



# Employer Pensions Discretion Policy

April 2025



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## **LOCAL GOVERNMENT PENSION SCHEME (LGPS) REGULATIONS**

### **STATEMENTS OF POLICY ABOUT EXERCISE OF DISCRETIONARY PENSION PROVISIONS**

Discretionary pension provisions are set out in the Local Government Pension Scheme Regulations 2013 (LGPSR) and Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2014 (LGPSTP) LGPS regulations.

Regulation 7 of the 2006 Compensation Regulations (CR) require employers to have a Pensions Discretions Policy. The full list of South Staffordshire Council pension discretions can be found within this document.

The regulations also state the Council should be mindful and consider if exercising a discretion could lead to a serious loss of confidence in public service.

South Staffordshire Council reserve the right to review, amend or withdraw these discretions should circumstance make this necessary. Where any policy changes are made, the LGPS requires that their scheme members are provided with one month's notice.

This policy and any subsequent amendments will be published on the Councils intranet and website and will be provided to Staffordshire Pension Fund.

## REGULATION 16 LGPS 2013: FUNDING OF ADDITIONAL PENSION

### Regulation and discretion detail

A Scheme member can “buy” an additional annual pension benefit (subject to a maximum set by the LGPS) to enhance their benefits, or to replace lost pension caused by a period of authorised absence or industrial dispute. The member can “buy” the additional pension over a period or by a one-off lump sum payment.

Where the pension has been lost because of a period of authorised unpaid absence, including child related absence the regulations require the employer to contribute to the cost of the lost pension where the member elects to “buy” back the lost pension within 30 days of returning to work. The employer contributes 2/3rds of the total cost and the employee 1/3 of the total cost. The cost is calculated in accordance with guidance provided by the Government Actuary (GAD).

Where the absence has occurred because of a trade union dispute the employer is not required to share the cost of the lost pension and there are no time limits as to when the employee can elect to “buy back” the lost pension.

Where the employer does not receive notification from the employee within 30 days of returning to work from an authorised absence on no pay the Scheme employer may extend the period by which they will accept an election beyond the 30-day deadline.

The additional pension may be funded in whole or in part by the Scheme employer.

#### Discretions

1. Whether to extend the 30-day deadline for a member to elect to “buy” back the lost pension in respect of an unpaid period of authorised absence.
2. Whether as the Scheme employer we will contribute towards the cost of “buying” additional pension for a Scheme member to enhance their pension benefits.

### Policy

The Council will not extend the 30-day deadline for a member to elect to “buy” back lost pension in respect of an unpaid period of authorised absence unless the employee can demonstrate the Council failed to notify them of the 30-day requirement. In this event each case will be considered on its merits.

As a Scheme employer we will not contribute towards the cost of “buying” additional pension for a Scheme member to enhance their pension benefits.

## REGULATION 30 (6) AND 30 (8) LGPS 2013: FLEXIBLE RETIREMENT

### Regulation and discretion detail

A Scheme employer has the discretion to allow flexible retirement for an employee aged 55 or over who with the employer's consent reduces their hours or grade. If an employer chooses to exercise this discretion, all or part of the accrued benefits can be paid even though the person remains in employment.

Benefits will be reduced on account of early payment (subject to certain protections for pre-1 April 2014 members). Where the Scheme employer permits flexible retirement, the member must take all the benefits built up prior to 31 March 2008.

#### Discretions

Whether to permit flexible retirement for staff aged 55 or over, who with the agreement of the Council as a Scheme employer are permitted to reduce their working hours and/or grade.

Whether to permit the member to draw:

- All, part or none of the pension benefits built up after 31 March 2008 and before 1 April 2014 and/or
- All, part or none of the pension benefits built up after 31 March 2014. Whether the Scheme employer, will agree to waive in whole or in part any actuarial reduction which would otherwise be applied to the benefits taken on flexible retirement before Normal Pension Age.

