

## Policy on Statement of Application of Discretions, Local Government Pension Scheme (Scotland) Regulations 2014

### ARGYLL AND BUTE COUNCIL STATEMENT OF APPLICATION OF DISCRETIONS

We are aware of our obligations under:

- regulation 58 of SSI 2014 No.164, the LGPS (Scotland) Regulations 2014
- paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014
- regulation 61 of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (in respect of leavers between 1 April 2009 and 31 March 2015)
- regulation 105 of the Local Government Pension Scheme (Scotland) Regulations 1998 (in respect of leavers between 1 April 1998 and 31 March 2009)

In developing our policy statement, we are aware that the LGPC has produced a document called “Discretions Policies” that contains tips for employers, see: <http://www.lgpsregs.org/index.php/scotland/admin-guides>

**Note:** \* in the following tables beside a regulation denotes the discretions where we are required to have a policy statement under the new regulations or recommended by Strathclyde Pension Fund.

Table 1 details our discretions from 1 April 2015 in relation to post 31 March 2015 active members and post 31 March 2015 leavers.

Table 2 details our discretions in relation to scheme members who ceased active membership on or after 1 April 2009 and before 1 April 2015.

Table 3 details our discretions under the Local Government Pension Scheme (Scotland) Regulations 1998 (as amended) in relation to pre 1 April 2009 scheme leavers.

Table 4 details our discretions under the Local Government Pension Scheme (Scotland) Regulations 1987 (as amended) in relation to pre 1 April 1998 scheme leavers.

Table 5 details our discretions under the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (as amended).

## **POLICY STATEMENT**

The Council is required to publish a policy relating to the exercise of certain discretionary powers within the regulations. In determining its policy, the Council must have regard to public perception and the extent to which decisions in regards to the application of discretions could lead to a serious loss of confidence in the public service. In applying the discretions outlined in the policy, the Council will always seek to ensure a consistent and equitable approach. To ensure transparency and consistency in decision making, HR will monitor the application of discretions and report this to elected members on an annual basis.

All decisions in relation to the use of these discretions will take account of the financial implications and costs contained within departmental budgets and must be approved by the Service Director or the Chief Executive, as appropriate. Members will approve the policy and scrutinise its application via reports submitted to the appropriate Committee. Any one-off or additional costs, ie costs to pension funds which are recharged to the Council (strain on the fund) and capitalised added years costs, where applied, will be repaid from savings within a 3 year period. Where repayment is for longer than 3 years, this would be reported in advance to the Policy and Resources Committee for approval.

In accordance with good practice principles recommended by the Accounts Commission, the Council will not normally re-employ an employee who has accepted a voluntary severance package within 12 months of leaving. It is recognised, however, given the geography of Argyll and Bute, that there may be exceptions to this restriction. Any proposal to re-employ a former employee who has been made voluntarily redundant must be approved by the relevant Executive Director.

## **POLICY REVIEW**

This policy statement will be kept under review and will be revised as and when necessary to reflect any changes in regulations or policy. Any changes to this policy will be advised to the administering authority and scheme members in writing within one month of the change taking effect and will be applicable 1 month after publication.

**TABLE 1**

**The following table details our discretions from 1 April 2015 in relation to post 31 March 2015 active members and post 31 March 2015 leavers, being discretions under:**

- the Local Government Pension Scheme (Scotland) Regulations 2014 [prefix **R**]
- the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 [prefix **TP**]
- the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 [prefix **A**]
- the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (as amended) [prefix **B**]
- the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008 [prefix **T**]
- the Local Government Pension Scheme (Scotland) Regulations 1998 (as amended) [prefix **L**]

<b>Regulation</b>	<b>Discretion</b>	<b>Argyll and Bute Council policy on the exercise of this discretion</b>
<b>R9(1) to R9(4)</b>	Determine the rate of employee's contributions	The Council will exercise this discretion. The Scottish Public Pensions Agency (SPPA) has issued guidance on determining contribution rates which will be followed by the Council. Contribution rates are assessed on 31 March annually in line with updated contribution rate tables.
<b>R9(10)</b>	Determine intervals at which employees' contributions are to be made	The Council will exercise this discretion. The employee's rate of contributions will be determined in accordance with monthly pay cycle.
<b>R16(2)(e)* &amp; R16(4)(d)*</b>	Whether, how much, and in what circumstances to contribute to a shared cost APC scheme	<p>The Council will not exercise this discretion. This discretion relates to whether an active member wishes to buy extra annual pension, up to a maximum of £6,500 (as at April 2015) by making Additional Pension Contributions (APCs) to (voluntarily) contribute towards the cost of purchasing that extra pension via a Shared Cost APC (SCAPC).</p> <p>It should be noted that this discretion does not relate to cases where a member has a period of authorised unpaid leave and elects within 30</p>

