

**Bath & North East  
Somerset Council**



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# Employers Guide to the LGPS

## Employers Discretions

## **15 - EMPLOYERS' DISCRETIONS**

### **15.1 Discretions on which Employers must make Policies and publish such Policies**

Each employer must prepare a written statement of its policy in relation to the exercise of its functions under the following Benefit Regulations:

- regulation 12 (power of employing authority to increase total membership of active members),
- regulation 13 (power of employing authority to award additional pension),
- regulation 18 (flexible retirement),
- regulation 30 (choice of early payment of pension)

The statement must be published by the 30 June 2008 to members of the LGPS and copied to the Avon Pension Fund by the same date.

An employer must:-

- keep its statement under review
- make appropriate revisions following a change in its policy

If the statement is revised it must be published within one month of the date it is revised sent to members of the LGPS and a copy sent to the Avon Pension Fund within that month.

In preparing, or reviewing and making revisions to, its statement, an employer must have regard to the extent to which the exercise of any of the functions in accordance with its policy could lead to a serious loss of confidence in the public service.

#### **15.1.1 Power of employer to increase total membership of an active member (Benefits Regulation 12)**

This regulation allows an employer to resolve to increase the total membership of a member who is currently paying contributions to the Scheme. The member's increase in membership under this regulation (including additional membership in respect of different employments) must not exceed 10 years.

#### **15.1.2 Power of employing authority to award additional pension (Benefits Regulation 13)**

This regulation allows an employer to resolve to award a member additional pension of not more than £5000 a year payable from the same date as his / her pension payable under any other provisions of the Benefit Regulations.

Additional pension may be awarded in addition to any increase of total membership resolved under Benefits Regulation 12. See section 15.1.1 above.

### **15.1.3 Flexible retirement (Benefits Regulation 18)**

A member who has attained the age of 55 and with his / her employer's consent, reduces the hours he / she works, or the grade in which he / she is employed, may make a request in writing to the Avon Pension Fund to receive all or part of his / her benefits under the Benefits Regulations. However, payment of the benefits cannot be made without the employer's consent.

If the benefits are reduced in accordance with guidance issued by the Government Actuary, the employer may agree to waive, in whole or in part, any such reduction.

The minimum retirement age is 55 for new scheme members from 1<sup>st</sup> April 2008 and 1<sup>st</sup> April 2010 for those who are members of the scheme on 31<sup>st</sup> March 2008. Therefore, from 1<sup>st</sup> April 2008 to 31<sup>st</sup> March 2010 the minimum retirement age will be 50 for those who are members of the scheme on 31<sup>st</sup> March 2008.

### **15.1.4 Choice of early payment of pension (Benefits Regulation 30)**

If a member leaves an employment before he /she is entitled to the immediate payment of retirement benefits, once he / she has attained the age of 55 he / she may choose to receive payment of them immediately.

A choice made by a member aged less than 60 is ineffective without the consent of his / her employer or former employer.

If the benefits are reduced in accordance with guidance issued by the Government Actuary, the employer may agree to waive, in whole or in part, any such reduction.

The minimum retirement age is 55 for new scheme members from 1<sup>st</sup> April 2008 and 1<sup>st</sup> April 2010 for those who are members of the scheme on 31<sup>st</sup> March 2008. Therefore, from 1<sup>st</sup> April 2008 to 31<sup>st</sup> March 2010 the minimum retirement age will be 50 for those who are members of the scheme on 31<sup>st</sup> March 2008.

### **15.1.5 Discretionary powers must:-**

- not be used for an ulterior motive and be exercised reasonably
- be used with regard to all relevant factors e.g. the cost to council tax payers must be balanced against the benefit to the employer
- only be used when there is a real and substantial future benefit to the employer in return for incurring the extra costs
- be duly recorded when used

**In drawing up policy statements, employers must satisfy themselves that they are:**

- applying the discretions reasonably
- not fettered i.e. being used in such a way that individual circumstances cannot be considered or usual practice rigidly followed

## 15.1.6 Further Discretionary Policies

### **Extending the time limit for members to pay contributions following a period of absence - Regulation 22 - Administration**

A scheme member may elect to pay **optional contributions** to cover a period of absence from duty providing the option **is** made within 30 days of return to work/cessation of employment or such longer period as the employer allows.

### **No double entitlement - Regulation 42 - Benefits**

Where a scheme member would be entitled to a pension or retirement grant under **two or more regulations** by reason of the same period of scheme membership the employer can choose which benefit is to be paid if the member does not make a choice within 3 months of becoming entitled to elect.

### **Exclusion of rights to a return of contributions - Regulation 47 - Administration**

A scheme member who meets the normal criteria for a refund of pension contributions is not entitled to such a refund if he / she left his / her employment because of:

- a) **an offence of a fraudulent character** – unless the employer directs that a total or partial refund may be made to the member.
- b) **grave misconduct** - unless the employer directs that a total or partial refund may be made to the member, his / her spouse, civil partner, nominated cohabiting partner or any dependant of his / her.

### **Forfeiture of pension rights after conviction of employment-related offences - Regulation 72 & 73 - Administration:**

If a scheme member is convicted of, and ceases employment as a result of, an **offence** in connection with his/her employment which was gravely injurious to the State or liable to lead to a serious loss of confidence in the public service, the employer can apply to the Secretary of State for the issue of a forfeiture certificate. If a certificate is issued the employer may direct that any of the person's **rights be forfeited**.

### **Interim payments directions – Regulation 73 - Administration**

Where the Secretary of State has issued a forfeiture certificate but the employer has not applied the certificate nor notified the scheme member of an award of benefits under the LGPS the employer may direct that **interim payments** are made out of the Pension Fund until such time as it decides to apply the forfeiture certificate or to make an award of benefits

**Recovery or retention where former member has misconduct obligation - Regulation 74 - Administration:**

Where a member

- (i) ceases employment in consequence of a criminal, negligent or fraudulent act or omission in connection with that employment and
- (ii) has incurred a **monetary obligation** arising therefrom to the employer and
- (iii) **is entitled to pension benefits** under the LGPS, the employer **may recover** the amount of the monetary obligation or the value of the members pension rights, if less (other than transferred in pension rights) from the Pension Fund and reduce the members benefits accordingly.

**Transfers of sums from the pension fund to compensate for member's misconduct – Regulation 76 - Administration:**

Where

- (i) a member ceases employment in consequence of an offence involving **fraud or due to grave misconduct** in connection with that employment, and
- (ii) the employer has suffered a **direct financial loss** resulting therefrom, and
- (iii) the member **is entitled to benefits** under the LGPS and a forfeiture certificate has been applied, or the member is entitled to a refund of pension contributions

the employer may direct that the **amount of the direct financial loss** (or the refund of contributions, if less) **be recovered** from the Pension Fund.

**Inward transfers of pension rights – Regulation 83(8):**

If a scheme member wishes to **transfer pension rights** into the LGPS he/she must opt to do so **within 12 months of** joining the LGPS **or such longer period as the employer may allow.**