The rule of 85 will automatically apply where the member has met the relevant criteria which means that no actuarial reduction can be applied and in these cases the Council would have to pay the cost of the early release of pension (strain cost) at the time for the reduction. Under the Regulations flexible retirement is the only situation where this rule automatically applies.

### Policy

That the Council as employing authority will consider an application received in writing from a Scheme member to elect for flexible retirement under Regulation 30 (6).

Each case will be considered on its merits and will be subject to the approval of the Chief Executive (or delegated member of Corporate Leadership Team) in consultation with the Director of Finance and the Assistant Director Organisation and People Development. (Also refer to Page 14, approvals).

Where flexible retirement is agreed, the benefits payable may be subject to an actuarial reduction under the LGPS 2013 and TP 2014. The Council will only waive any such reduction where it is affordable and is supported by a business case detailing how any costs will be recovered.

Where an application is approved the release of pension benefits accrued prior to 1 April 2008 must be released. However, the business case and cost analysis will determine whether all, part or none of the benefits accrued after 31 March 2008 and before 1 April 2014 and/or those accrued after 31 March 2014 onwards are released and whether actuarial reduction will be applied to benefits taken before normal pension age.

The Council has a separate policy in relation to Flexible Retirement that should be referred to.

In meeting our public confidence test flexible retirement applications require a reduction of 40% in salary through reduced grade and/or hours.

## REGULATION 31 LGPS 2013: POWER OF EMPLOYING AUTHORITY TO AWARD ADDITIONAL PENSION TO ACTIVE MEMBERS

### Regulation and discretion detail

A Scheme employer may resolve to award.

(a) an active member, or

(b) a member who was an active member but dismissed by reason of redundancy, or business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency,

Additional annual pension of, in total (including any additional pension purchased by the Scheme employer under Regulation 16), (noting this is subject to maximum LGPS limits).

Any additional pension awarded is payable from the same date as any pension payable under other provisions of the Scheme Regulations from the account to which the additional pension is attached.

In the case of a member falling within sub-paragraph (b) above, the resolution to award additional pension must be made within 6 months of the date that the member's employment ended.

### Discretions

A Scheme employer may resolve to award an active member or a member who was an active member who was dismissed by reason of redundancy or business efficiency or whose employment was terminated by mutual consent on grounds of business efficiency additional annual pension.

### Policy

The Council will not exercise this discretion. However, it will permit employees to

- use the enhanced element (above the statutory amount) of any redundancy compensation payment to buy additional pension.

For the avoidance of doubt the above option will be at no cost to the Council and within any parameters set or advised by the LGPS.

## REGULATION 30 LGPS 2013: EARLY RETIREMENT AFTER AGE 55 BEFORE NORMAL PENSION AGE (NPA) WHERE EMPLOYMENT CEASES ON OR AFTER 1 APRIL 2014

### Regulation and discretion detail

A Scheme member who leaves their employment after 1 April 2014 and has attained age 55 or more can elect to receive their pension benefits immediately under Regulation 30(5).

A former employee, who ceased their employment and Scheme membership after 1st April 2014 without entitlement to immediate payment of benefits, attains age 55 they can elect for their deferred benefit to be brought into payment before Normal Retirement Age (NRA).

3. A former employee who ceased their employment and Scheme membership after 1 April 2014 with a Tier 3 Ill health benefit which has ceased to be paid (paid for a maximum of 3 years), attains age 55 they can elect for their deferred benefit to be brought into payment before NRA.

### Discretions

Where an election is received under Regulation 31 the Council as a Scheme Employer can exercise their discretion as to

1. whether to waive all or part of any actuarial reduction (on compassionate or other grounds) that would apply to the member's pension benefits under Regulation 30(8) of LGPS Regulations 2013.
2. where an election is received under Regulation 31 the Council as a Scheme Employer can exercise their discretion as to whether to apply the "Rule of 85" protections to "relevant employees" under Schedule 2 of TP 2014.

