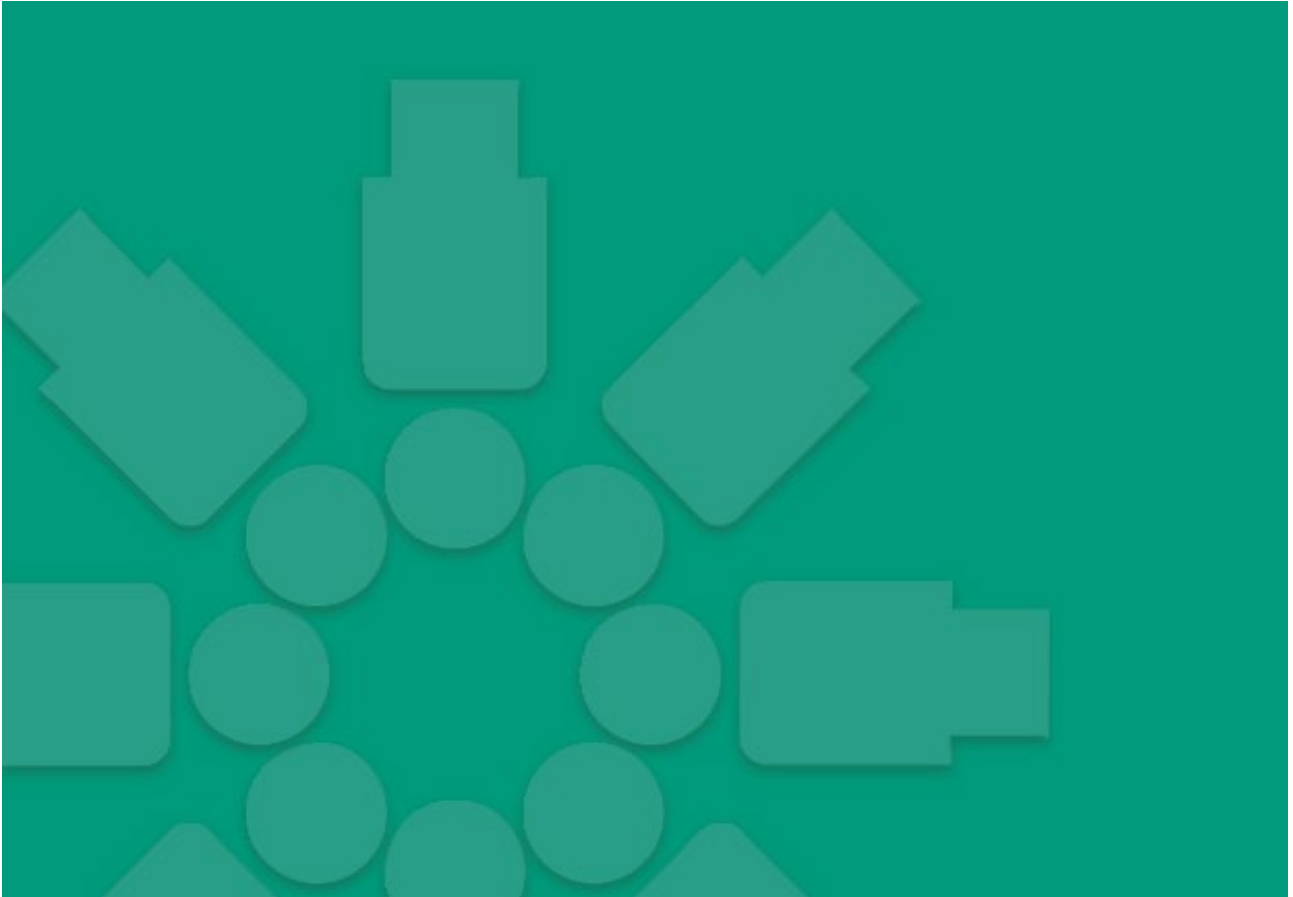


Guidance for Employers

Developing Your Policy Statement for the Exercise of Employer Discretions



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Introduction

The Scheme is governed by regulations, which set out the Scheme's rules. The current principal regulations are the Local Government Pension Scheme Regulations (NI) 2014 (the "2014 Regulations").

Earlier Regulations still apply in limited ways in relation to membership before 1 April 2015.

Most requirements of the Regulations are mandatory – the regulations set out what the employer or member must do. However, in some areas, the Regulations give the employer power to decide how it will act. This choice is what is meant by an employer discretion. For example – an employee may apply for flexible retirement if he or she meets the requirements under Regulation 31 but this is subject to employer consent. The employer has the discretion or power to decide whether or in what circumstances it will give that consent.

The Regulations require the employer to have a written policy statement in relation to certain discretions. You must provide the policy statement to NILGOSC and you must publish it. The discretions for which you must have a policy are at the following sections of this document – 1-5; 13; 15 and 17-18. We have highlighted these discretions for which you must have a policy by using pink text in the Table of Content and noted this in the relevant Guidance Notes. The employer must also have a policy statement in relation to the discretions at sections 19 to 22 but ONLY IF the employer has awarded compensatory added years under these, or earlier, Regulations. If you have never awarded compensatory added years, you do not need to include these discretions in your policy statement.

The Regulations require the employer to keep the policy statement under review and to make relevant revisions when there is a change in policy. If you revise your policy statement, you must send the revised version to NILGOSC and must publish it.

The Regulations require that in preparing, reviewing and revising your policy statement you must consider whether and to what extent the exercise of any discretions in line with your policy might lead to a serious loss of confidence in the public service.

Although the Regulations only require a policy statement in relation to some discretions, it is advisable to take a comprehensive approach and set out your policy in relation to all the discretions. This promotes transparency and equal treatment of different members.

Case law shows that, for public bodies, any policy you adopt should not be so rigid that it fetters your discretion. Fettering your discretion broadly means that a policy binds your hands so tightly that you cannot take into account exceptional circumstances. Every application will have its own individual circumstances, which should be considered. A good policy will show your general approach but leave room for consideration of exceptional circumstances. A blanket policy that applies in all circumstances is more likely

to fall foul of the rule against fettering. NILGOSC cannot give you legal advice on the public law or employment law aspects of your Policy Statement. We can only give general guidance.

This Guidance considers each discretion the employer has under the Regulations. It aims to explain each discretion, the employer's powers and any relevant considerations for the employer and member. The Guidance sets out some examples of wording that the employer might include in its Policy Statement. But the discretion belongs to you as the employer and your Policy Statement must reflect your choice about how you will operate each of the powers. Any legal challenge about your policy or how you exercise your discretions would be made by the member against you as the employer.

