

# **The Environment Agency**

## **Employing Authority statement of policy on discretions – Effective 22 October 2019**

### **1. Introduction**

The Environment Agency, as the employing authority to the Environment Agency's Active and Closed Pension Funds, has determined this policy in accordance with the Local Government Pension Scheme Regulations 2013, as amended, and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England & Wales) Regulations 2006 and related legislation. We will apply this policy to all Environment Agency employees who are current members of the Active and Closed Pension Funds. Where relevant, this policy equally applies to members who left pensionable service prior to 1 April 2014 (albeit only in relation to discretions exercised since the date of this policy) and to pension credit members. The policy does not apply to employees of other employers that participate in the Active or Closed Pension Funds.

We reviewed this statement of policy in December 2018 and updated the content in line with current legislation. The Environment Agency's Pensions Committee at its meeting on 18 December 2018 recommended this policy for approval by the Environment Agency's Board, who approved it on 22 October 2019.

We have set out the criteria that we will consider when making a decision about the use of employing authority discretions. We will base our decisions relating to these discretionary provisions using the current policy at the time of the relevant event. In the event of a conflict between a discretion as written in this policy and the governing regulations, we will apply the governing regulations.

We retain the right to change the policy at any time as long as we republish it at least within one month of when the change(s) we are introducing come(s) into effect.

This policy does not give, nor shall it be deemed to give, any contractual rights to any employee of the Environment Agency, or any member of the Active and Closed Funds, or to any other person whatsoever.

### **2. Key discretion principles** We will observe the following principles when reviewing discretions:

- We will exercise all discretions reasonably and in good faith
- With the exception of any discretion which is to be exercised on compassionate grounds, we will only exercise a discretion, where there is a material cost if we are satisfied, as employing authority, that there will be an associated business benefit for the Environment Agency.
- We will formally record all decisions and will report them to the Environment Agency's Pensions Committee and Board as appropriate.

3. **Exercising discretions**

The Environment Agency's Board is the body responsible for exercising employing authority discretions for and on behalf of the Environment Agency. The Board may delegate some or all of these discretions to specific officers and we have highlighted where this is the case in the policy decisions below.

Nothing in this Policy will cause the Board's capacity to exercise its discretionary powers to be unlawfully fettered or restricted in any way.

We will exercise these discretions in line with the provisions of the various LGPS Regulations and other legislation. Nothing within this statement can overwrite the legal requirements within those provisions.

4. **Policy approval and review**

We will review the discretions within this statement as required in the light of future changes to the LGPS legislation. We will also do this to take account of other legislative or taxation changes or to reflect changing organisational or operational needs. It will also be reviewed at least every three years.

5. **Costs**

The Environment Agency may face some additional costs as a result of exercising some of the discretions within this statement. We have highlighted any such costs that we do not consider insignificant within the policy description (or in the separate operational instruction where one exists and is referred to).

## Key to regulation references:

### *The Local Government Pension Scheme*

- LGPS13 – The Local Government Pension Scheme Regulations 2013
- LGPS:TP14 – The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014
- \*LGPS:Ben07 – The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007
- \*LGPS:Admin08 – The Local Government Pension Scheme (Administration) Regulations 2008
- \*LGPS97 – The Local Government Pension Scheme Regulations 1997
- \*LGPS95 – The Local Government Pension Scheme Regulations 1995

### *Other Discretionary Award Schemes*

- LG:Injury11 - The Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011
- LG:Disc06 - The Local Government (Early Termination of Employment)(Discretionary Compensation) Regulations 2006
- LG:Disc00 - The Local Government (Early Termination of Employment)(Discretionary Compensation) Regulations 2000

\*Note that references to old provisions (e.g. LGPS:Ben07) generally apply in relation to scheme members who left under those provisions.

We have set out a key to the delegation titles in the appendix.

