Derbyshire Pension Fund

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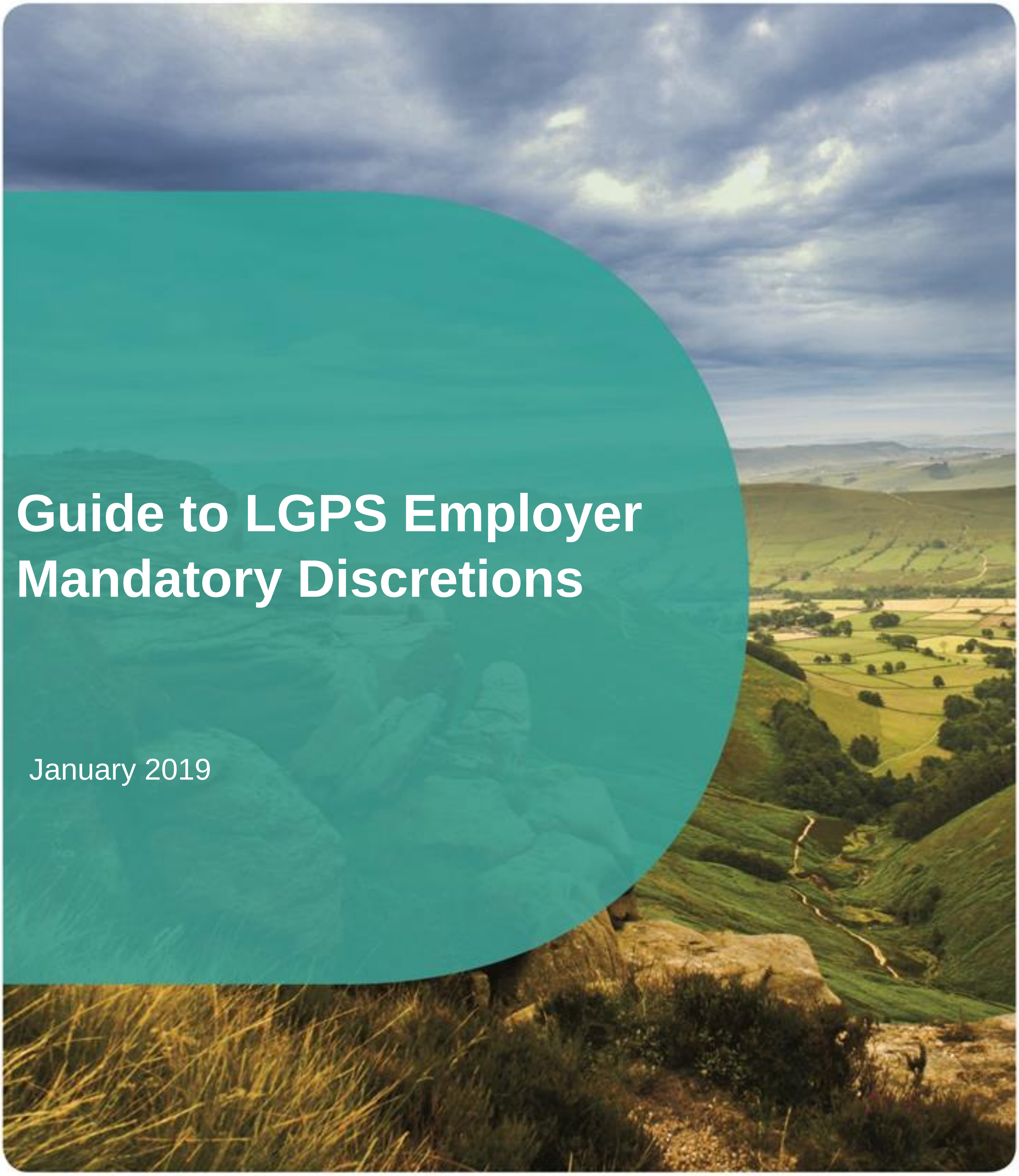

Guide to LGPS Employer Mandatory Discretions

January 2019

County Hall, Matlock, Derbyshire, DE4 3AH
Administered by Derbyshire County Council

lgps

Contents

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Introduction

Every Derbyshire Pension Fund scheme employer must have a **discretions policy** in place, and although called a discretion, it's actually mandatory to set a policy.