		days of return to work to pay a SCAPC to cover the pension 'lost as employees in this situation have the option under the regulations to do so. Provided the employee elects within 30 days of returning to work, the employee will pay 1/3 <sup>rd</sup> of the cost and the Council 2/3rds.
<b>R16(16)</b>	Whether to extend 30 day deadline for member to elect for a shared cost APC upon return from a period of absence from work with permission with no pensionable pay (otherwise than because of illness or injury, child-related leave or reserve force service leave)	The Council will not exercise this discretion but will keep under review.
<b>R17(1) &amp; definition of SCAVC in RSch 1</b>	Whether, and in what circumstances to contribute to a shared cost AVC scheme.	The Council will not exercise this discretion but will keep under review.
<b>TP15(1)(b) &amp; L65(8) &amp; former L65(9)(b)</b>	Allow late application to convert scheme AVCs into membership credit i.e allow application more than 30 days after cessation of active membership (where AVC arrangement was entered into before 30/6/05)	The Council will not exercise this discretion
<b>R19(2)</b>	No right to a return of contributions due to an offence of a fraudulent character or grave misconduct unless the employer directs a total or partial refund is to be made	The Council will exercise this discretion
<b>R20(1)(b)</b>	Specify in an employee's contract what other payments or benefits, other than those specified in R20(1)(a) and not otherwise precluded by R20(2), are to be pensionable	The Council will exercise this discretion. Elements of pay received by an employee other than those specified in these regulations and not otherwise precluded will only be pensionable if specified as such in the member's contract of employment.
<b>R21(5)*</b>	In determining Assumed Pensionable Pay, whether a lump sum payment made in the previous 12 months is a "regular lump sum"	The Council will exercise this discretion. A lump sum payment made in the previous 12 months will only be used in determining Assumed Pensionable Pay where the Council would determine there is a reasonable expectation that such a payment would be paid on a regular

		basis and that there is justification to do so. An example of a lump sum payment would be a bonus payment or a payment related to performance. (Regulations 21(4)(a)(iv), 21(4)(b) (iv) and 21(5). LGPS (Scotland) Regulations 2014.
<b>R29(5) &amp; (13)</b>	Whether to grant application for early payment of benefits on or after age 55 and before age 60	The Council may exercise this discretion. Argyll and Bute Council will not have a general policy of granting early payment of benefits on or after age 55 and before age 60 but will consider requests on a case by case basis. The Council may exercise this discretion where a sound business case can be made for doing so or where other exceptional circumstances arise that make payment of those benefits justifiable.
<b>R29(6)* &amp; TP11(2)</b>	Whether all or some benefits can be paid if an employee reduces their hours or grade prior to age 60 (flexible retirement)	The Council may exercise this discretion. Arrangements and eligibility criteria are set out in the Council's Flexible Retirement Procedure
<b>R29(8)* and TPSch 2, para 2(1)</b>	Whether to waive, in whole or in part, any actuarial reduction on benefits paid on flexible retirement. <b>Note: any resultant strain cost from the exercise of this discretion will be charged to the employer regardless of the member's age at date of retirement.</b>	The Council may exercise the discretion to waive, in whole or in part, and dependent on financial constraints, any reduction in the employee's benefits.
<b>R29(8)*</b>	Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age, other than on the grounds of flexible retirement (where the member only has post 31/3/15 membership)	The Council will not exercise this discretion
<b>TPSch 2, paras 1(2) and 2(1)*</b>	Whether to apply the 85 year rule for a member voluntarily drawing benefits, with employer consent, on or after age 55 and before age 60 (other than on the grounds of flexible retirement).	This discretion is referred to as the "switching on of Rule of 85" and relates to an employer agreeing to a member drawing benefits on or after age 55 and before age 60 the council would meet the strain costs. There is further discretion in that the Council can "switch off the Rule of 85", ie in cases where the employee does not meet the Rule of 85 and in this case