We have also developed a template, which you may choose to fill in as you read through this Guidance. We have provided cross-references to help you transfer your chosen text to the template.

For each of the discretions:

- **You should consider whether or not you will use the power.**
- **If you will not use the power, this is still a policy and should be recorded.**
- **If you will use the power, you must decide on the circumstances in which you will use it**
- **The criteria should be set out clearly in your policy statement**
- **The criteria should not result in unlawful direct or indirect discrimination**
- **You should avoid a policy that is so strict that it could be seen to fetter your discretion.**
- **Your policy should not lead to a serious loss of confidence in the public service**
- **You can carry forward any existing policy, updated to the current regulations but we recommend that you review any such policy and consider this guidance**

We recommend that you include an introduction in your policy statement. Suggested wording is included in the template.

Discretions under the 2014 Regulations

1. Power to grant extra annual pension

2014 Regulations, Reg 32

The employer has the power to grant extra annual pension to an active scheme member or to a member within 6 months of the date of a dismissal, or termination by mutual consent, for reasons of redundancy or business efficiency. The award is limited to an annual amount of £8,131 (2023/24 rates).

Note: The employer may also contribute in whole or in part to an APC arrangement under Regulation 18 subject to relevant limits – please see 2 below

Guidance Notes

You must have a policy statement in respect of this discretion.

You should consider how you wish to use this power, if at all. You should decide and set out clearly:

- In what circumstances you would grant extra annual pension (if at all)
- How you will determine the amount to grant in each case.

The award can be made

- at any stage when the member is actively contributing to the Scheme; and/or
- in the case of redundancy or termination by mutual consent for reasons of business efficiency, up to 6 months after the date of dismissal/termination

You may wish to consider how you might use this power on redundancy (further notes below). You may also wish to consider whether you might use this power in your recruitment strategy for certain posts.

Granting extra annual pension to members may leave an employer open to challenge on age or other discrimination grounds (e.g. if those not in the Pension Scheme tend to be younger employees or female employees).

Cost to the Employer

There will be a cost for the extra annual pension and this must be paid by the employer to NILGOSC. The cost is usually paid as a lump sum unless the employer agrees with NILGOSC to pay increased contributions to meet the cost.

Limit

The limit is £8,131 (2023/24 rates). This limit also includes any amount of extra annual pension purchased (or being purchased) by the employer under Regulation 18 (see 2 below).

Considerations for the Member

The extra pension forms part of the member's main Scheme benefits and can be taken into account for commutation of pension to lump sum. However, it provides benefits for the member only and not for any survivors.

Any extra annual pension awarded will be subject to reductions for payment before normal pension age – except on ill-health retirement or termination on grounds of redundancy or business efficiency.

In some cases, an award of extra pension may result in the member exceeding the standard Annual Allowance. Any extra pension granted will also count towards the capitalised value of a person's pension benefits which have to be assessed against the member's Lifetime Allowance.

The Discretionary Compensation Regulations 2007

Awarding extra annual pension under Regulation 32 may affect the awards that an employer can make under the Discretionary Compensation Regulations 2007:

- Extra annual pension cannot be granted if the employer makes an award of lump sum compensation (of up to 104 weeks' pay) under regulation 5 of the Discretionary Compensation Regulations 2007

but

- Extra annual pension can be granted, if the employer only makes an award under regulation 4 of the Discretionary Compensation Regulations 2007.

You may wish to provide for alternative approaches in your policy on the award of extra annual pension and in any policy you have for awards under the Discretionary Compensation Regulations.

Other considerations on redundancy

If you decide that you may award extra annual pension upon termination on the grounds of redundancy or business efficiency, you may wish to include a clause in your policy that you will not grant extra annual pension where an employee either accepts or declines to accept an offer of employment, which in the opinion of the employer is suitable alternative employment, either:

- from the employer

or

- where applicable, from another employer covered by the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order (Northern Ireland) which would have started within four weeks of the termination date.

Options – examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **A** in section 1 on the template.

1. **[Name of employer]** will not use the discretion to grant extra annual pension of up to £8,131 (2023/24 rates) 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.

Please note that this option may be open to the challenge or complaint that it is too rigid and fetters the employer's discretion.

2. **[Name of employer]** will not make use of the discretion to grant extra annual pension of up to £8,131 (2023/24 rates) 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.

3. **[Name of employer]** will not make use of the discretion to grant extra annual pension of up to £8,131 (2023/24 rates) 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.]

4. [Note - This wording reflects NILGOSC's own policy on this discretion]

[Name of employer] will exercise this discretion as follows:

- (a) Employees who leave the Scheme

Additional pension up to a maximum of £8,131 (figure at 1 April 2023) may be awarded to those leaving **[name of employer]**'s employment on redundancy or in the interests of efficiency of the service in accordance with **[name of employer]**'s policy on Redundancy/ Efficiency (so long as the award is made

within six months of leaving) or on compassionate grounds in accordance with [enter relevant cross reference here]).

(b) Employees joining the Scheme

Additional pension up to a maximum of £8,131 (figure at 1 April 2023) may be awarded in rare and exceptional circumstances when it is deemed absolutely necessary as an inducement to attract and retain a new employee who has specialist skills and experience required by **[name of employer]**. This will be conditional on the employee remaining in **[name of employer]**'s employment for an agreed period of time.

(c) Employees who are active members of the Scheme

Additional pension up to a maximum of £8,131 (figure at 1 April 2023) will only be awarded in rare and exceptional circumstances when it is deemed absolutely necessary as an inducement to prevent an employee who is an active member, who has exceptional specialist skills and experience required by **[name of employer]**, from leaving **[name of employer]**'s employment. This will be conditional on the employee remaining in **[name of employer]**'s employment for an agreed period of time.

Each case above will be considered on the merits of the case put forward. The cost of any extra annual pension awarded will have to be paid to NILGOSC as a lump sum payment unless it has been agreed to pay increased contributions to meet the cost.

5. Your own wording

2. Contributing to the cost when an employee purchases extra pension

2014 Regulations, Regs 18(2)(e) and 18(4)(d)

Members can decide to purchase extra annual pension of up to £8,131 (figure at 1 April 2023) by making Additional Pension Contributions (APCs). Under this discretion the employer can choose to contribute in whole or in part to the cost of the APC arrangement, which is known as a Shared Cost Additional Pension Contribution or SCAPC.