Setting a discretions policy as a scheme employer gives you flexibility in managing issues relating to LGPS benefits for your current and former employees. Exercising these discretions can have immediate costs for employers, however, please be aware that failing to set a policy is a breach of the scheme regulations.

The LGPS Regulations include over one hundred provisions where scheme employers have discretionary, or decision-making powers. However you're not required to include every discretion in your policy. There are four main areas where setting a policy, and publishing it, is a statutory requirement, and two others where you must have a policy in place, even though you are unlikely to be called on to apply it.

This guide has been written to help you with setting or reviewing your discretions policy.

The Local Government Association (LGA) has also produced some helpful guidance and a full list of employer's discretions at http://lgpsregs.org/resources/guidesetc.php

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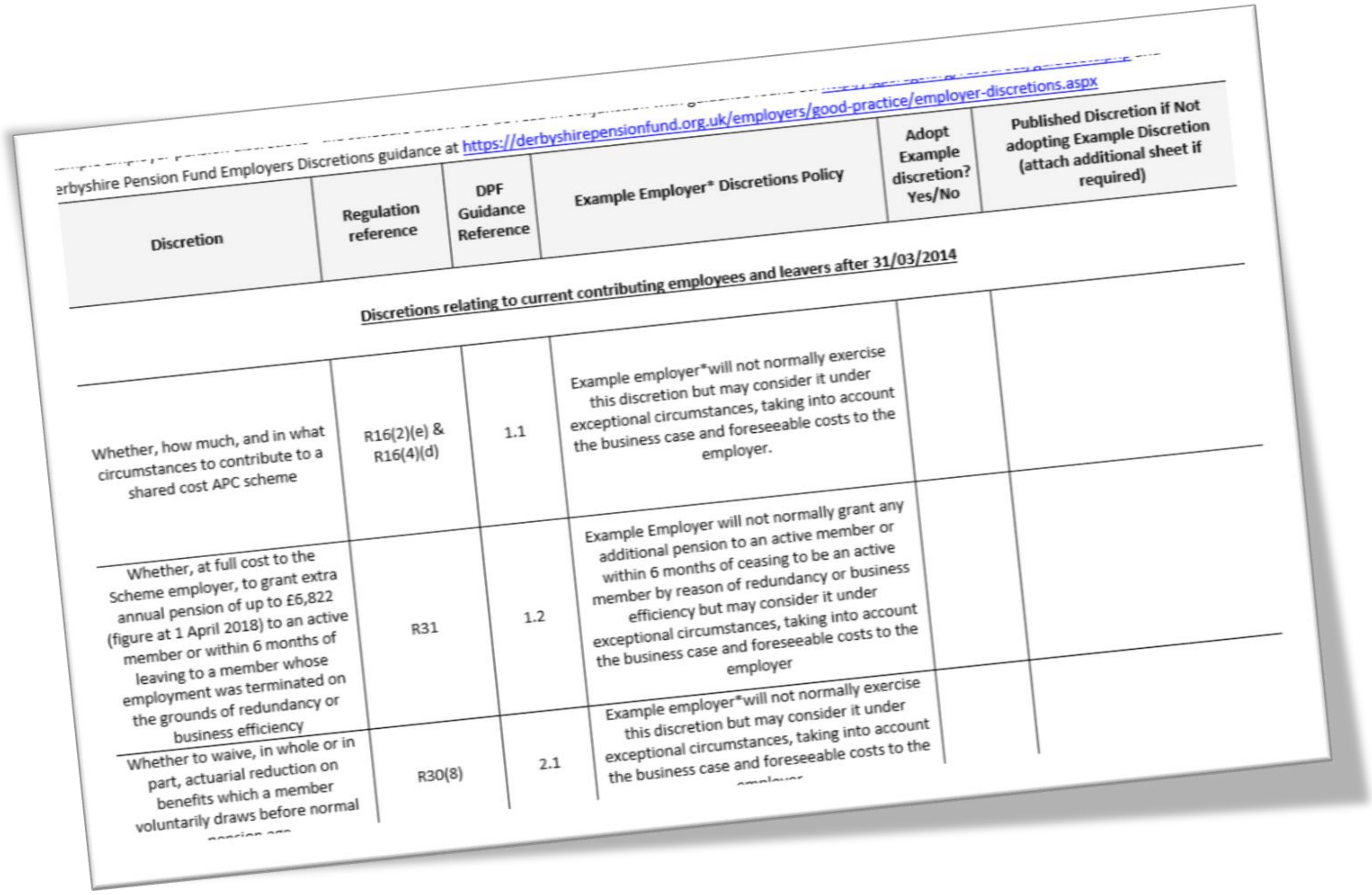
Derbyshire Pension Fund’s Example Employer discretions template