		<p>the employee would pay the strain on the fund costs via an actuarial reduction to their pension benefits and there would be no strain cost to the Council.</p> <p>The Council may exercise this discretion where a sound business case can be made for doing so.</p>
<b>TP3(1), TPSch 2, para 2(1) and B30(5)*</b>	Whether to waive, in whole or in part, any actuarial reduction on pre and post April 2015 benefits which a member voluntarily draws before normal pension age other than on the grounds of flexible retirement (where the member has both pre 1/4/15 and post 31/3/15 membership and is subject to the 85 year rule)	The Council will not exercise this discretion. This discretion relates to waiving all or part of any actuarial reduction for pre and post April 2015 membership, members retiring on or after age 55 and before Normal Pension age (NPA) who elect to retire under Reg 29(5) of the LGPS 2014, (with their employers consent if age under 60) to immediately draw benefits and for deferred members, under the same regulations (with their employers consent if under age 60) draw benefits on or after age 55 and before NPA. These members could have been members of the scheme before and after 2006
<b>TP3(1), TPSch 2, para 2(1) and B30(5)*</b>	Whether to waive on compassionate grounds any actuarial reduction on pre April 2015 benefits and to waive, in whole or in part, any actuarial reduction on post April 2015 benefits which a member voluntarily draws before normal pension age other than on the grounds of flexible retirement (where the member has both pre 1/4/15 and post 31/3/15 membership and is <b>not</b> subject to the 85 year rule)	The Council may exercise this discretion. Each case will be considered on an individual basis taking into account costs to the Council, impact on service delivery and the particular personal circumstances of the member.
<b>R30*</b>	Whether to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency (by up to £5,000 p.a.)	<p>This refers to the ability of the authority to grant additional pension to an active scheme member. The Council may grant additional pension of up to a maximum of £5,000 per annum (in aggregate) to an employee, which would be payable to them at age 65. If the pension is drawn before or after that age it will be adjusted on account of the fund paying it out for a longer/shorter period.</p> <p>The Council will exercise this discretion in exceptional circumstances where it is deemed to be of specific and particular benefit to the Council.</p>

<b>TP12(4)</b>	Whether to use a certificate produced by an IRMP under the 2009 Scheme for the purposes of making an ill health determination under the 2015 Scheme.	The Council will use a certificate produced by its contracted Independent Registered Medical Practitioner (IRMP) 2009 for the purposes of making an ill health determination under the 2015 Scheme.
<b>R89(1) &amp; (8) R89(4)</b>	Whether to apply to Scottish Ministers for a forfeiture certificate (where a member is convicted of a relevant offence) and subsequently whether to direct that benefits are to be forfeited (other than rights to GMP – but see R92 below)	The Council will exercise this discretion and will apply for a forfeiture certificate where a member is convicted of a relevant offence and, following the issue of the certificate, direct that benefits are to be forfeited.
<b>R90(2)</b>	Whether to recover from the fund any monetary obligation or, if less, the value of the member's benefits (other than transferred in pension rights or AVCs / SCAVCs) where the obligation was as a result of a criminal, negligent or fraudulent act or omission in connection with the employment and as a result of which the person has left the employment.	The Council may consider exercising this discretion and will seek to recover the amount of loss in cases of criminal negligence or fraudulent act(s) by a member, where there is lawful reason to do so.
<b>R92</b>	Whether, if the member has committed treason or been imprisoned for at least 10 years for one or more offences under the Official Secrets Acts, forfeiture under R89 or recovery of a monetary obligation under R90 should deprive the member or the member's surviving spouse or civil partner of any GMP entitlement	The Council will not exercise this discretion
<b>R96(1)(b)</b>	Agree to bulk transfer payment	This refers to situations where a number of employees are transferring in, or out, of the pension fund due to a change in employer. Rather than several individual calculations on the value of pension benefits for all affected employees, one calculation is done for the group. The Council will exercise this discretion and will consult with SPFO and the fund actuaries in this regard.

<b>R98(6)</b>	Extend normal time limit for acceptance of a transfer value beyond the 12 month time limit from joining the LGPS	The Council will exercise this discretion in accordance with SPFO's Technical Bulletin No 25 or any succeeding update.
<b>TP3(6), TP4(6)(c), TP8(4), TP10(2)(a), TP17(2)(b) &amp; B11(2)</b>	Whether to allow a member to select final pay period for fees to be any 3 consecutive years ending in the 10 years prior to leaving and ending on the anniversary of the date of leaving	The Council will exercise this discretion and will allow a member to select final pay for fees to be any three consecutive years ending 31 <sup>st</sup> March in the 10 years prior to leaving. The Council agree that this will automatically be done by Strathclyde Pension Fund.
<b>TP3(1)(a), A43(5)</b>	Issue a certificate of protection of pension benefits where eligible non-councillor member fails to apply for one (pay cuts / restrictions occurring pre 01 04 15)	The Council will issue a certificate of protection of pension benefits within twelve months of the date of reduction.