## Part 1 - The Local Government Pension Scheme

	Regulation Number and Subject Matter	Description of Discretion	Environment Agency Policy
<b>Contributions and Pensionable Pay</b>			
1	LGPS13 - 9(1) & 9(3) Determining the rate of the scheme member's contribution	We must determine what rate of member contribution should be paid (i.e. in accordance with the table of tiered contributions). We may also reassess the rate of contribution if the scheme member changes employment or has a material change in pay	We have included details of how we use this discretion in our separate Contributions Operational Instruction.
2	LGPS13 - 20(1)(b) Determining what additional benefit elements are pensionable	Pension contributions are generally deducted from all elements of an employee's pay. We may determine that we will treat other benefits specified in the employee's contract as pensionable.	We class the monetary value of any housing or uniform payment as a pensionable emolument other than those specified by LGPS13 – 20(1)(a). The CoS will determine whether to treat any additional elements as pensionable.

	<b>Regulation Number and Subject Matter</b>	<b>Description of Discretion</b>	<b>Environment Agency Policy</b>
3	LGPS13 - 21(5) Determining whether to include a lump sum in Assumed Pensionable Pay	For certain periods of absence on reduced pay, we calculate benefits using a higher "Assumed Pensionable Pay" (APP). Where we have paid a lump sum in the previous 12 months, we may increase the APP figure if we consider there is a reasonable expectation that the lump sum would be paid on a regular basis.	We will normally only use permanent, recurring, non-variable payments to increase the APP.
4	LGPS13 – 21(5A)	Where APP applies, regulation 21(4) sets out how APP is calculated. Where the outcome of the prescribed calculation is, in the employer's opinion, materially lower than the actual level of pensionable pay the member would normally receive had they been at work, we may substitute a higher level of pensionable pay than the APP value.	The APP will, in such cases, be increased to reflect the level of pay the member would normally have received. This will usually be based on the pensionable pay received by the member in the previous 12 months.
<b>Award of Additional Benefits</b>			
5	LGPS13 - 31 Award of Additional Pension	<p>We may award additional annual pension to a scheme member of up to £6,822* in total.</p> <p>We can award extra pension to an active scheme member to count in the calculation of the pension benefits we will pay. We can do this:</p> <ol style="list-style-type: none"> <li>1) during active membership</li> <li>2) on redundancy or leaving on business efficiency grounds.</li> </ol> <p>*note that this amount increases each year in line with inflation</p>	<p>We have included details of how we will use this discretion in our separate Voluntary Early Release and Compulsory Redundancy schemes, detailed in the Operational Instruction.</p> <p>We will approve other awards under this provision in accordance with Scheme of Delegation Type 1 approvals as outlined in the Appendix.</p> <p>We will meet the costs of all awards by making a capital payment into the pension fund at the time we make the award.</p>

	<b>Regulation Number and Subject Matter</b>	<b>Description of Discretion</b>	<b>Environment Agency Policy</b>
6	LGPS13 - 16(2)(e) & 16(4)(d) Shared Cost Additional Pension Contribution (APC)	We may fund some or all of an APC where a scheme member elects to buy up to £6,822* of annual pension. *note that this amount increases each year in line with inflation	Our policy is that we will not normally contribute under this provision. We will approve any shared cost APCs in accordance with Scheme of Delegation Type 1 approvals as outlined in the Appendix.  We will meet the cost of all shared cost APCs by paying additional employer contributions into the pension fund.  Note this policy does not apply to certain absences where the member elects to purchase an APC to cover a period of unpaid leave and it is a legal requirement for the employer to pay two thirds of the cost.
7	LGPS13 - 17(1) & Sch 1 (SCAVCs) LGPS:Admin08 - 25(3) LGPS:Ben07 - 15(3) Establishing a shared cost Additional Voluntary Contribution (AVC) arrangement	We may set up a shared-cost AVC facility, whereby, if an employee pays AVCs, we may also pay AVCs into the AVC account.	We will only use this in exceptional circumstances, which must be jointly approved by CoS and CPO.
8	LGPS13 – 16(16)	We may extend the 30 day deadline for a member to elect for a shared cost APC upon return from a period of absence from work with permission with no pensionable pay	We will generally not extend the 30 day deadline, except in exceptional circumstances which will be considered on a case by case basis. The decision maker for all cases is the CPO.