This guide is designed to be read in conjunction with Derbyshire Pension Fund’s (DPF) Example Employer discretions template, found on DPF’s website at: https://derbyshirepensionfund.org.uk/employers/good-practice/employer-discretions.aspx where the discretions can be crossed referenced by the corresponding discretion numbers (e.g. 1.1 for “Whether, how much, and in what circumstances to contribute to a shared cost APC scheme” shown in the next sections.

Discretions template preview of first page only – full document available from https://derbyshirepensionfund.org.uk/employers/good-practice/employer-discretions.aspx:



erbyshire Pension Fund Employers Discretions guidance at https://derbyshirepensionfund.org.uk/employers/good-practice/employer-discretions.aspx

Discretion	Regulation reference	DPF Guidance Reference	Example Employer* Discretions Policy	Adopt Example discretion? Yes/No	Published Discretion if Not adopting Example Discretion (attach additional sheet if required)
Discretions relating to current contributing employees and leavers after 31/03/2014					
Whether, how much, and in what circumstances to contribute to a shared cost APC scheme	R16(2)(e) & R16(4)(d)	1.1	Example employer*will not normally exercise this discretion but may consider it under exceptional circumstances, taking into account the business case and foreseeable costs to the employer.		
Whether, at full cost to the Scheme employer, to grant extra annual pension of up to £6,822 (figure at 1 April 2018) to an active member or within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency	R31	1.2	Example Employer will not normally grant any additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency but may consider it under exceptional circumstances, taking into account the business case and foreseeable costs to the employer		
Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal	R30(8)	2.1	Example employer*will not normally exercise this discretion but may consider it under exceptional circumstances, taking into account the business case and foreseeable costs to the		

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The basics – what you need to consider

The LGPS employer discretions are an essential and helpful tool when managing your workforce and when faced with certain scenarios.

Discretions fall into two categories:

1. Those which must be formulated and published **(mandatory discretions).**
2. Those which don't need to be formulated and published **(non-mandatory discretions)**

When formulating your discretions policy you must:

- Avoid setting policies which may lead to a serious loss of confidence in the public service, (e.g. allowing flexible retirement for a minimal reduction in working time of, for instance, 1 hour),
- Ensure that the policies are workable, affordable and reasonable, especially with regard to foreseeable costs,
- Ensure that the policies are non-discriminatory (e.g. age),
- Avoid blanket or fettered (overly restrictive) policies, and
- Keep the policies under "regular" review (but how regular is not defined in the scheme regulations!)

Where to publish your policy

Your employees and former employees who are, or were, in the LGPS must be able to access your policy. Most employers will publish it on their website, however, it's your choice where you decide to publish it.

Derbyshire Pension Fund (DPF)

Derbyshire Pension Fund (DPF) cannot set your discretions policy for you. Setting your policy is one of your main LGPS responsibilities, although it is essential that you provide a copy of your policy to the Fund.

If you don't have a policy in place, or provide the Fund with a copy, it may affect how your employees or former employees are able to draw their pension benefits from the Fund. You don't need DPF to approve your policy but you must have published it before it can be put into operation.

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The Mandatory Employer Discretions

The principal mandatory discretions fall into **four main categories**:

1. **Additional pension**
2. **Waiving actuarial reductions**
3. **Switching on the rule of 85 before age 60**
4. **Flexible Retirement**

There are two further mandatory discretions from older regulations which remain in force which you are required to include in your policy, although the chance of you needing to apply your discretion may be minimal.

