#### Explanation

How any surviving spouse’s or civil partner’s annual compensatory added years pension is to be apportioned where the deceased person is survived by more than one spouse or civil partner.

#### Policy

##### Option 1

[Name of employer]will apportion any surviving spouse's or civil partner’s annual compensatory added years pension where the deceased person is survived by more than one spouse or civil partner in such proportions as, at its sole discretion, it sees fit (based on the merits of the individual cases).

### Annual compensation suspension rules

(LG (Early Termination of Employment) (Discretionary Compensation) Regulations (NI) 2003, Regulation 20(5))

#### Explanation

Whether, if the spouse or civil partner of a person who ceased employment before 1 February 2003 remarries, enters into a civil partnership or cohabits after 1 February 2003, the normal annual compensation suspension rules will be disapplied i.e. the spouse’s or civil partner’s annual compensatory added years pension will continue to be paid.

#### Policy

##### Option 1

If the spouse or civil partner of a person who ceased employment before 1 February 2003 remarries, enters into a new civil partnership or cohabits after 1 February 2003, the normal annual compensation suspension rules will be disapplied i.e. the spouse’s or civil partner’s annual compensatory added years pension will continue to be paid.

[Note: if Option 1 is chosen, it will **not** be necessary to have a policy on item 5.3 below]

##### Option 2

If the spouse or civil partner of a person who ceased employment before 1 February 2003 remarries, enters into a new civil partnership or cohabits after 1 February 2003, the normal annual compensation suspension rules will **not** be disapplied i.e. the spouse’s or civil partner’s annual compensatory added years pension will cease to be payable.

[Note: if Option 2 is chosen, it will also be necessary to have a policy on item 4 below]

### Annual compensation suspension rules (reinstatement)

(LG (Early Termination of Employment) (Discretionary Compensation) Regulations (NI) 2003, Regulation 20(7))

#### Explanation

Whether, where a spouse’s or civil partner’s annual compensatory added years pension is suspended as a result of remarriage, entering into a new civil partnership or cohabitations, the spouse’s or civil partner’s annual compensatory added years pension should be reinstated after the end of the period of remarriage, new civil partnership or cohabitation.

#### Policy

##### Option 1.

Where a spouse’s or civil partner’s annual compensatory added years pension is suspended as a result of remarriage, entering into a new civil partnership or cohabitation, the spouse’s or civil partner’s annual compensatory added years pension will be reinstated after the end of the period of remarriage, new civil partnership or cohabitation.

##### Option 2.

Where a spouse’s or civil partner’s annual compensatory added years pension is suspended as a result of remarriage, entering into a new civil partnership or cohabitation, the spouse’s or civil partner’s annual compensatory added years pension will **not** be reinstated after the end of the period of remarriage, new civil partnership or cohabitation.

1. There is no definition in the Regulations of “compassionate grounds”. However, one could take the view that, for example, releasing benefits because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion. [↑](#footnote-ref-2)
2. See the article on SCAVCs in Circular 244 at <https://lgpslibrary.org/assets/circulars/2011/244.pdf> [↑](#footnote-ref-3)
3. There is no definition in the Regulations of “compassionate grounds”. However, one could take the view that, for example, waiving a reduction because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion. [↑](#footnote-ref-4)