Guidance notes

You must have a policy statement in respect of this discretion.

The Employer must decide on the criteria.

You should consider how you wish to use this power, if at all. You should set out clearly in what circumstances you would contribute to an employee's purchase of additional pension.

Note: This discretion does not relate to cases where a member has a period of authorised unpaid leave of absence and elects within 30 days of return to work to cover the amount of pension ‘lost’ during that period of absence with an APC. In those cases, the employer must contribute 2/3rds of the cost (regulation 18(16)) if the member makes the election in that 30-day period. The employer has a discretion in relation to extending time – please see Discretion 10 below.

If you contribute (in whole or in part) to the member’s purchase of additional pension under this Regulation 18 , this reduces the amount of extra annual pension you could award under Regulation 32 and vice versa as it counts towards the limit – please see Discretion 1 above.

Considerations for the Member

Except in the case of ill-health retirement, when a member takes pension before normal pension age any additional pension purchased is reduced to take account of early payment. Unlike additional pension awarded by the employer under regulation 32 (see 1 above) , this includes on termination for redundancy or business efficiency.

These reductions apply both where the additional pension is purchased entirely by the member and where the employer pays in whole or in part.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **B** at section 2 in the template

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)
Please note that this option may be open to the challenge or complaint that it is too rigid and fetters the employer’s discretion
2. **[Name of employer]** will only voluntarily contribute towards the cost of purchasing extra pension via a Shared Cost Additional Contribution (SCAPC) where 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.
3. Your own wording

3. Flexible retirement for active member aged 55 or over

2014 Regulations, Reg 31(6), and Transitional Regulations, Regs 10(2) and (3)

An employee aged 55 or over, who reduces working hours or grade, may take flexible retirement with the employer's consent.

The employer has the discretion to decide

- whether to consent to an employee taking flexible retirement
- whether to waive, in whole or in part, any actuarial reduction of benefits where flexible retirement is taken before Normal Pension Age (NPA)

An employee who takes flexible retirement must take all benefits accrued prior to 1 April 2009 and may choose to take

- all, part or none of the benefits accrued after 31 March 2009 and before 1 April 2015, and
 - all, part or none of the pension benefits they accrued after 31 March 2015
-

Guidance notes

You must have a policy statement in respect of this discretion.

The Employer must decide on the criteria

You should consider how you wish to use this power, if at all. You should decide and set out clearly in what circumstances you would

- consent to an employee taking flexible retirement; and
- agree to waive any actuarial reductions that would otherwise apply

You may wish to include in your policy that there must be a reduction of at least one grade or a minimum reduction in hours (e.g. 20% or the equivalent of the hours for one working day for a full-time post).

Costs for the Employer

Normally when an employee is accessing their benefits before normal pension age, whether on flexible retirement or otherwise, the annual pension is reduced to take account of early payment. However, in some circumstances the pension may be paid without reductions and the cost may fall on the employer. In relation to flexible retirement these employer costs may arise:

(i) where the employee has protections under the 85 Year Rule

Full details of the operation of the 85 Year Rule can be found on our website – but you should be aware that if you agree to flexible retirement and the member:

- is under 60 and has 85 year rule protections; and
- at the date of flexible retirement has met the 85 year rule, or would meet the rule before age 60,

there would be a strain cost which the employer must pay to NILGOSC. You can ask NILGOSC for a projection of any costs before responding to a request from an employee.

(ii) where the employer decides to waive reductions

If you exercise the discretion to waive reductions that would otherwise apply, there will be a capital cost that the employer must pay to NILGOSC.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **C** in section 3 of the template

1. **[Name of employer]** will not agree to requests for flexible retirement.
Please note that this option may be open to the challenge or complaint that it is too rigid and fetters the employer's discretion
2. **[Name of employer]** will agree to flexible retirement only in circumstances 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,
 - will set out whether, in addition 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
 - (if desired, add "The request will require the approval of **[enter appropriate details]**")
 - (if relevant include any requirements as to minimum reduction in grade or hours – such as at least one grade or at least 20%)

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]**.

3. [Note – this reflects NILGOSC's policy as an employer]
[Name of employer] will allow early payment of total accrued benefits to employees meeting its terms for early payment of benefits in cases of flexible retirement (a copy of which is available from HR), subject to cost.

Requests to waive the reduction in benefits will only be considered in exceptional circumstances on compassionate grounds (in accordance with the criteria specified in [insert appropriate reference]) or 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 [insert]). Any strain on fund costs or any cost to waive the reduction in benefits will have to be met by **[name of employer]** and paid to NILGOSC.

4. Your own wording

4. 85 Year Rule

Schedule 3 of the Transitional Regulations

Whether, as the 85 year rule does not (other than on flexible retirement – see 3 above) automatically apply to 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, to switch the 85 year rule back on in full for such members.

Notes:

- If the employer does agree to switch back on the 85 year rule in full, the employer will have to meet the cost of any strain on the fund resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule, or would meet it before age 60.
- The 85 year rule is satisfied if the person was a member of the LGPS (NI) on 30 September 2006 and 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 as its full calendar length

Guidance notes

You must have a policy statement in respect of this discretion.

Background

The 85 Year Rule existed in former regulations to permit someone with at least 25 years of membership in the Scheme and who had reached the age of 60 to take pension benefits unreduced. Schedule 3 to the Transitional Regulations sets out how this applies to members who are claiming their pension now and who were in the Scheme before 1 October 2006.

For the purposes of Schedule 3, the 85 Year Rule is satisfied if the person was a member of the LGPS (NI) on 30 September 2006 and 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.

Switching on the 85 Year Rule in full may eliminate or lessen the reductions that would otherwise apply to tranches of the member's pension benefits when retiring early. It is extremely complex and the effect will vary according to the individual circumstances of the member. NILGOSC can provide details for any particular member upon request.

The Employer must decide on the criteria

You should consider how you wish to use this power, if at all. You should decide and set out clearly in what circumstances you would decide to "switch on" the 85 Year Rule for qualifying members.

Cost to the Employer

If the employer does agree to switch back on the 85 year rule in full, the employer will have to meet the cost of any strain on fund resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule, or would meet it before age 60.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at BOX D at section 4 in the template.