5. **Considering whether to grant an application from a deferred member (ex-employee) for early payment of their pension benefits on or after age 50 and before age 55**

6. **Deciding if an employee who opted out of the LGPS before 1 April 2008 can be paid their pension benefits accrued before opting out at their Normal Retirement Date (NRD).**

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1. Additional pension

The Local Government Pension Scheme (LGPS) includes an option to increase pension benefits by using Additional Pension Contributions (APC's).

An APC can either be:

- to buy **extra pension, or**
- to cover **lost pension** from an unpaid absence

There is a maximum APC amount that a scheme member can have as extra pension. The current maximum is £7,026 (2019/20 rates). This figure will be reviewed each year in line with the cost of living.

The employer's mandatory discretions relating to APC's are for the purchase of **extra pension only**. There are two types of APC:

Extra Pension

Scheme members (or their employer) can use APC's to boost their pension benefits at retirement. They must be in the main section of the Scheme to increase their benefits in this way. This option is not available if they are in the 50/50 section of the scheme.

Scheme members can choose to buy extra pension by spreading payment over a number of complete years (unless they are within 1 year of their Normal Pension Age) or by making a one-off payment. **Employers can choose to contribute in full or part towards the cost of the extra pension.** If this is the case, the scheme member must obtain written confirmation of the share that their employer has agreed to pay before making any application to buy APCs.

Lost Pension

If a scheme member is absent from work as a result of one of the following reasons, the period does not count towards their pension:

- Industrial action
- Unpaid leave (except when due to illness or injury)
- Unpaid additional child related leave,

However, APC's allow the member to buy back the pension which they lost through their absence.

They can do this regardless of whether they are in the main or 50/50 section of the Scheme.

Scheme members can choose to buy the lost pension by spreading payments over a number of complete years (unless they are within 1 year of their Normal Pension Age) or by making a one-off payment.

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If they elect to buy their lost pension, which is covering an <u>authorised</u> absence, within 30 days of returning to work **(or such longer period as your employer may allow)** [1] the employer must meet ⅔ of the cost.

Covering lost pension from an <u>unauthorised</u> absence such as industrial action is at full cost to the scheme member.

APC Discretions

There are 2 mandatory discretions relating to APC's:

1.1 *Whether, how much, and in what circumstances to contribute to a shared cost APC scheme*

This is simply whether an employer wants to help an employee who is a scheme member and who is buying **extra pension**, by <u>sharing</u> the APC cost with them.

If you set your policy to allow consideration for sharing the cost in some cases, you will then need to describe in what circumstances you would share the cost (e.g. to reward long service). Please be mindful of age or gender discrimination when setting your policy, as those not in the pension scheme tend to be younger employees and part-time female workers.

Please note:

- This discretion does not relate to cases where a scheme member is buying an APC to cover lost pension. In some lost pension cases, the Scheme employer must contribute ⅔ of the cost to a shared cost APC so there is no discretion on this other than whether to extend the 30 day period, which is a separate discretion and not mandatory to publish a policy on (though publishing is recommended).
- There is a similar discretion relating to Additional Voluntary Contributions (AVC's) (e.g. through Prudential), but it is not mandatory to publish a policy on sharing AVC costs.

Example 1.1

*Ann has decided to buy **extra pension** through an APC at £100 pm. Her employers' policy is that they will contribute 10% towards an APC application to buy extra pension for employees with more than 2 years' service with them. Therefore, Ann only pays £90 pm from her gross pay herself with the employer contributing £10 pm.*

[1] *An employer discretion is the option to extend the deadline for a member to elect to buy lost pension and automatically share the cost with their employer, however, it is **not** a mandatory discretion which must be included in your discretions policy. If you wish to allow your employees to have a longer period than 30 days to apply for a shared cost APC which includes your ⅔ contribution, it is recommended that you include it in your policy.*

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1.2 Whether, at full cost to the Scheme employer, to grant extra annual pension of up to £6,822 (figure at 1 April 2018) to an active member or within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency

This discretion is fairly straightforward and could be used as a conditional golden handshake, help to retain key staff or as a reward for staff retiring.