**TABLE 2**

**The following table details our discretions in relation to scheme members who ceased active membership on or after 1 April 2009 and before 1 April 2015, being discretions under:**

- the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 [prefix **A**]
- the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (as amended) [prefix **B**]
- the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008 [prefix **T**]
- the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 [prefix **TP**]
- the Local Government Pension Scheme (Scotland) Regulations 2014 [prefix **R**]
- the Local Government Pension Scheme (Scotland) Regulations 1998 (as amended) [prefix **L**]

<b>Regulation</b>	<b>Discretion</b>	<b>Argyll and Bute Council's Policy on the exercise of this discretion</b>
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<b>B12*</b>	Whether, for a member leaving on the grounds of redundancy or business efficiency on or before 31 <sup>st</sup> March 2015, to augment membership (by up to 10 years). The resolution to do so would have to be made within 6 months of the date of leaving. Hence this discretion is spent entirely after 30 <sup>th</sup> September 2015	The Council will not exercise this discretion
<b>A42(2)</b>	No right to a return of contributions due to an offence of a fraudulent character or grave misconduct unless the employer directs a total or partial refund is to be made	The Council will exercise this discretion.
<b>A43(5)</b>	Employer may issue a certificate of protection where an employee fails to apply for one.	The Council will exercise this discretion where the member requests this within 12 months from the date when the reduction was applied.
<b>A45 (1) &amp; (2)</b>	Whether Contribution Equivalent Premium (CEP) in excess of the Certified Amount (CA) recovered from a refund of contributions can be recovered from the Pension Fund	The Council will not exercise this discretion
<b>A66 (2) &amp; (6) A67 (1) &amp; (2)</b>	Whether to apply for a forfeiture certificate (where a member is convicted of a relevant offence) and subsequently whether to direct that benefits are to be forfeited.	The Council will apply for a forfeiture certificate where a member is convicted of a relevant offence and, following the issue of the certificate, direct that benefits are to be forfeited.
<b>A68(2)</b>	Whether to recover from the fund any monetary obligation or, if less, the value of the member's benefits (other than transferred in pension rights or AVCs / SCAVCs) where the obligation was as a result of a criminal, negligent or fraudulent act or omission in connection with the employment and as a result of which the person has left the employment.	The Council will exercise this discretion. The Council will recover from Strathclyde Pension Fund the amount of loss in cases of criminal, negligence or fraudulent acts by a member.
<b>A70(2) &amp; (3)</b>	Whether to recover from the fund any	The Council will exercise this discretion and will recover from

	financial loss caused by fraudulent offence or grave misconduct of an employee (who has left because of that) or amount of refund if less	Strathclyde Pension Fund the amount of loss caused by fraudulent offence or grave misconduct of a member (who has left employment because of that), or the amount of refund, if less.
<b>B11(2)</b>	Whether to allow a member to select a final pay period for fees to be any three consecutive years ending with 31 <sup>st</sup> March in the 10 years prior to leaving.	The Council will exercise this discretion and will allow a member to select final pay for fees to be any three consecutive years ending 31 <sup>st</sup> March in the 10 years prior to leaving. Argyll and Bute Council agree that this will be done automatically by Strathclyde Pension Fund.
<b>B30(2)*</b>	Whether to grant application for early payment of benefits on or after age 50/55 and before age 60	The Council will not have a general policy of granting early payment of benefits on or after age 50/55 and before age 60 but will consider requests on a case by case basis. Argyll and Bute Council may exercise this discretion where a sound business case can be made for doing so or where other exceptional circumstances arise that make payment of those benefits justifiable.

**TABLE 3**

The following table details our discretions under the Local Government Pension Scheme (Scotland) Regulations 1998 (as amended) in relation to pre 1 April 2009 scheme leavers.