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.
Please note that this option may be open to the challenge or complaint that it is too rigid and fetters the employer's discretion
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].
3. [Note this reflects NILGOSC's policy as an employer]
[Name of employer] will not agree to switch the 85 year rule on in full where employees choose to voluntarily draw their benefits on or after age 55 and before age 60 except where there are compassionate reasons for doing so in accordance with the criteria specified in [insert relevant cross-reference]. The cost to **[name of employer]** will be taken into consideration.
4. Your own wording

5. Discretion to Waive Reductions on Early Retirement

2014 Regulations, Reg 31 and Transitional Regulations, Schedule 3

Under Regulation 31(5) of the 2014 Regulations active members can choose to retire and take their pension early and deferred members can choose to draw their benefits early, between age 55 and NPA.

Pension benefits are reduced for early payment (except in the case of ill-health retirement) 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). Different parts of membership may have different reductions applied.

The employer has a discretion

- under Regulation 31(8) 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 Earlier Regulations to waive on compassionate grounds any relevant reduction in respect of membership before 1 April 2015
 - under Paragraph 2(1) of Schedule 3 to the Transitional Regulations to determine on compassionate grounds to waive in full any relevant reduction calculated in accordance with Schedule 3, in respect of membership before 1 April 2015.
-

Guidance notes

You must have a policy statement in respect of this discretion.

You should decide in what circumstances you would decide to waive reductions on early retirement and set them out clearly in your policy.

Costs to the employer

If the employer decides to waive any actuarial reduction, the employer will have to meet the cost of the strain on Fund resulting from that waiver.

NILGOSC can provide an estimate of the capital cost to the employer.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **E** at section 5 in the template

Please note that option 1 may be open to the challenge or complaint that it is too rigid and fetters the employer's discretion

1. Where a member chooses to take pension benefits between age 55 and Normal Pension Age, **[Name of employer]** will not agree
 - under Regulation 31(8) to waive on any ground any reduction that would otherwise be made to those benefits under Regulation 31(5) in whole or in part in relation to any membership from 1 April 2015
 - under Earlier Regulations to waive on compassionate grounds any relevant reduction in respect of membership before 1 April 2015
 - to waive on compassionate grounds any reduction that would otherwise be made to those benefits under Paragraph 1(4), 9(2) or 1(3)(b) of Schedule 3 to the Transitional Regulations in relation to any membership before 1 April 2015

2. Where a member chooses to voluntarily draw their benefits on or after age 55 and before Normal Pension Age, **[Name of employer]** will only agree
 - to waive on compassionate grounds any reduction on pre 1 April 2015 benefits; 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 membersin circumstances where **[Name of employer]** considers it is in its financial or operational interests to do so or there are compelling compassionate 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

3. [Note – this reflects NILGOSC's policy]
[Name of employer] will not agree under Regulation 31(8) or under Paragraph 2(1) of Schedule 3 to the Transitional Regulations to waive in whole or in part any reduction in benefits as described above except in circumstances where **[Name of employer]** considers there are compassionate grounds in accordance with [insert appropriate cross-reference] and always subject to the approval of [insert details]. As the employer, **[Name of employer]** will have to meet the cost of the strain on the fund resulting from any waiver in actuarial reduction.
Each case will be considered on the merits the compassionate case put forward.

4. Your own wording

6. Contributing to a Shared Cost Additional Voluntary Contribution 2014 Regulations, Reg 19

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.

Guidance Notes

You should decide whether and in what circumstances you will contribute to a Shared Cost AVC and set out the criteria clearly in your policy.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **F** in section 6 in the template

1. **[Name of employer]** will not enter into a shared cost AVC arrangement
Please note that this option may be open to the challenge or complaint that it is too rigid and fetters the employer's discretion
2. **[Name of employer]** will not enter into a shared cost AVC arrangement other than:
 - (a) 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
 - (b) where the scheme member enters into a SCAVC salary sacrifice arrangement; or
 - (c) 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 (a) to (c) above that are not appropriate.]
3. [This option reflects NILGOSC's policy]
[Name of employer] allows all employees to increase their death in service grant.
[Name of employer] will contribute 50% of the SCAVC cost for any employee who takes out an SCAVC arrangement with the in-house scheme AVC provider to provide further death in service cover to a maximum of two years pensionable pay.
4. Your own wording

7. Aggregating benefits – When a concurrent employment ends

2014 Regulations, Reg 24(7)(b)

When a member has concurrent employments and one of them ceases with an entitlement to a deferred pension, the deferred benefits from that employment must be aggregated with the pension account for the member's ongoing employment unless the member elects to keep the deferred benefits separate. The member has 12 months to make this election or such longer period as the employer in relation to the ongoing employment permits.

The employer has the discretion to agree to extend time.

Guidance Notes

You should decide whether and in what circumstances you will extend the 12-month period for a member to elect to keep the deferred benefits separate. You should set out the criteria clearly in your policy.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **G** in section 7 of the template

1. **[Name of employer]** will not extend (under regulation 24(7)(b)) 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.
Please note that this option may be open to the challenge or complaint that it is too rigid and fetters the employer's discretion
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.
 - (a) 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;
 - (b) 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 NILGOSC (e.g. the election form was lost in the post); or
 - (c) 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]

8. Aggregating Deferred Benefits – Deferred Member again becomes Active

2014 Regulations, Reg 24(8)(c)

When a deferred member becomes an active member again, the member may elect to aggregate the benefits in the deferred pensions account with those in the new active member's pension account. The member must make the election within 12 months.

The employer has a discretion to extend time and allow the member to elect to aggregate benefits after the 12-month period has elapsed.

Guidance notes

You should decide whether and in what circumstances you would agree to extend time for the member to elect to aggregate the deferred benefits with the active pension account. You should set out the criteria clearly in your policy.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **H** in section 8 of the template

1. **[Name of employer]** will not extend the 12-month time limit within which a deferred member who becomes an active member again may elect **to aggregate** the benefits in the deferred pensions account with those in the new active member's pension account.
Please note that this option may be open to challenge that it fetters the employer's discretion and does not allow for circumstances where it may be reasonable to accept a late election to combine benefits.
2. **[Name of employer]** will only **extend** the 12-month time limit within which a deferred member who becomes an active member again may elect to aggregate the benefits in the deferred pensions account with those in the new active member's pension account
 - (a) Where **[name of employer]** agrees that the available evidence indicates the member had not been informed of the 12-month limit due to maladministration
 - (b) Where **[name of employer]** agrees that the available evidence indicated the member had made an election within 12 months of joining the LGPS (NI) 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

- (c) 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 benefits aggregated and would in consequence, suffer a detriment to their pension benefits (for example, where member'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).

