East Sussex Pension Fund

Discretions Guide

Autumn 2026



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What are discretions?

Every Scheme Employer in the LGPS is required to publish a discretions policy covering the mandatory discretions.

'Discretions' are policies that employers make on a variety of pensions issues, such as allowing additional pension contributions, flexible retirement, waiving pension reductions for early retirement and many others.

The 2013 Regulations also include some non-mandatory discretions which are covered later in this guide.

Why do employers in the Fund need a discretions policy?

Regulation 60 of the 2013 LGPS Regulations states that every Scheme Employer must prepare a written statement of its policy regarding the exercise of discretions.

Discretions are also useful for both employers and members to know which pension rights are applicable to them and the circumstances in which they may be able to exercise these rights.

Mandatory discretions explained

There are some discretions that employers must publish policies on, detailing which discretions the employer will exercise and the circumstances in which they will be exercised.

2014 discretions

These are discretions that apply to members with active membership in the LGPS since 1 April 2014.

Regulation 31 – Award of additional pension

Employers in the LGPS may choose to award their active members with extra pension. This is known as making additional pension contributions (APCs). This might be done as a form of incentive or as part of the member's contract with the employer. Extra pension can also be awarded to members who have left the role in the previous six months but only if they have left due to redundancy/business efficiency. There is a limit to how much additional pension can be paid to a member in any one scheme year – the latest limit can be found on the LGPS website.

Employers have the choice on whether to make APCs for their members, the amount they will pay and the circumstances in which they will pay. The decision on how the employer

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will pay (either through regular additional contributions and/or a lump sum) are covered by different discretions [R16 (2)(e) and R16 (4)(d)].

Note that members can elect to make additional pension contributions regardless of their employer's discretion policy. The decision the employer needs to make is whether the employer will provide additional contributions towards the member's pension.

Regulations 16(2)(e) and 16(4)(d) – Method of paying additional pension contributions

Employers in the LGPS may choose to award their active members with extra pension. This is known as additional pension contributions (APCs). The decision on whether to award these additional pension contributions is covered by Regulation 31 (a different discretion).

If the employer chooses to make additional pension contributions they can make these payments either in the form of a lump sum [R16 (4)(d)] or as part of the regular pension contributions that the employer pays to the Fund each month [R16 (2)(e)]. The maximum amount of additional pension payments an employer can make per member is reviewed each year and can be found on the LGPS website.

Employers have the choice of whether to make these additional payments by making regular contributions, paying a lump sum or both. They may also specify the circumstances in which either payment method is used.

Regulation 30(6) and TP11(2) – Flexible retirement

When an active member of the LGPS reaches the age of 55 their employer may choose to grant them access to part or all of their pension if the member at any point:

- Has their working hours reduced, or
- There is a reduction in their grade.

Usually if the member is to receive their pension before their normal pension age, there will be a reduction in the amount of pension they receive annually.

Employers have the choice of whether to allow the early granting of part/all of their members' pensions in the case of reduced working hours/grade, and the circumstances in which this may be allowed.

Regulation 30(8) – Waiving the actuarial reduction where a member takes their LGPS pension early

Members in the LGPS can choose to take their pensions from the age of 55, which is below the normal pension age. In these cases, the member's pension benefits are decreased to take into account that they are receiving payments earlier and for longer than expected.

Employers have the choice whether to waive this reduction on behalf of their members by paying the additional costs that come from providing the member their full pension for longer. If the employer chooses to do so, they can decide how much of the reduction to

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waive. An employer can choose to do this for a number of reasons and may specify the circumstances in which they would allow the reduction to be made in their discretion policy.

TP Schedule 2, para 1(1)(c) and 1(2) – Switch on the 85 year rule

The 85-year rule applied to members from 1 April 1998 to 20 September 2006, when it was phased out. The 85-year rule states that if the combined figures of the member's age and LGPS membership equal 85, then that member would be eligible for early payment of benefits with no reduction (for example, a 55 year old who has 30 years service in the LGPS would satisfy the 85 year rule).