You must describe in your policy the circumstances when you will purchase extra pension for a scheme member.

Any award of additional pension under this discretion via the purchase of an APC is at **full cost to the employer.**

If you want to set your policy to allow an award of extra pension in this way, there are a number of consequences to consider, for example:

1. Possible legal challenges on age or gender discrimination grounds (as those not in the pension scheme tend to be younger employees and part-time female workers).
2. If awarding extra pension at retirement, it may be subject to actuarial reduction for early payment, so the employee may not see the full value.
3. There could be tax implications for the employee as the extra pension could cause them to breach HMRC's Annual Allowance limit (i.e. the limit on capital growth of a member's pension within a tax year).
4. The extra pension could also cause them to breach HMRC's Lifetime allowance limit (i.e. the limit of capital value of their pension at retirement).

Please also note that this differs from the previous discretion (1.1) in that the APC would be completely at the employers cost and not shared with the employee.

Example 1.2

Brenda is 60 and her employer decides to award her £500pa of extra pension as a reward for her long service.

This comes at a cost of £7,650 to the employer.

Cost estimate

An online calculator is available which will help you to estimate the cost of contributing to, or purchasing in full, an APC:

https://www.lgpsmember.org/more/apc/

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2. Waiving actuarial reductions

If an employee or ex-employee, who is a scheme member, elects at age 55 or later to draw their LGPS pension before their Normal Pension Age[2], the pension will be in payment for longer than planned so an actuarial reduction is applied.

The actuarial reduction factor is based on guidance issued by the Government Actuary Department.

If however an employee is dismissed between 55 and SPa on the grounds of redundancy or business efficiency, all of the actuarial reduction **is** waived, at an unavoidable cost to the employer.

There are 2 mandatory discretions relating to waiving actuarial reductions. These are described in 2.1 and 2.2 and allow you, as an employer, to waive actuarial reductions to a member's LGPS pension either:

- on any grounds (limited for most scheme members to membership after 1st April 2014 only)
- on compassionate grounds (applies to all membership periods)

If an Employer decides to partly or fully waive actuarial reductions for an employee or ex-employee, it comes at an immediate cost to the employer.

There may be some periods which can only be waived on compassionate grounds depending on how long the member has been in the LGPS, and therefore can only be waived in full.

Determining the periods for when and on what grounds an employer can decide to waive an actuarial reduction is very complex. The table of membership periods and waiving powers (Page 11) explains when employers have the power to waive an actuarial reduction, and also if it can be waived in full or part, or just fully.

Please note that where scheme members have multiple pension records, each record is considered separately, and therefore, may fall into a different group.

[2] *Normal Pension Age for employees in the scheme after 31 March 2014, is the later of*

- *their State Pension age (SPa) or*
- *age 65,*

For members who left the scheme before 1 April 2014, their Normal Pension Age may be earlier, depending on when they left and other factors.

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Table of membership periods and waiving powers

	Group 1	Group 2	Group 3	Group 4
Part A	Waive all or none on compassionate grounds.	Waive all or none on compassionate grounds	Waive all or none on compassionate grounds.	Waive all or none on compassionate grounds.
Part B1	Waive all or none on compassionate grounds.	Waive all or none on compassionate grounds.	Waive all or none on compassionate grounds.	Waive all or none on compassionate grounds.
Part B2	Waive all or none on compassionate grounds.	Waive all or none on compassionate grounds.	Waive all, some or none on any grounds.	Waive all, some or none on any grounds.
Part C	Waive all, some or none on any grounds.	Waive all or none on compassionate grounds.	Waive all, some or none on any grounds.	Waive all, some or none on any grounds.
Part D1	Waive all, some or none on any grounds.	Waive all, some or none on any grounds.	Waive all, some or none on any grounds.	Waive all, some or none on any grounds.
Part D2	Waive all or none on compassionate grounds.	Waive all or none on compassionate grounds.	Waive all or none on compassionate grounds.	Waive all or none on compassionate grounds.