3. Your own wording

9. Determining contribution rates for employees

2014 Regulations, Reg 11

The regulations set out the rates of contributions that members must pay and these are divided into bands according to the pensionable pay of the member.

The employer must decide

- how it will determine an employee's contribution band/rate on joining the Scheme and at each subsequent April; and
- if there is a material change to the member's terms and conditions of employment affecting pensionable pay during a Scheme year (1 April to 31 March), in what circumstances it will review that member's contribution band/rate.

Guidance notes

You should decide how you will determine the appropriate band for each employee when joining your organisation and annually. You should also decide in what circumstances you will review the banding during the year, following a change in terms and conditions affecting the member's pensionable pay. You should set out the criteria and circumstances clearly in your policy.

You should assess the appropriate contribution band/rate in a reasonable and consistent manner.

Considerations for the Employer

Employers must notify members, as soon as possible, of the contribution rate the member will pay and give the member notification of their right of appeal under the Internal Disputes Resolution procedure (IDRP).

Part-time members' contribution rates are assessed on actual pensionable pay rather than full-time equivalent rates of pay.

If an employee holds more than one employment and these are treated as separate jobs, each job must be assessed separately when determining the contribution band/rate for each job - so an employee may be paying different contribution rates in each job, depending on the pensionable pay in each job.

Any reductions in pensionable pay due to sickness, child related leave, reserve forces service leave or other absence from work are disregarded when assessing or reviewing the appropriate contribution band/rate.

You may have to make an assumption as to what pensionable pay a person will probably receive in the Scheme year. This can be done in a number of ways. For example:

- the annual rate of contractual pay
- the annual rate of contractual pay plus an estimation of the non-contractual overtime or hours worked in excess of the contractual hours which might be worked in a full year
- the hourly contractual rate multiplied by an estimate of the number of hours to be worked in a full year
- the weekly contractual rate multiplied by 52.143 (or whatever multiplier an employer deems appropriate)
- the weekly contractual rate multiplied by 52.143 (or whatever multiplier an employer deems appropriate) plus an estimate of other pensionable payments to be made in a full year

For an employee with a zero hours contract, employers could consider the following approaches. Each approach has strengths and weaknesses.

- make a reasonable initial assessment of the number of hours the person is likely to work on an annual basis, perhaps taking account of the hours worked by the post holder in previous years or, if the member is a new employee, the hours worked by the previous holder (if any) of the post, and subsequently review the band/rate allocation at an appropriate time (see 'Reallocation' below), or
- allocate the employee to the lowest band (5.5%) and subsequently review the band/rate allocation at an appropriate time (see 'Reallocation' below), or
- allocate the employee to the 6.5% band (on the basis that this is the closest to the average expected contribution rate for Scheme members of 6.4%) and subsequently review the band/rate allocation at an appropriate time (see 'Reallocation' below).

Changing the band/rate during a Scheme Year

Generally once set, the contribution rate remains in force for the rest of the Scheme year (1 April to 31 March). You may change the employee's band and contribution rate part of the way through the Scheme year where there is a material change to the terms and conditions of that employee's employment which affects pensionable pay (e.g. on

promotion, demotion, re-grading, change of hours, change of post, or a move from a casual post to a post with contractual hours). This could result in a retrospective reallocation to a different contribution band/rate with a consequential adjustment to the employee contributions due (e.g. where there is a retrospective pay award or retrospective re-grading) but the employer can decide to only apply the new rate from the date the pay award or re-grading is actioned on the payroll.

Annual review

Employers must reassess the contribution rate for all Scheme members each 1 April and reallocate members to a new band/rate where applicable.

Employers must notify (Regulation 82(1) of the 2014 Regulations) Scheme members of any change in the contribution, the date from which the new rate is effective, and give the member notification of the employer's address from which the member may obtain further information about the decision and their right of appeal to the County Court (Regulation 82(2)(d) of the 2014 Regulations). The notification must be given to the member as soon as is reasonably practicable after the decision to change the rate has been made.

Options

After considering how you wish to exercise this discretion, you can choose one of the options below. Detailed example wording is not possible here as circumstances vary widely. You should ensure your wording accurately reflects your policy. If you are using the accompanying template, you should insert your wording at I in section 9 of the template

1. [Having considered the guidance notes above, you should to insert details here of the employer's policy on
 - (a) allocating a member to a contribution rate on joining the Scheme (after 1 April 2015)
 - (b) 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)
 - (c) reallocating a member to a new contribution rate each 1 April]
2. [If you have a separate policy in relation to banding you can reference it – this reflects how NILGOSC has addressed this discretion in its policy statement]
[Name of employer] has written a separate policy in respect to this discretion. A copy of the Contribution Banding Policy is available to staff [explain where it is available].

10. Calculating Assumed Pensionable Pay – Regular Lump Sums

2014 Regulations, Reg 23(5)

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)

Guidance notes

A “regular lump sum payment” is a payment for which the employer determines there is an expectation that such a payment would be paid on a regular basis

To calculate APP, the employer considers the pensionable pay received by the member during the reference period, excludes any lump sum payments received in the reference period, and then calculates an annual figure. The Regulations require that the employer must add to that annual figure any “regular lump sum” received by the member in the 12 months before the circumstances for which APP is being calculated.

Any decision as to whether there is an expectation that the lump sum would be received on a regular basis must be fair, equitable and justifiable.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **J** in section 10 of the template

1. [Note – this reflects NILGOSC's policy as an employer]
[Name of employer] does not currently make any 'regular lump sum payments' to its employees. Therefore, if any lump sum payment were made to an employee, generally there would be no expectation that such a payment would be regular. However, **[Name of employer]** will consider each case on its merits and any final decision will rest with [insert as appropriate].

2. 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. A lump sum is a “regular lump sum” when the employer determines there is an expectation it would be paid on a regular basis.

When **[Name of employer]** is deciding whether or not there was an expectation that a lump sum would be paid on a regular basis, it will take into account all the circumstances of the case, including, where relevant, whether a lump sum of the same nature has been received in previous years and/or at intervals through the 12 month period.

3. You own wording

11. Whether to substitute a revised pensionable pay in calculating APP 2014 Regulations, Reg 23(5A) and (5B)

This discretion allows the employer to substitute a revised pensionable pay, instead of APP, where the pay received by the member during the reference period was materially different to the pensionable pay the member usually received.