The 85-year rule does not automatically fully apply to members who would have had the protection under old regulations, and who choose to voluntarily draw their benefits on or after age 55 and before age 60. This also applies to members with deferred benefits or a suspended tier 3 ill health pension who choose to voluntarily draw their deferred benefits (on or after 14 May 2018) on or after age 55 and before age 60.

Employers have the choice whether to switch on the 85 year rule for eligible members and can specify the circumstances in which the rule will be switched on. More information on the 85 year rule can be found on the ESPF website.

TP3(1), TP Schedule 2, para 2(1), B30(5) and B30A(5) - waiving of actuarial reduction for a member voluntarily retiring early where member has pre and post April 2014 LGPS membership

Members in the LGPS can choose to take their pensions from the age of 55, which is below the normal pension age. In these cases, the member's pension benefits are decreased to take into account that they are receiving payments earlier and for longer than expected.

Employers have the choice whether to waive this reduction for members with both pre-April 2014 membership and membership from April 2014 onwards in the following circumstances:

a) on compassionate grounds (pre-1 April 2014 membership) and/or, in whole or in part on any grounds (post 31 March 2014 membership) if the member was not in the Scheme before 1 October 2006,

b) on compassionate grounds (pre-1 April 2014 membership) and/or, in whole or in part on any grounds (post 31 March 2014 membership) if the member was in the Scheme before 1 October 2006, will not be 60 by 31 March 2016 and will not attain 60 between 1 April 2016 and 31 March 2020 inclusive,

c) on compassionate grounds (pre-1 April 2016 membership) and/or, in whole or in part on any grounds (post 31 March 2016 membership) if the member was in the Scheme before 1 October 2006 and will be 60 by 31 March 2016,

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d) on compassionate grounds (pre-1 April 2020 membership) and/or, in whole or in part on any grounds (post 31 March 2020 membership) if the member was in the Scheme before 1 October 2006, will not be 60 by 31 March 2016 and will attain 60 between 1 April 2016 and 31 March 2020 inclusive.

2008 discretions

These are discretions that apply to members who ceased active membership on or after 1 April 2008 and before 1 April 2014.

TPSch 2, para 1(1)(c) & 1(2) - Switch on the 85 year rule

The 85-year rule applied to members from 1 April 1998 to 20 September 2006, when it was phased out. The 85-year rule states that if the combined figures of the member's age and LGPS membership equal 85, then that member would be eligible for early payment of benefits with no reduction (for example, a 55 year old who has 30 years service in the LGPS would satisfy the 85 year rule).

The 85-year rule does not automatically fully apply to members who would have had the protection under old regulations, and who choose to voluntarily draw their benefits on or after age 55 and before age 60. This also applies to members with deferred benefits or a suspended tier 3 ill health pension who choose to voluntarily draw their deferred benefits (on or after 14 May 2018) on or after age 55 and before age 60.

Employers have the choice whether to switch on the 85 year rule for eligible members and can specify the circumstances in which the rule will be switched on. This can be split between whether to allow the rule to be switched on for different types of member (i.e. deferred or pensioners, or for those with suspended tier 3 ill health pensions). More information on the 85 year rule can be found on the ESPF website.

B30(5), B30a(5), TPSch 2, para 2(1) - Waive actuarial reductions to members' benefits

Members in the LGPS can choose to take their pensions from the age of 55, which is below the normal pension age. In these cases, the member's pension benefits are decreased to take into account that they are receiving payments earlier and for longer than expected.

Employers have the choice whether to waive this reduction, on compassionate grounds, for members who ceased active membership on or after 1 April 2008 and before 1 April 2014. This can be can be split between different types of member (i.e. deferred or pensioners).

In addition the employer may decide to waive any actuarial reduction that would normally be applied to any suspended tier 3 ill health pension benefits which are brought back into payment before age 65.