**Early Retirement – Flexible and Business Efficiency**

	<b>Regulation Number and Subject Matter</b>	<b>Description of Discretion</b>	<b>Environment Agency Policy</b>
9	LGPS13 - 30(6) & 30(8) LGPS:TP14 11(2) Flexible retirement	<p>We may consent to a scheme member receiving payment of some or all of their benefits where they reduce their hours or move to a lower grade post. We can only apply this provision to scheme members who are aged 55 or over.</p> <p>In addition, the employer can choose to waive, in whole or in part, any reduction that might otherwise apply to that scheme member's benefits.</p>	We have set out details of how we will use this provision in our Partial Retirement Operational Instruction.
<b>Benefits on Ill Health</b>			
10	LGPS13 - 35(1) Ill Health retirement	Where the independent registered medical practitioner (IRMP) certifies that a scheme member is permanently incapable of efficiently carrying out the duties of his/her employment, we may terminate the employee's employment and they will be entitled to ill-health retirement benefits.	The CoS will determine whether employment will be terminated on ill-health grounds and whether to award Tier 1, 2 or 3 ill-health benefits. When reviewing cases the CoS will refer to the findings of the IRMP certificate and other relevant available evidence to confirm if the scheme member meets the relevant requirements.
11	LGPS13 - 37 Review of Tier 3 ill-health benefits	We must review the continued payment of benefits at 18 months or on request for all scheme members who are in receipt of Tier 3 ill-health benefits the benefits.	We will review Tier 3 cases 18 months after the date of leaving the Scheme and on request from the scheme member. The CoS will take account of information on the 18 month review medical certificate to determine whether we will continue or cease Tier 3 benefits or whether we will award Tier 2 ill-health benefits, as appropriate.
12	LGPS13 - 37(3) & (4) Recovery of ill-health benefits paid during gainful employment	We will cease paying Tier 3 ill-health benefits when the scheme member obtains gainful employment. If, at a later stage, we find out the scheme member has commenced gainful employment, we may choose to recover any benefits paid since the gainful employment commenced.	We ask all Scheme members who are awarded Tier 3 ill-health benefits to notify us as soon as they commence gainful employment. Accordingly, we will recover any overpayment of benefits due to late notification unless the administration of the recovery of the overpayment is considered to be greater than the amount being recovered. The CoS will decide this.

	<b>Regulation Number and Subject Matter</b>	<b>Description of Discretion</b>	<b>Environment Agency Policy</b>
13	LGPS13 - 38(3) & 38(6) LGPS:Ben07 - 31(4) & (7) Early Payment of Pension: Ill Health (Deferred and Former Tier 3)	As the former employer we must decide whether a deferred member meets the criteria for permanent ill health. This also applies to a scheme member who was formerly in receipt of Tier 3 ill-health benefits.	The CoS will determine whether deferred benefits will be paid early on ill health grounds taking account of information the IRMP provides on the medical certificate. This applies to applications for the early payment of benefits including former Tier 3 ill-health recipient cases.
<b>Early Payment of Pension Benefits in Other Circumstances</b>			
14	LGPS13 - 30(8) Waiving of actuarial reduction on voluntary retirement	We can choose to waive, in whole or in part, any early retirement reduction that might otherwise apply to a scheme member's benefits on voluntary retirement. These provisions only apply to scheme members who are age 55 or over and also only have scheme membership after 31 March 2014.  This is a discretion under the 2013 regulations and so will not apply to anyone who left before 31 March 2014. Those who have pensionable service before and after 1 April 2014 are covered by the transitional regulations (see reference 18 below).	We will not normally use this discretion. We have explained how we will use this provision in exceptional circumstances for active members in our separate Retirement Operational Instruction.
15	LGPS:TP14 - Sch 2, 1(2) & 2(2) Applying "Rule of 85" protections	We can choose to allow rule of 85 protections to apply to a scheme member's benefits on voluntary retirement. In doing this we would not apply some or all of the early retirement reduction. We can only apply these provisions to scheme members who are age 55 or over.	We will only use this discretion in exceptional circumstances and have provided more information in our separate Retirement Operational Instruction.