<b>Regulation</b>	<b>Discretion</b>	<b>Argyll and Bute Council's policy on the exercise of this discretion</b>
<b>30(2)*</b>	Grant application from a post 31 March 1998 / pre 1 April 2009 leaver for early payment of benefits on or after age 50 and before age 60	The Council may exercise this discretion. Former employees of the Council aged 55 and above may request early release of their pension benefits. In general the Council will not grant early applications for early payment of benefits from former employees. However, in exceptional circumstances applications may be granted on compassionate grounds.
<b>30 (5)*</b>	Waive, on compassionate grounds, the actuarial reduction applied to benefits paid early for a post 31 03 98 / pre 01 04 09 leaver <b>Note: any resultant strain cost from the exercise of this discretion will be charged to the</b>	The Council will exercise this discretion. Former employees of the Council aged 55 and above may request early release of their pension benefits. In general the Council will not grant early applications for early payment of benefits from former employees. However, in exceptional circumstances, applications may be granted on compassionate grounds

	<b>employer regardless of the member's age at date of retirement</b>	
<b>30 (7A)*</b>	Pre 01 04 09 optants out only to get benefits paid from NRD if employer agrees	The Council will exercise this discretion.
<b>33 (1)(b)</b>	Decide, in the absence from a post 31 03 98 / pre 01 04 09 leaver of an election from the member within 3 months of being able to elect, which benefit is to be paid where the member would be entitled to a pension or retirement grant under 2 or more regulations in respect of the same period of Scheme membership	The Council may exercise this discretion in partnership with Strathclyde Pension Fund Office.
<b>70(7)(a)</b>	Consent to a member's former employer assigning to the new employer rights under any SCAVC life assurance policy	The Council will not exercise this discretion
<b>87 (2)</b>	No right to return of contributions due to offence of a fraudulent character unless employer directs a total or partial refund is to be made (pre 01 04 09 leavers)	The Council will exercise this discretion
<b>91</b>	Contribution Equivalent Premium (CEP) in excess of the Certified Amount (CA) recovered from a refund of contributions can be recovered from the Pension Fund (pre 01 04 09 leavers)	The Council will exercise this discretion

<b>111(2) &amp;(5) 112(1)</b>	Forfeiture of pension rights on issue of Secretary of State's certificate (pre 01 04 09 leavers)  Where forfeiture certificate is issued, direct interim payments out of Pension Fund until decision is taken to either apply the certificate or to pay benefits (pre 01 04 09 leavers)	The Council will exercise this discretion and will apply for a forfeiture certificate where a member is convicted of a relevant offence and, following the issue of the certificate, direct that benefits are to be forfeited
<b>113(2)</b>	Recovery from Fund of monetary obligation owed by former employee or, if less, the value of the member's benefits (other than transferred in pension rights) (pre 01 04 09 leavers)	The Council will exercise this discretion and will seek to recover from Strathclyde Pension Fund the amount of loss in cases of criminal negligence or fraudulent act(s) by a former employee.
<b>115(2) &amp; (3)</b>	Recovery from Fund of financial loss caused by employee, or amount of refund if less (pre 01 04 09 leavers)	The Council will exercise this discretion.

**TABLE 4**

**The following table details our discretions under the Local Government Pension Scheme (Scotland) Regulations 1987 (as amended) in relation to pre 1 April 1998 scheme leavers.**

<b>Regulation</b>	<b>Discretion</b>	<b>Argyll and Bute Council's policy on the exercise of this discretion</b>
<b>E2(6)(b)</b>	Grant application from a pre 01 04 98 leaver for early payment of benefits on or after age 50 and before age 60	The Council will not exercise this discretion

**TABLE 5**

**The following table details our discretions under the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (as amended)**

<b>Regulation</b>	<b>Discretion</b>	<b>Argyll and Bute Council's policy on the exercise of this discretion</b>
<b>D 4 (1)</b>	Power to increase statutory redundancy payments above statutory weekly pay limit	The Council may exercise this discretion. Redundancy payments will be based on the employee's actual week's pay.
<b>D 8(1)</b>	Decision on whether to award compensatory added years to an individual on retirement on efficiency / redundancy Grounds	<p>The Council may exercise this discretion in respect of an employee aged over 55 (see transitional protections) whose post is made redundant and has at least 5 years pensionable service and will award the maximum enhancement up to 2 added years. The Council will meet the cost of added years payments as well as the strain on the fund cost. The Council will not exercise its discretion to award compensatory added years to a redundant employee who is <b>not</b> a member of the Pension Scheme.</p> <p>Where an employee leaving on ground of efficiency and has at least 5 years' pensionable service, the Council may exercise its discretion to enhance service by up to 2 years, dependent upon the exigencies of the service and available years up to their Normal Retirement Date.</p>
<b>D 35</b>	Decision to award up to 104 weeks compensation instead of compensatory added years	The Council may exercise this discretion and will award compensation of up to 66 weeks pay in cases of redundancy.