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1998 discretions

These discretions apply to members who were active in the LGPS between 1 April 1998 and 31 March 2008.

L31(2) The Local Government Pension Scheme Regulations 1997 (as amended) - Grant application for early payment of deferred benefits

Pre-2008, LGPS members were able to apply to take their pension benefits from the age of 50. Employers can decide whether to grant applications for the early payment of pension benefits to members who were active in the Fund pre-2008 on or after age 50 and before age 55.

The employer can also choose to waive any actuarial deductions from any early payment (covered in discretion L31(5)).

TPSch 2, para 1(2) & 1(1)(f) & R60 - Switch on the 85-year rule upon the voluntary early payment of deferred benefits

The 85-year rule, is where a member whose age when combined with the number of years LGPS service they have, equals 85. For example, a 55 year old with 30 years of LGPS experience would qualify for the 85-year rule.

The 85-year rule does not automatically fully apply to members who would have had the protection under old regulations. An employer can decide to "switch on" the 85-year rule in full for a member with deferred benefits voluntarily drawing benefits (on or after 14 May 2018) on or after age 55 and before age 60.

(L31(5) The Local Government Pension Scheme Regulations 1997 (as amended)& TPSch 2, para 2(1) - Waive actuarial reductions to members benefits

If an employer has elected to allow members to take their pension benefits between the ages of 50 and 55, then the employer can decide whether, on compassionate grounds, to waive any actuarial reduction in the member's benefits due to the early payment.

Pre-1998 discretions

This discretion only applies to members who ceased active membership before 1 April 1998.

TP3 (5A)(vi), TL4, L106(1) Transitional & D11(2)(c) - Grant application for early payment of deferred benefits

Employers can decide whether to grant applications early payment of deferred pension benefits on or after age 50 and before normal retirement age on compassionate grounds.

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Non – mandatory discretions explained

The 2014 Regulations (alongside the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014) also allow employers to create a policy on a range of other discretions. Creating and publishing a policy regarding these discretions is optional, however employers may feel that it is beneficial to make clear if and when these discretions will be exercised. The discretions explained below represent some of the key non-mandatory discretions employers may have a policy on but is not an exhaustive list.

Regulation 17 & TP15(2A) – Whether to contribute to a Shared Cost Additional Voluntary Contribution (SCAVC) agreement

Members can choose to make additional contributions to their pension by means of additional voluntary contributions (AVCs). Employers have the choice of whether they wish to share the cost of their members' AVCs.

If an employer chooses to exercise this discretion, they can also set out the circumstances in which the employer would agree to contribute to a SCAVC and how much the employer would contribute.

Regulation 16(16) – Whether to extend the 30 day deadline for a member to elect for a Shared Cost Additional Pension Contribution (SCAPC)

Where a member has been absent from work with permission, with no pensionable pay (for reasons other than illness/injury, relevant child-related leave, or reserve forces service leave), that member ordinarily has 30 days the elect for a Shared Cost Additional Pension Contribution (SCAPC) upon their return from absence.

The employer can choose to extend this deadline and can define the circumstances in which the deadline may be extended.

Regulation 100(6) - Transfer of member pension rights into the LGPS after 12 months

When members join the Fund they ordinarily have 12 months to decide whether to transfer their previous pension rights into the LGPS. The employer, with the agreement of East Sussex Pension Fund, has the choice whether to allow members to make this decision after the 12 month period.

Regulation 22(7) and (8) – Whether to extend the 12 month deadline for members to elect to not aggregate membership

When a member's membership within the LGPS is deferred following the cessation of an employment (or a concurrent employment) after 31 March 2014, they may elect to not have their deferred benefits aggregated with their new LGPS employment (or ongoing concurrent LGPS employment). This election ordinarily needs to be made within 12 months of commencing their new employment.

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The employer can choose whether to extend this 12 month period for members to make their election and the circumstances in which this period may be extended.