KEY
Blue = **Can be waived in accordance with guidance at section 2.1**
Orange = Can be waived in accordance with guidance at section 2.2

Part A = membership to 31 March 2008
Part B1 = membership 1 April 2008 to 31 March 2014
Part B2 = membership 1 April 2014 to 31 March 2016
Part C = membership 1 April 2016 to 31 March 2020
Part D1 = membership 1 April 2020 onwards
Part D2 = certain transfers, augmented service and added years

Group 1 member = a member who was an active member prior to 1 October 2006 and who was born on 31 March 1956 or earlier
Group 2 member = a member who was an active member prior to 1 October 2006, was born between 1 April 1956 and 31 March 1960 inclusive, and who would reach their R85 by 31 March 2020
Group 3 member = a member who was an active member prior to 1 October 2006 and who is not a Group 1 or Group 2 member
Group 4 member = a member who was not a member prior to 1 October 2006.

If member retires on flexible retirement, the employer may waive all, some or none of any reduction on any grounds.

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2.1 Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age

Employers can choose to waive an actuarial reduction when a scheme member voluntarily draws their pension at age 55 or later in order to lessen the reduction which may apply to the member's pension benefits.

The reduction can be waived in full or in part, and would require a one-off payment to Derbyshire Pension Fund representing the full, capitalised cost of waiving the reduction.

Upon request the fund will provide an estimate of potential costs, however due to the complexity of the calculation, you should always contact Derbyshire Pension Fund giving at least two months' notice of the required information. This time scale is in line with the Pensions Administration Strategy.

The member's pension benefits cannot be adjusted to recognise the waived reduction until the fund has received full payment from the employer.

Example 2.1

Charles is over 55 and joined LGPS in 2015 he is therefore a group 4 member (as defined in the table on page 11) with all his benefits falling in the blue category shown in the table.

His employer is looking at reducing its workforce, so they have requested an employer shortfall estimate from Derbyshire Pension Fund which shows that to waive all of Charles's reduction would cost £20,000. This is outside of their budget, but they negotiate with Charles and agree to fund £10,000 towards waiving his reduction, Charles retires only bearing half of the reduction he would have done otherwise.

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2.2 Whether to waive, in full, any actuarial reduction on pre and/or post April 2014 benefits paid early on compassionate grounds

This discretion allows employers to waive **in full** any actuarial reductions on **compassionate grounds** which would apply when a scheme member decides to draw their pension benefits at age 55 or later. This could be an existing employee or ex- employee.

Following changes to the LGPS regulations in 2018, all ex-employees are able to voluntarily draw their pension benefits without their former employer's approval at any time from reaching age 55. However, the employer has the power to waive the actuarial reductions which would ordinarily be applied if they decide that there is sufficient reason for compassionate grounds to be applied.

The scheme regulations do not define the meaning of compassionate grounds and is, therefore, at the discretion of the employer to determine.

As with 2.1, the calculation to determine the potential cost is very complex with some periods only being able to be waived on compassionate grounds, and in full, whereas other periods provide more flexibility with partial flexibility being an option. The table in Appendix A provides an explanation as to the periods which are limited to the actuarial reduction only being waived on compassionate grounds and in full.

Upon request the fund will provide an estimate of potential costs, however due to the complexity of the calculation, you should always contact Derbyshire Pension Fund giving at least two months' notice of the required information. This time scale is in line with the Pensions Administration Strategy.

Where an employer decides to waive an actuarial reduction, it would require a one-off payment to Derbyshire Pension Fund representing the full, capitalised cost of waiving the reduction.

Example 2.2

Dennis is over 55 and left the LGPS in 2012, therefore, he has deferred pension benefits. He is a Group 2 member (as defined in the table on page 11) with all his benefits falling in the orange category shown in the table

While he can voluntarily draw his pension, he would suffer a reduction and it would not be enough to support him and his disabled wife, for whom he is full time carer, so he asks his ex-employer if they would exercise their discretion and waive his reduction on compassionate grounds.

Dennis's ex-employer assesses his application and decide to waive his reduction on compassionate grounds at a cost of £5,000.

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3. Switching on Rule of 85 before 60

The Rule of 85 (R85) is a complex protection for employees (and ex-employees) who were in the LGPS before 1 October 2006, and is the point when their age plus the time of their LGPS membership (in whole years) totals 85.