**Areas of Discretion that a Scheme Employer can exercise in relation to 1 and 2 above are where an employee or former employee was not a Scheme member before 1 October 2006 whether to,**

waive on compassionate grounds, any actuarial reduction that would be applied to benefits built up before 1 April 2014 and/or.

waive, in whole or in part (on any grounds), any actuarial reduction that would be applied to benefits built up after 31 March 2014.

### Policy

#### Retirement at age 55 or more and under age 60

The Council will consider waiving any actuarial reduction in whole or in part that would apply to the member's benefits, and if relevant, apply the "Rule of 85", where an employee leaves their employment and the pension scheme after attaining age 55 and before attaining age 60, and elects for the immediate payment of their benefits, as follows:

- There is a significant compelling case on compassionate grounds.
- A Corporate Director considers the retirement is in the financial and operational interests of the Council.
- Pension costs (actuarial strain) must be affordable and supported by a business case detailing how any costs will be recovered.
- Each case will be considered by the Council on its merits and will be subject to the approval of the Chief Executive in consultation with the Assistant Director Organisation and People Development and the Director of Finance. (Also refer to Page 14, approvals).

**Former employees with a deferred benefit entitlement and where a Tier 3 ill health benefit has been suspended.**

The Council will not normally agree to waive actuarial reduction in whole or part that would apply to a member's benefits, and if relevant nor would they agree to apply the "Rule of 85" where a former employee with entitlement to deferred benefits elects for early payment of their deferred benefit after age 55 and before NRA.

## PARAGRAPHS 2 (2) OF SCHEDULE 2 TO THE LOCAL GOVERNMENT PENSION SCHEME (TRANSITIONAL PROVISIONS, SAVINGS & AMENDMENT) REGULATIONS 2014

### Regulation and discretion detail

To 'switch on' the 85-year rule for a member voluntarily drawing benefits on or after age 55 and before age 60. (Transitional Regulations Schedule 2, Para 2 (2)).

The rule of 85 is a complex one but in general terms the rule is satisfied if the members age at the date they draw their benefits before their normal retirement age (and they were a member of the LGPS on 30th September 2006) and their scheme membership in whole years add up to 85 or more.

### Policy

Whilst cost of actuarial strain can be high in some circumstances switching on the rule of 85 could be a mechanism to encourage members to retire early to help achieve a balanced age profile within the workforce and/or avoid possible redundancies later which can have an even higher cost.

The Council's policy is that applications for the rule of 85 to be switched on will be considered on an individual basis following submission of a detailed business case.

Factors will include:

- A Corporate Director considers that the retirement is in the financial and/or operational interests of the Council.
- The pension costs (actuarial strain) must be affordable and supported by a business case detailing how any costs will be recovered.
- Each case will be considered by the Council on its merits and will be subject to the approval of the Chief Executive in consultation with the Assistant Director Organisation and People Development and the Director of Finance. (Also refer to Page 14, approvals).

## REGULATION 17 (1) ADDITIONAL VOLUNTARY CONTRIBUTIONS

### Regulation and discretion detail

An active member may enter arrangements to pay additional voluntary contributions (AVCs) or to contribute to a shared cost additional voluntary contribution arrangement (SCAVCs) in respect of an employment.

The arrangement must be a scheme established between the appropriate administering authority and a body approved for the purposes of the Finance Act 2004, registered in accordance with that Act and administered in accordance with the Pensions Act 2004.

### Policy

The Council resolves not to use its discretion to set up and maintain a shared cost AVC arrangement. It further resolves not to voluntarily fund in part or in full a member's option to pay an Additional Voluntary Pension Contribution.

Employees may purchase additional pension contributions (APC) or additional voluntary contributions (AVC). Both options allow employees to save more for their retirement in a tax efficient way, but they operate differently, and it is important advice is sought to understand these differences and any tax implications that may apply. The Council will not contribute financially to these schemes or provide financial advice.