TP10(6) – Whether to extend the 12 month deadline for members with deferred benefits from the pre-2014 Scheme to elect to receive a transfer value payment

When a member with deferred benefits in the LGPS from before the set up of the 2014 Scheme, and who was not an active member at the time of the change, becomes active in the 2014 Scheme they can elect to receive a transfer value payment to be credited to their new active record. This credit would be used to purchase additional CARE pension.

Ordinarily a member would have 12 months to make this election. However, an employer can choose to extend this deadline, and the circumstances in which the deadline would be extended.

Regulation 9 and Regulation 10 – Determining employee contribution bands

Whilst the member contribution bands in the LGPS are set centrally, employers will decide which contribution rate to apply for each employment a member has. This rate will ordinarily be applied for the whole year and reviewed every April but this can be reviewed more frequently in certain circumstances.

Employers can set the circumstances in which they, in addition to the review each April, will review the pension contribution band to which an employee has been allocated following a material change which affects the member's pensionable pay in the course of a Scheme year (1 April to 31 March).

Regulation 21(4)(a)(iv), Regulation 21 (4)(b)(iv) and Regulation 21(5) – Whether to include any 'regular lump sum payment' when calculating assumed pensionable pay in certain circumstances

When calculating the assumed pensionable pay when a member is:

- on reduced contractual pay or no pay on due to sickness or injury; or
- absent during ordinary maternity, paternity or adoption leave, or paid shared parental leave, or during paid additional maternity or adoption leave; or
- absent on reserve forces service leave; or
- retires with a Tier 1 or Tier 2 ill health pension; or
- dies in service

the employer can decide whether to include in the calculation the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred.

A 'regular lump sum payment' is a payment for which the member's employer determines there is a reasonable expectation that such a payment would be paid on a regular basis

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Regulation 21(5A) and (5B) – Assumed pensionable pay adjustment in certain circumstances

When calculating assumed pensionable pay (APP), an employer will need to use the previous 3 months (or 12 weeks if not paid monthly) pensionable pay to be able to make the calculation. This includes any adjustments made to reflect any lump sum payments.

If the employer is calculating assumed pensionable pay when a member is:

- on reduced contractual pay or no pay due to sickness or injury; or
- absent during ordinary maternity, paternity or adoption leave, or paid shared parental leave, or during paid additional maternity or adoption leave; or
- absent on reserve forces service leave; or
- retires with a Tier 1 or Tier 2 ill health pension; or
- dies in service

and the employer believes that the pensionable pay from the previous 3 months prior to the commencement of the APP is materially lower then the level of pensionable pay the member would have normally received, then the employer can decide to substitute this period of pensionable pay with a higher period of pensionable pay when calculating the APP. This higher level of pensionable pay must have been from the previous 12 months.

How to create a discretions policy

The Fund cannot advise employers on which discretions they should exercise or the circumstances in which such discretions should be exercised but you may wish to consider the financial impact of any discretions you exercise as an employer.

For employers who do not already have their own LGPS discretions policy, the Fund has a template that employers can use to create a policy – this can be found in Appendix A.

For each discretion in their policy the employer should state:

- Whether they are going to exercise the discretion;
- If the discretion is to be exercised, then the circumstances in which the discretion will be exercised should be included. It is up for the employer to decide when and why a discretion might be exercised.

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Appendix A – Template Discretion Policy

East Sussex Pension Fund

Employer	
Date of Policy Statement	
Date for Review	
Person completing form	
Job Title	

Discretions under the Local Government Pension Scheme 2014

These discretions are Employer discretions under the following regulations:

The Local Government Pension Scheme Regulations 2013 (prefix **R**) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (prefix **TP**) on which Employers are required to formulate and publish a policy on.

Regulations quoted in this document with the prefix B (highlighted in yellow) are from the LGPS (Benefits, Membership and Contributions) Regulations 2007 (as amended).