	<b>Regulation Number and Subject Matter</b>	<b>Description of Discretion</b>	<b>Environment Agency Policy</b>
16	LGPS:TP14 - 3(1) & Sch 2, 2(1) and 2(2) Waiving of any further actuarial reduction on compassionate grounds for "Rule of 85" protected benefits	We can choose to waive on compassionate grounds any reduction to benefits that might otherwise not be reduced or have less reduction due to rule of 85 protections.	We have explained how we will use this provision in our separate Early Payment of Deferred Benefits Operational Instruction.
17	LGPS97 – 31(2) Applies to pre 1 April 2008 leavers only Early payment of pension benefits for existing deferred members	<p>We may consent to the early payment of retirement benefits for a small group of scheme members between age 50 and 55, who are deferred members and who left before 1 April 2008. If we use this discretion some employees may have protections that mean we will pay their benefits unreduced.</p> <p>This discretion does not apply to these scheme members once they reach age 55 as they then have an automatic right to voluntarily take immediate payment of pension benefits.</p> <p>For those who left on or before 1 April 1998 there is no discretion to release benefits early where compassionate grounds do not apply.</p> <p>Note this does not apply to ill-health retirement cases.</p>	We have explained how we will use this provision in our separate Early Payment of Benefits Operational Instruction.



	<b>Regulation Number and Subject Matter</b>	<b>Description of Discretion</b>	<b>Environment Agency Policy</b>
18	LGPS:Ben07 - 30(5) & 30A(5) LGPS97 – 31(5) - applies to pre 1/4/14 leavers Waiving of actuarial reduction on compassionate grounds including for a former Tier 3 Ill-Health member	<p>We may consent on compassionate grounds to waive any actuarial reduction for scheme members between age 55 and 65, who are deferred members or former Tier 3 Ill-Health members. We can only waive the whole reduction.</p> <p>Note this does not apply to ill-health retirement cases.</p>	We have explained how we will use this provision in our separate Early Payment of Deferred Benefits Operational Instruction.
19	LGPS97 - 31(7A) Payment of benefits at NRD for members who have opted out	Where a scheme member opted out of the LGPS prior to 1 April 2008 and they continue in LGPS employment beyond their normal retirement date, we can agree to pay their benefits on reaching their normal retirement date.	We will not normally pay pension benefits in these circumstances (i.e. whilst continuing in the same employment beyond normal retirement age).
20	LGPS95 - D11(2)(c) – applies to pre 1/4/98 leavers Entitlement to deferred benefits	As the former employer we may grant the application for early payment of benefits on or after age 50 on compassionate grounds	We have explained how we will use this provision in our separate Early Payment of Benefits Operational Instruction.

*Transferring and/or Linking Separate Sets of Benefits*

21	<p>LGPS13 - 22(8)(b) &amp; 22(7)(b)                  LGPS:TP14 – 10(6)                  Extension of time limit for a scheme member to retain separate previous or concurrent deferred pension accounts</p>	<p>We may extend the 12 month time limit for a scheme member to elect to retain separate deferred pension accounts in respect of former or concurrent periods of LGPS membership.</p>	<p>We expect scheme members to elect to retain separate deferred pension accounts within 12 months. Such an election will mean we do not link a previous or concurrent set of deferred pension accounts when the scheme member re-enters the Scheme. The CPO (in an Employer capacity) will only extend the 12-month time limit in exceptional circumstances, where the member can demonstrate the reason for their late request was outside of their control.</p>
22	<p>LGPS13 - 100(6)                  Extension of time limit to elect to transfer in benefits from another pension scheme</p>	<p>We (with the agreement of the administering authority) may extend the 12 month time limit for a scheme member to elect to transfer in benefits from a non local government pension scheme or personal pension plan.</p>	<p>We expect scheme members to request all transfers within 12 months. We will only extend the 12-month time limit in exceptional circumstances, where the scheme member can demonstrate the reason for their late request was outside of their control. The CPO (acting for the Employer and for the administering authority) will determine any such requests. The CPO acting in this capacity for both roles is permitted on the understanding that when making decisions the CPO is aware in which capacity he is acting.</p>
23	<p>LGPS:TP14 - 15(1)(b)                  LGPS97 - 66(8) &amp; 66(9)(b)                  Extension of time limit for transferring AVCs into service credit</p>	<p>This discretion applies to scheme members who commenced payment of AVCs before 13 November 2001 and are either (a) subject to ill-health retirement or (b) have stopped paying AVCs whilst continuing to be in the LGPS and are over 50. We may extend the 30 day time limit (from ceasing to be an active scheme member) for a scheme member to elect to transfer AVCs into service credits within the main LGPS.</p>	<p>We appreciate that administrative delays may shorten the time available for a scheme member to consider his or her options. The CPO may, where appropriate, extend the 30 day time limit</p>