The employer must have regard to the level of pensionable pay received by the member in the previous 12 months

Guidance Notes

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 material difference can mean the pay received in that period was either materially higher or lower than the normal pensionable pay. You may wish to include in your policy what you will consider to be a material difference.

In determining the level of pensionable pay that the member normally received, the employer must have regard to the level of pensionable pay received by the member in the previous 12 months.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **K** in section 11 of the template

1. [Note – this option reflects NILGOSC’s policy as an employer]

In calculating APP, **[Name of employer]** will usually substitute a revised pensionable pay for the actual pensionable pay received in the reference period where the actual pensionable pay in that period 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.

2. Your own wording

12. Time limit for elections to cover lost pension due to an absence with permission

2014 Regulations, Regs 17(5) and 18(16)

If a member who has been absent with permission (other than on child-related leave, sick leave or reserve forces service leave) elects within 30 days of returning to work to take out an additional pension contract to cover the pension lost during the absence, the employer must pay two-thirds of the cost. The employer has the discretion to extend the 30 day period.

Guidance Notes

When a member has an absence with permission and elects to enter into an APC to cover the pension lost, the employer must pay two-thirds of the cost (Reg 17(5)). There is a time limit for making that election of 30 days, beginning with the day on which the member returns to work, or such longer period as the employer may allow (Reg 18(16)).

If the member decides to take out an APC outside that time period, the employer is not obliged to contribute under the Regulations – unless the employer exercises this discretion and extends time.

An absence with permission does not include child-related leave as defined in the Regulations, absence due to illness or injury, or reserve forces service leave. However, family leave where the member receives no pay (including statutory pay), for example unpaid additional maternity leave, is an absence with permission.

Cost to the employer

If the employer extends the time period for the election under Regulation 18(16), then it must pay two-thirds of the cost of the arrangement.

The cost the employer has to pay cannot exceed the cost for an APC to cover the pension the member would have accrued if working or treated as receiving pensionable pay for the period of absence and is capped at 36 months.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **L** in section 12 of the template

1. **[Name of employer]** will not extend the 30 day time limit.
Please note that this option may be open to the challenge or complaint that it is too rigid and fetters the employer's discretion
2. **[Name of employer]** will only extend the 30 day time limit in cases where it is in the interests of operational business efficiency that the 30 day deadline is extended.
3. **[Name of employer]** will only extend the 30 day time limit where the member can demonstrate that the reason for missing the deadline was because the member had not been made aware of that deadline
4. **[Name of employer]** will only extend the 30 day time limit where
 - the member can demonstrate that the reason for missing the deadline was because the member had not been made aware of that deadline and/or
 - 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.
5. Your own wording

Discretions exercised from 1 April 2015 in relation to members who ceased active membership between 1 April 2009 and 31 March 2015

13. Waiving reduction to deferred benefits

Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009, Reg 30(5)

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

Guidance notes

You must have a policy statement in respect of this discretion.

Reductions on benefits accrued under the 2009 Regulations and earlier regulations can only be waived on compassionate grounds. This differs from reductions on benefits accrued from 1 April 2015 onwards, which can be waived on any ground.

Costs to the Employer

If the employer does agree to waive any actuarial reduction, the employer will have to meet the cost of the strain on fund resulting from that waiver.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **M** in section 13 of the template

1. **[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.
Please note that this option may be open to the challenge or complaint that it is too rigid and fetters the employer's discretion
2. **[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]. [If you have set out what you consider to be compassionate grounds separately, you can insert an appropriate cross-reference here.]
3. Your own wording

14. Application of 85 year rule for deferred members

Transitional Regulations, Schedule 3

Whether, as the 85 year rule does not (other than on flexible retirement) automatically apply to members 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.

Notes:

- If the employer does agree to switch back on the 85 year rule in full, the employer will have to meet the cost of any strain on the fund resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule, or would meet it before age 60.
 - The 85 year rule is satisfied if the person was a member of the LGPS (NI) on 30 September 2006 and 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 as its full calendar length
-

Guidance notes

Considerations for the Employer

The 85 year rule is satisfied if the person was a member of the LGPS (NI) on 30 September 2006 and 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 as its full calendar length. Please see the notes at discretion 4 for further background on the 85 Year Rule.

Switching on the 85 Year Rule in full may eliminate or lessen the reductions that would otherwise apply to tranches of the member's pension benefits when retiring early. It is extremely complex and the effect will vary according to the individual circumstances of the member. NILGOSC can provide details for any particular member upon request.

Costs to the Employer

If the employer does agree to switch back on the 85 year rule in full, the employer will have to meet the cost of any strain on the fund resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule, or would meet it before age 60.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **N** in

section 14 of the template

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.
Please note that this option may be open to the challenge or complaint that it is too rigid and fetters the employer's discretion
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]**
3. Your own wording

Discretions to be exercised from 1 April 2015 in relation to Scheme members who ceased active membership between 1 February 2003 and 31 March 2009

Note: Employers who were participating in the Scheme on 31 March 2009 MUST have a policy on the discretions at 15 and 16 below

15. Waiving reduction to deferred benefits

Local Government Pension Scheme Regulations (Northern Ireland) 2002, Reg 33(5)

When a deferred member applies for early payment of pension under the 2002 Regulations, it is usually reduced in accordance with guidance.

The employer can choose on compassionate grounds to waive any actuarial reduction that would normally be applied to deferred benefits paid before age 65.

Guidance notes

Costs to the Employer

If the employer does agree to waive any actuarial reduction, the employer will have to meet the cost of the strain on fund resulting from that waiver.

Options- example of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **O** in section 15 of the template

1. **[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.
Please note that this option may be open to the challenge or complaint that it is too rigid and fetters the employer's discretion
2. **[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].
3. Your own wording

16. Application of 85 year rule for deferred members

Transitional Regulations, Schedule 3

Whether, as the 85 year rule does not (other than on flexible retirement) automatically apply to members 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.

Notes:

- If the employer does agree to switch back on the 85 year rule in full, the employer will have to meet the cost of any strain on the fund resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule, or would meet it before age 60.
 - The 85 year rule is satisfied if the person was a member of the LGPS (NI) on 30 September 2006 and 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 as its full calendar length
-

Guidance notes

Considerations for the Employer

The 85 year rule is satisfied if the person was a member of the LGPS (NI) on 30 September 2006 and 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 as its full calendar length.