For most scheme members R85 only protects their pension benefits in respect of their membership before 1st April 2008 (i.e. 80ths under the final salary arrangements), and is automatically applied at age 60 if the member met R85 before then.

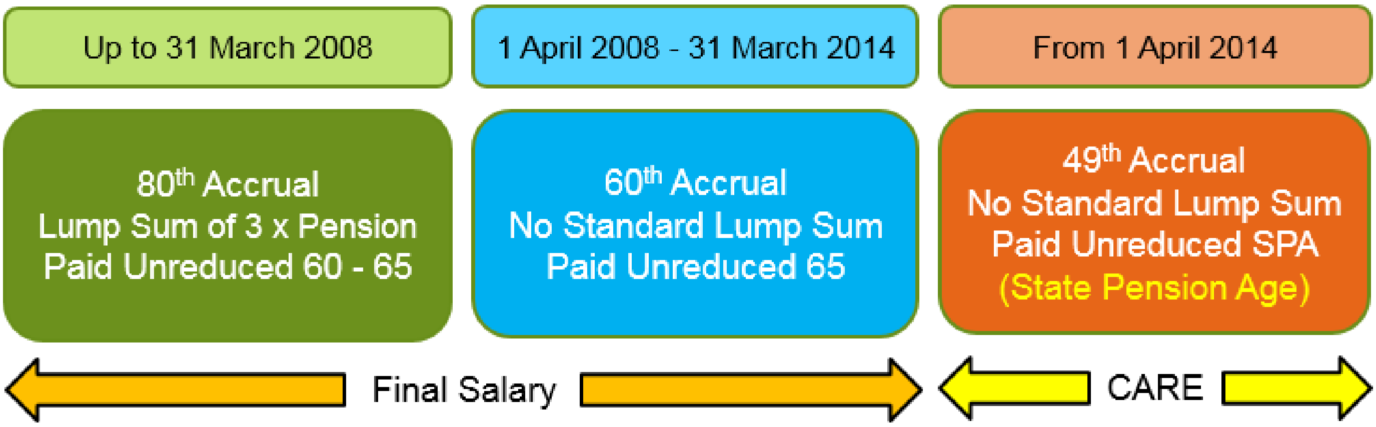
Ordinarily where a member has met R85 and is retiring and drawing their pension **after age 60**, R85 applies in full.

However, where a member has met the rule of 85 and is retiring and drawing their pension **between age 55 and 60**, the employer has the **power to "switch on" R85** at a cost.

R85 can be "switched on" by the employer for:

- Current employees retiring
- Ex-employees with deferred benefits, retiring
- Ex-employees who had been awarded a tier ill health pension that was subsequently suspended.

The diagram below reflects the changes to the LGPS and shows when a member's pension benefits in respect of each period can be paid at an unreduced level:



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3. Whether to "switch on" the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.

An employer can switch on R85 before age 60 for any reason. As a result the unreduced date used will be the member's actual R85 date instead of 60.

However, "switching on" R85 between ages 55 and 60 will in most cases require a payment by the employer to Derbyshire Pension Fund.

The one-off payment representing the cost of "switching on" R85 before age 60 must be made to the fund before the decision can be reflected in the member's pension benefits.

In theory an employer may wish to consider this discretion if the cost of waiving an actuarial reduction, as described in 2.1 or 2.2, is considered to be too expensive, or a case does not meet the compassionate reasons required for 2.2.

It is also worth noting that this option does not apply to current employees going through flexible retirement (see 4. Flexible Retirement). For flexible retirements R85 is automatically switched on before age 60 and cannot be switched off.

Example 3

Eric is 55 and retiring, only his Pre 2008 (80ths) have R85 protection and his R85 date is his 58th birthday as he joined on his 31st Birthday and will have been in the LGPS for 27 years on his 58th Birthday (58 PLUS 27 = 85).

Eric's pre-2008 pension would normally be unreduced at 60. He is retiring at 55 which is 5 years early, so his pre-2008 pension would normally be reduced by (approx.) 22.2%

However, if his employer switches on the rule of 85 for him, his 80ths unreduced date changes to being his actual R85 date of 58 instead of 60, so his pre-2008 pension would only be 3 years early at 55, meaning it would be reduced by (approx.) 14.3% instead of (approx.) 22.2%, but this comes at a cost of £5000 to his employer.