## REGULATION 9 (1) & (3) LGPS 2013: CONTRIBUTIONS

### Regulation and discretion detail

Where an active member changes employment or there is a material change which affects the member's pensionable pay during a financial year, the Scheme employer may determine that a contribution rate from a different band (as set out in Regulation 9(2)) should be applied.

Where the Scheme employer makes such a determination it shall inform the member of the revised contribution rate and the date from which it is to be applied.

### Policy

The Council has a pension banding policy statement to ensure a reasonable and consistent approach to banding and re-banding. A summary of this is:

1. Overtime, additional and temporary payments are pensionable. (Except car user allowance).
2. Casual workers will be allocated to the very lowest band for the first year of contract, thereafter the banding decision will be based on the previous 12 months.
3. An employees assumed actual pensionable pay will be assessed for the year at the review date.
4. The review date will be set each year to co- inside with incremental progression and change to the bands within the banding table. This will normally be 1st April.
5. We will only review an employee's contribution band during the financial year if there is a material increase (greater than £5,000 per annum).
6. If an employee's contractual pay reduces, the pension band will be reassessed except in the following circumstances:
  - Statutory sick pay
  - Statutory maternity pay.
  - Child related leave
  - Leave of absence with permission
  - Sick leave
  - Leave due to injury.
  - Reserve forces leave.
  - Industrial action
7. An employee has a right of appeal against a decision (classed as a first instant decision). In the first instance they should raise any queries with the payroll officer but in the event of an appeal this would be heard by the Council's Director of Finance. Thereafter the Internal Disputes Resolution Procedure (IDRP) would apply.

## REGULATION 22 MERGING OF DEFERRED MEMBER PENSION ACCOUNTS WITH ACTIVE MEMBER PENSION ACCOUNTS

### Regulation and discretion detail

A deferred member's pension account is automatically aggregated with their active member's pension account unless the member elects within the first 12 months of the new active member's pension account being opened to retain their deferred member's pension account.

### Policy

The Councils policy is that it will not normally extend the 12-month period unless exceptional<sup>1</sup> circumstances apply.

In such an event each case will be considered on its merits by the Chief Executive in consultation with the Assistant Director Organisation and People Development and the Director of Finance.

<sup>1</sup> For example, maladministration and cases where there are significant compassionate grounds.

## REGULATION 100 (6) INWARD TRANSFER OF PENSION RIGHTS

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### Regulation and discretion detail

A request from an active member to transfer former pension rights from a previous arrangement into the Local Government Pension Scheme because of their employment with a Scheme employer must be made in writing to the administering authority and the Scheme employer before the expiry of the period of 12 months beginning with the date on which the employee first became an active member in an employment (or such longer period as the Scheme employer and administering authority may allow).

### Policy

The Councils policy is that it will not normally extend the 12-month period unless exceptional<sup>2</sup> circumstances apply.

In such an event each case will be considered on its merits by the Chief Executive in consultation with the Assistant Director Organisation and People, the Director of Finance and the Pensions Administering Authority.

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<sup>2</sup> For example, maladministration and cases where there are significant compassionate grounds.

## REGULATION 74 APPLICATIONS FOR ADJUDICATION OF DISAGREEMENTS

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### Regulation and discretion detail

Each Scheme employer must appoint a person (“the adjudicator”) to consider applications from any person whose rights or liabilities under the Scheme are affected by a decision under regulation 72 (first instance decisions); or any other act or omission by a Scheme employer or administering authority and to decide on such applications.

### Policy

The following individuals are authorised to consider such applications, the Chief Executive or his nominated representative (s) which may include a Corporate Director or Assistant Director.

Where appropriate where there is a complaint, the initial decision will be reviewed by a senior officer as indicated above. Where the matter cannot be resolved the adjudication process will apply.