Switching on the 85 Year Rule in full may eliminate or lessen the reductions that would otherwise apply to tranches of the member's pension benefits when retiring early. It is extremely complex and the effect will vary according to the individual circumstances of the member. NILGOSC can provide details for any particular member upon request.

Costs to the Employer

If the employer does agree to switch back on the 85 year rule in full, the employer will have to meet the cost of any strain on the fund resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule, or would meet it before age 60.

Options- example of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **P** in section 16 of the template

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.
Please note that this option may be open to the challenge or complaint that it is too rigid and fetters the employer's discretion
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]**.

3. Your own wording

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

17. Redundancy payment

Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (NI) 2007, Reg 4

The employer can choose to base a redundancy payment on an employee's actual weeks' pay where this exceeds the statutory week's pay limit of, currently, £669 per week (as at April 2023).

Guidance notes

You must have a policy statement in respect of this discretion.

Employer Considerations

When a member's employment is terminated because of redundancy or for reasons of business efficiency, a redundancy payment may be due. A statutory redundancy payment is calculated according to the employee's age, years of service (note: the Modification Order may apply) and the amount of a week's pay. For the purposes of a statutory redundancy payment, a week's pay is capped by legislation. The current limit is £669 (April 2023). The employer can choose to substitute the employee's actual week's pay, where this is higher than the statutory cap.

Case law has determined that for the purposes of determining a statutory redundancy payment (and other statutory awards) that, up to the statutory maximum, a week's pay is calculated including employer pension contributions.

If you decide to use an actual week's pay for the redundancy payment, where this exceeds the statutory maximum, you can decide whether or not to include employer pension contributions. You should make it clear in your policy whether employer pension contributions will be included in the calculation of an actual week's pay for these purposes.

Employee considerations

Lump sum severance / compensation payments are subject to the normal rules in relation to the taxation of severance payments. The current rules (at time of writing) are that the first £30,000 of severance pay is tax-free. Generally speaking, payments counting towards the £30,000 limit would include:

- the statutory redundancy payment and any increase in the redundancy payment where the redundancy payment is based on the employee's actual pay, rather than being limited to the statutory weeks' pay limit,

- pay in lieu of notice (PILON) - but in some circumstances PILON can be fully taxable (e.g. where it is contractual, or has become an implied contractual term through custom and practice), and
- a lump sum compensation payment which is being paid under the 104 weeks' pay provision (see 2 below),

but employers should refer to HM Revenue and Customs guidance (see <https://www.gov.uk/government/publications/cwg2-further-guide-to-pay-and-national-insurance-contributions> and the detailed guidance at <http://www.hmrc.gov.uk/manuals/eimanual/EIM12800.htm>).

Unlike an award of extra annual pension (please see notes on discretion 1):

- any increase in the redundancy payment where the redundancy payment is based on the employee's actual pay, rather than being limited to the statutory weeks' pay limit, and
- any lump sum compensation payment which is being paid under the 104 weeks' pay provision (see 2 below)

does not count towards the members Annual Allowance or Lifetime Allowance.

Options- example of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **Q** in section 17 of the template

1. 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.
2. 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.
3. 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.
For these purposes, the calculation of an employee's actual week's pay, where it exceeds the statutory maximum [will] [will not] include employer's pension contributions.
4. 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 week's pay limit where pay exceeds that limit.
For these purposes, the calculation of an employee's actual week's pay, where it exceeds the statutory maximum [will] [will not] include employer's pension contributions.

[Additional paragraph to add to the end of each 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.]

18. Enhanced compensation

Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (NI) 2007, Reg 5

The employer may 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 business efficiency.

Guidance notes

You must have a policy statement in respect of this discretion.

A decision to make a termination payment under this Regulation 5 must be made within 6 months of the date of termination of the member's employment.

A termination payment under Regulation 5 cannot be made if the employer has made an award of extra membership under regulation 12 of 2009 Benefits Regulations or extra annual pension under regulation 32 of the 2014 Regulations (please see the notes at discretion 1)

Lump sums paid on redundancy are subject to the normal rules in relation to the taxation of severance payments. The current rules (at 1 time of writing) are that the first £30,000 of severance pay is tax-free. Generally, payments counting towards the £30,000 limit would include:

- the statutory redundancy payment and any increase in the redundancy payment where the redundancy payment is based on the employee's actual pay (see 17 above)
- a lump sum compensation payment which is being paid under Regulation 5
- pay in lieu of notice in some cases - but please note this can be fully taxable (e.g. where it is contractual or has become an implied contractual term through custom and practice)

Employers should refer to HM Revenue and Customs guidance. NILGOSC cannot provide expert advice on taxation.

Unlike an award of extra annual pension (please see the notes at discretion 1 above):

- any increase in the redundancy payment where the redundancy payment is based on the employee's actual pay, rather than being limited to the statutory weeks' pay limit (see 1 above), and
- any lump sum compensation payment which is being paid under the 104 weeks' pay provision does not count towards the members Annual Allowance or Lifetime Allowance.

Options- example of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **R** in section 18 of the template

1. **[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.
2. **[Name of employer]** will make a termination payment (inclusive of any redundancy payment) to an employee whose employment is terminated because of redundancy. Any termination payment made will be calculated using the statutory redundancy payment formula and 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 business efficiency of the service. Instead, **[Name of employer]** will determine each case on its merits, taking into account business and operational factors and may make a termination payment of an amount it shall decide, which shall not be greater than would have applied if the employee had been made redundant.

3. **[Name of employer]** will make a termination payment (inclusive of any redundancy payment) to an employee whose employment is terminated because of redundancy or business efficiency. The termination payment will be calculated using the statutory redundancy payment formula and 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]**.
4. **[Name of employer]** will make a termination payment (inclusive of any redundancy payment) to an employee whose employment is terminated because of redundancy. Any termination payment made will be 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]**.

For these purposes, the calculation of an employee's actual week's pay, where it exceeds the statutory maximum [will] [will not] include employer's pension contributions.

A termination payment will not automatically be paid to employees whose employment is terminated on the grounds of business efficiency of the service. Instead, **[Name of employer]** will determine each case on its merits, taking into account business and operational factors and may make a termination payment of an amount it shall decide, which shall not be greater than would have applied if the employee had been made redundant.

5. **[Name of employer]** will make a termination payment (inclusive of any redundancy payment) to an employee whose employment is terminated because of redundancy or business efficiency. The termination payment will be 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]**.

For these purposes, the calculation of an employee's actual week's pay, where it exceeds the statutory maximum [will] [will not] include employer's pension contributions.