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4. Flexible Retirement

If an employee reduces their hours or moves to a less senior position, and the employer gives their permission, they may be able to start receiving their pension from the age of 55, even though they're still working. This is called **flexible retirement** and it's designed to help;

- The employee ease into retirement,
- The employer to retain knowledge and skills of experienced staff and
- Help the employer in its succession planning.

Employees can still build up further pension benefits in their ongoing job on either lower hours or in a less senior role.

It's important to note that:

- Taking flexible retirement before State Pension age (SPa), means that the employees' pension benefits will normally be reduced as if they were retiring early,
- R85 is always switched on (see 3. Switching on the rule of 85 before 60) for flexible retirements and cannot be switched off, therefore granting flexible retirement for someone under age 60 may result in an unavoidable employer shortfall cost. Therefore, it is always advisable to obtain an estimate of the potential cost from Derbyshire Pension Fund for cases under 60 before approving them.
- If a member retires on flexible retirement, the employer may waive all, some or none of any reduction on any grounds in the same way as section 2.1
- Where an employer wishes to compare the cost of waiving some or all of the actuarial reduction, it is always advisable to ask Derbyshire Pension Fund for an estimate of the potential cost.

4. Whether all or some benefits can be paid if an employee over 55 reduces their hours or grade (flexible retirement)

While essentially this is a relatively straight forward discretion, in deciding whether or not to allow someone to take flexible retirement, there are a number of consequences to be aware of:

- Without a clear written policy, staff may have unrealistic expectations of being approved for flexible retirement
- Some cases under 60 may have unavoidable employer shortfall costs, due to R85 being automatically switched on.
- The possibility of waiving reductions
- Consideration will need to be given when writing the policy as to the possibility of causing a serious loss of confidence in the public service (e.g. allowing a reduction of 1 hour for chief executive to take flexible retirement with the result that they earn more from the lower salary PLUS pension)
- How much of a reduction in hours is acceptable
- Whether to allow an increase in hours or grade after taking flexible retirement

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Please see the Example Employer template for an example of a full written policy where all the issues are addressed.

Example 4.

Frank is 59 and has recently become a Grandad, he has requested flexible retirement with a reduction to half of his hours so he can help with childcare and ease into retirement.

As he meets R85 at 61, there is no cost to the employer.

Frank's role becomes job-shared and he trains his new colleague to eventually take over in 2 years' time when Frank plans to fully retire.

Frank spends half his week with his grandchild and works the other half.

His employer benefits from Frank's experience and knowledge sharing.

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5. Considering whether to grant an application from a deferred member (ex-employee) for early payment of their pension benefits on or after age 50 and before age 55

HMRC rules relating to the earliest that someone can voluntarily retire and receive their pension changed in April 2010 from being age 50 to age 55, however some regulations in place before the change are still in force.

Due to this, in theory an employer can grant someone aged over 50 and under 55 access to their pension, but it would be classed as an "unauthorised payment" for HMRC purposes and as such the individual would be subject to penal unauthorised payment charges of up to 55% but there is no cost to the employer for exercising this discretion.

Please note that this discretion and the unauthorised payment charges do not apply to ill health retirement cases.

While it is up to individual employers to set their own policy for this discretion, our example employer discretion is worded that each application will be assessed on a case by case basis and take any HMRC charges into account.

6. Deciding if an employee who opted out of the LGPS before 1 April 2008 can be paid their pension benefits accrued before opting out at their Normal Retirement Date (NRD)

This discretion only covers scheme members who opted out of the LGPS between 1 April 1998 and 31 March 2008 and gives the employer discretion to allow (or not) the employee to draw their pension from their normal retirement date of 65.

While it is up to each individual employer to set their own policy for this discretion, if the policy is set to allow it to be paid from NRD, then this would be consistent with how employees who opted out before 1 April 1998 or after 31 March 2008 are treated within (non-discretionary) LGPS regulations. Therefore our example employer discretion is worded to allow this group of people to get their benefits from their NRD (age 65).

Please note that there is no cost to the employer for exercising this discretion.

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