Regulation	Discretion	Employer's Policy on the exercise of this discretion
The Local Government Pension Scheme Regulations 2013		
R16(2)(e)	Where APCs are to be paid by regular contributions, whether to fund in whole or in part a members additional pension contribution. To be purchased up to the maximum additional pension amount.	
R16(4)(d)	Where APCs are to be paid by a lump sum contribution, whether to fund in whole or in part a members additional pension contribution. To be purchased up to the maximum additional pension amount.	

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R30(6) & TP11(2)	Whether to allow an active member who has attained the age of 55 or over who reduces their working hours or grade to receive immediate payment of all or part of their retirement pension to which the member is entitled to in respect of that employment subject to an actuarial reduction.	
R30(8)	Whether to waive in whole or in part any reduction in a members pension benefits as a result of a member who has not attained normal pension age but who has attained the age of 55 or over and has elected to receive immediate payment of a retirement pension.	
R31	Whether to award additional pension up to the maximum additional pension amount to 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 within 6 months of the date the members employment ended.	
The Pre-2014 Discretions (those to be exercised on and after 1 April 2014 in relation to scheme members who ceased active membership between 1 April 2008 and 31 March 2014) requiring a policy are as follows:		
Switch on the 85 year rule - TPSch 2, para 1(1)(c) & 1(2)	The 85-year rule does not automatically fully apply to members who would have had the protection under old regulations, and who choose to voluntarily draw their benefits on or after age 55 and before age 60. An employer can decide to switch the 85-year rule back on in full for such members. This may also apply to members with deferred benefits or a suspended tier 3 ill health pension who choose to voluntarily draw their deferred benefits (on or after 14 May 2018) on or after age 55 and before age 60.	

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Waive actuarial reductions to members benefits - B30(5), TPSch 2, para 2(1) and B30A(5) as defined in LGPS (Benefits, Membership and Contributions) Regulations 2007 (as amended).	An employer can decide whether, on compassionate grounds, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65; And/or to waive any actuarial reduction that would normally be applied to any suspended tier 3 ill health pension benefits which are brought back into payment before age 65.	
The Pre-2008 Discretions (those to be exercised on and after 1 April 2014 in relation to scheme members who ceased active membership between 1 April 1998 and 31 March 2008) requiring a policy are as follows:		
Grant application for early payment of deferred benefits - L31(2) The Local Government Pension Scheme Regulations 1997 (as amended)	Employers can decide whether to grant applications for the early payment of pension benefits on or after age 50 and before age 55.	
Switch on the 85-year rule upon the voluntary early payment of deferred benefits - TPSch 2, para	The 85-year rule does not automatically fully apply to members who would have had the protection under old regulations. An employer can decide to "switch on" the 85-year rule in full for a member with deferred benefits voluntarily drawing	

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1(2) & 1(1)(f) & R60	benefits (on or after 14 May 2018) on or after age 55 and before age 60.	
Waive actuarial reductions to members benefits - (L31(5) The Local Government Pension Scheme Regulations 1997 (as amended)& TPSch 2, para 2(1)	Employers can decide whether to grant applications for the early payment of pension benefits on or after age 50 and before age 55. An employer can decide whether, on compassionate grounds, to waive any actuarial reduction that would normally be applied to benefits which are paid before age 65.	
TPSch 2, 2(2)	Whether to "switch on" the 85 Year Rule for a member voluntarily drawing benefits on or after age 55 and before age 60.	
TPSch 2, 2(3)	Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits from pre 1/4/14 membership where the employer has "switched-on" the 85 Year Rule for a member voluntarily drawing benefits on or after age 55 and before age 60.	
The Pre-1998 Discretions (those to be exercised on and after 1 April 2014 in relation to scheme members who ceased active membership before 1 April 1998 requiring a policy are as follows:		
Grant application for early payment of deferred benefits - (TP3(5A)(vi), TL4, L106(1) Transitional & D11(2)(c) as	Employers can decide whether to grant applications early payment of deferred pension benefits on or after age 50 and before normal retirement age on compassionate grounds.	

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defined in The Local Government Pension Scheme Regulations 1995 (as amended)		

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