6. Your own wording

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

Note: Employers MUST have a policy on the 4 items below, but ONLY IF the employer has awarded compensatory added years under these, or earlier, Regulations

If you have never awarded compensatory added years, you do not need to include these discretions

19. Abatement of annual compensatory added years pension

Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (NI) 2003, Regs 16 and 18

The employer can decide whether it will apply abatement to annual compensatory added years pension previously awarded to an employee, where that person is re-employed in local government employment, regardless of whether or not the employee chooses to re-join the Local Government Pension Scheme NI.

Guidance Notes

You can choose to apply abatement when an employee who has been awarded compensatory added years is re-employed by any employer in the Scheme. The post must be one in which the person can be a member of the Scheme. There is no requirement that the person becomes an active member in the Scheme in that re-employment in order to apply abatement.

You can choose to have a policy of no abatement.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **S** in section 19 of the template

1. [This option reflects NILGOSC's policy as an employer]
[Name of employer] has a policy of no abatement and any pensioner currently re-employed, or reemployed in the future, with any employer participating in the Local Government Pension Scheme NI will not be subject to a reduction or suspension of his/her annual compensatory added years pension.
2. **[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 (NI), 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).

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 (NI) (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 (NI) 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 (NI) 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:

- (a) the actual LGPS (NI) pre 1 April 2009 1/80th pension and 3/80ths lump sum,

plus the actual LGPS (NI) 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

- (b) the 1/80th LGPS (NI) pension and 3/80ths lump sum the member would have achieved in their first job to 31 March 2009, plus the 1/60th LGPS (NI) pension 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 (NI) to its employees, regardless of whether or not the employee chooses to join the LGPS (NI) (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 (NI) and has entered into a formal admission agreement) is only employed in 'local government' if he / she is a member of the LGPS (NI).

3. Your own wording

20. Survivor compensatory added years apportionment

Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (NI) 2003, Reg 20(4)

Where a member is survived by more than one spouse or civil partner and there is a surviving spouse's or civil partner's annual compensatory added years pension, the employer must choose how it will be apportioned.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **T** in section 20 of the template

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 case).
2. Your own wording

21. Annual compensation suspension rules

Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2003, Regulation 20(5)

The employer can choose whether to suspend a surviving spouse's or civil partner's annual compensatory added years pension, where the survivor remarries, forms a civil partnership or cohabits. This applies to the surviving spouse or civil partner of a member who ceased employment before 1 February 2003.

Guidance Notes

You can choose whether you will suspend a compensatory added years pension paid to the surviving spouse or civil partner of a member who ceased employment before 1 February 2003, where the survivor remarries, forms a new civil partnership or cohabits. You should set out your policy clearly.

If you decide that you will suspend such pensions, then you must also have a policy on whether or not you will reinstate the compensatory added years pension to the surviving spouse or civil partner if the period of remarriage, new civil partnership or cohabitation ends. Please see discretion 22 below.

If you have a policy that you will never suspend the compensatory added years pension, then you do not need a policy under discretion 22, as the question of reinstatement will never arise.

Options - examples of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **U** in section 21 of the template

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 spouse's or civil partner's annual compensatory added years pension will continue to be paid.
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 spouse's or civil partner's annual compensatory added years pension will cease to be payable.

22. Annual compensation suspension rules - reinstatement

Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (NI) 2003, Reg 20(9)

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 cohabitation, 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.

Options- example of policy wording

After considering how you wish to exercise this discretion, you can choose one of the below examples or use your own wording. You should ensure this accurately reflects your policy. If you are using the accompanying template, you should insert your choice at **V** in section 22 of the template

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.
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.

Consideration of requests on compassionate grounds

You may wish to set out how you will approach exercising a discretion on compassionate grounds. This is not mandatory but it may be useful to include this in your policy statement. Not setting out a policy may provide you with more flexibility in deciding in individual cases. However, having a policy will help to manage expectations and should promote equality of treatment between different applicants.

If you decide to include a section in your policy statement on how you will consider requests on compassionate grounds, then you should consider carefully what factors you would take into account. You should ensure these are set out clearly. You may wish to include some flexibility to ensure that your policy does not fetter your exercise of any discretion on compassionate grounds. In particular with regard to any requirement for medical reports you should ensure appropriate consent is received or that you have another lawful purpose to process that special category personal data.

Below is the wording that reflects NILGOSC's own policy statement. If this reflects your organisation's view, you may wish to use this wording. It is included in the template. You should note that the wording below states that the request will be considered on its merits regardless of cost. If cost would be a factor in your decision, you should not make this statement.

You should consider the suggested wording carefully and amend to ensure that it matches the approach that you will take as an employer.

Options - examples of policy wording

1. [Note – this reflects NILGOSC's policy as an employer.]

Consideration of requests on compassionate grounds

Each request on compassionate grounds will be considered on its own merits regardless of cost.

The main criteria **[Name of Employer]** will consider as compassionate grounds are

- to allow employees or 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.

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.

The member must provide **[Name of Employer]** with relevant information and evidence supporting the application. If the member refuses to provide information to

[Name of Employer], then **[Name of Employer]** may proceed to make a decision without that information.

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 **[Name of Employer]**'s employment.
 - 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.

[Name of Employer] 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.

2. Your own wording

Policy Review

As set out above, you are required to keep your policy statement under review. We therefore recommend that you record in your policy statement the date when it was last reviewed and the date when it is next due to be reviewed. Suitable wording is included in the template.

Glossary

“2014 Regulations” means the Local Government Pension Scheme Regulations (NI) 2014

“Child -related leave” is defined in Schedule 1 to the 2014 Regulations and includes

- ordinary adoption leave
- ordinary maternity leave
- additional maternity or additional adoption leave during which the member receives some pensionable pay
- paternity leave
- shared parental leave during which the member receives some pensionable pay
- parental bereavement leave during which the member receives some pensionable pay

It does not include unpaid additional maternity leave, unpaid additional adoption leave, unpaid shared parental leave or unpaid parental bereavement leave.

“Discretionary Compensation Regulations 2007” means the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2007

“Earlier Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009 and the Local Government Pension Scheme Regulations (Northern Ireland) 2002 and, where relevant, any previous regulations governing the Scheme.

“LGPS (NI)” means the Local Government Pension Scheme for Northern Ireland

The “Scheme” means the LGPS (NI)

“Transitional Regulations” means the Local Government Pension Scheme (Transitional Provisions and Amendments) Regulations (NI) 2014