## LOCAL GOVERNMENT (DISCRETIONARY PAYMENTS) (INJURY ALLOWANCES) REGULATIONS 2011

### Regulation and discretion detail

The purpose of these Regulations is to provide the Council with the opportunity to award an injury allowance to an employee where, while carrying out his or her normal work, he/she sustains either an injury or contracts a disease.

The allowance applies to those employees who are entitled to be members of the Local Government Pension Scheme, whether or not they are active members of that scheme.

It should be noted payment of any award which can relate to loss of employment through permanent incapacity because of the persons employment and a reduction in remuneration because of injury or disease is at the sole discretion of the employer.

### Policy

Since all employees are offered an occupational sick pay scheme and are offered access to the LGPS which affords comprehensive cover for ill health and death in service and the Council has appropriate insurance cover – it is the Councils policy that it will consider such awards only on an exceptional basis.

Each case will be taken on an individual basis, considering all the circumstances including any contributory negligence by the employee in determining if an award should be made.

In the event of an award being made it would be subject to an annual review to determine if any material changes had taken place including but not limited to, health/prognosis, capacity, and the individual's financial situation.

Any decisions will be made by the Chief Executive following an investigation carried out by the Corporate Director of Governance and the Assistant Director of Organisation and People Development

## **OTHER DISCRETIONS/REGULATIONS**

Discretions exercised on and after 1 April 2014 under the LGPS Regulations for scheme members who have ceased active membership and all other employer discretions not referred to, will be subject to the discretion of the Chief Executive.

## **APPROVAL, BUDGET AND RECOVERY OF COSTS**

A report will be prepared for the Chief Executive (or his delegated CLT member, or subcommittee/Full Council if applicable) which sets out the business case for the proposals including a financial appraisal of costs. Costs should be affordable and recoverable within the Council's agreed budget (including savings and/or contingency set aside).

Decision makers will consult with the Assistant Director Organisation and People Development, Director of Finance and the Corporate Director of Governance and all cases considered under this policy will be considered on their merit, affordability and the public confidence test.

Authorisation is subject to the provisions set out in the LGPS Regulations, this/relevant policy, the Localism Act, Special Severance Payments Guidance, and the Constitution.

Where payments are £100,000 and above, they must be approved by Full Council and If payments meet the definition of Special Severance Payments, the Statutory Guidance<sup>3</sup> should be considered and payment thresholds and authorisation requirements observed.

- £100,000 and above must be approved by a vote of Full Council, as set out in the Localism Act 2011.
- £20,000 and above, but below £100,000, must be personally approved and signed off by the Head of Paid Service<sup>4</sup>, with a clear record of the Leader's approval and that of any others who have signed off the payment.
- Below £20,000 must be approved according to the local authority's scheme of delegation.

Costs will normally be recoverable over a 5-year period. This may include averaging, in instances of several posts. Where costs are not recoverable and there are exceptional considerations each case/situation will be considered on its merits subject to the circumstances, legislation, pension regulations, affordability, relevant Council policy and approval rules.

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<sup>3</sup> Statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England - <https://www.gov.uk/government/publications/special-severance-payments/statutory-guidance-on-the-making-and-disclosure-of-special-severance-payments-by-local-authorities-in-england#what-is-a-special-severance-payment>

<sup>4</sup> Para 5.5 of the guidance applies where the recipient of the proposed payment is the Head of Paid Service.

## Document history/version control

<b>Version:</b>	<b>Reason for Change:</b>	<b>Author/Editor:</b>	<b>Date:</b>
3	Policy review due.	Assistant Director Organisation and People Development.  Consultation Finance Manager (D151) Staffordshire Pensions Authority, & UNISON	16.01.25

### Consultation and Decision route

Corporate Leadership Team

Cabinet Weekly Brief

Council (Final approval)

### Date

12 February 2025

25 February 2025

25 March 2025

### Next Review

3 yearly or new/amended legislation/regulation whichever is the sooner.