24	LGPS13 - 98(1)(b) Agreement of a bulk transfer payment	Where two or more scheme members are being transferred to a new pension scheme, we may agree to a bulk transfer payment (which may be more or less than individually calculated transfer payments). The administering authority and trustees or managers of the new scheme must also agree to the bulk transfer payment.	Bulk transfer payments may result in additional costs to us and any we agree to pay any such costs as a lump sum (in accordance with the EAPF bulk transfer policy). Our policy is that we will consider all potential bulk transfers on their own merits and will seek approval from the CPO with agreement of the PC. This is set out in the bulk transfer policy.
25	LGPS13 - Sch 2, Part 3, para 12(c) Offsetting outstanding pension payments, due from an outsourced employer, from contract payments	An admission agreement must include a provision allowing outstanding pension payments to be offset against contract payments due to the transferring employer. As the transferring employer we must consider whether we wish to make use of this provision.	The CPO will decide on any such cases as they arise to ensure that the EAPF receives payments in a timely manner in accordance with the terms of the admission agreement and the EAPF admission policy.
<b>Miscellaneous</b>			
26	LGPS13 - 74(1) Initial complaint - Internal Dispute Resolution Procedure (IDRP)	We must appoint a person for dealing with applications under the initial complaint stage of the internal dispute resolution procedure.	The GPRM acts as the initial complaint assessor to consider and determine whether or not the scheme member was treated within the terms of the LGPS regulations. Investigations carried out by the legal adviser, Osborne Clarke may feed into the decision making.

27	<p>LGPS13 - 19(2), 91(1), (4) &amp; (8), 92(1) &amp; (2), 93(2), 95          LGPS:Admin08 - 47(2), 72 to 76          LGPS97 – 88(2), 111 to 115          Reduction of pension benefits as a result of fraud, etc</p>	<p>We may claim monies from a scheme member's pension benefits in cases of fraud, misconduct and other similar situations or direct those monies to another person.</p>	<p>Where the circumstances covered in these provisions are met, the CPO will determine whether to use this discretion.</p>
28	<p>LGPS.Admin08 - 49          LGPS97 – 92 – applies to leavers          Reclaim of state premiums from the Fund</p>	<p>We may reclaim some state related payments (contribution equivalent premiums) from the Pension Fund.</p>	<p>We will not claim these payments.</p>
29	<p>LGPS97 – 34(1)(b)          LGPS95 - D10          Entitlement to more than one type of benefit</p>	<p>If a scheme member could be entitled to two or more different benefits in relation to the same period of scheme membership, and they do not choose which benefit they want to receive, we may notify the scheme member which benefit we will pay.</p>	<p>These circumstances will be extremely rare. However, in such circumstances, where the scheme member has not chosen a benefit, the Operations Delivery Manager of the EAPFs third party administrators will make a recommendation to the [CPO] on the determination of the benefit to be awarded. The [CPO] will then make the relevant decision.</p>

## Part 2 – Other Discretionary Award Schemes

	<b>Regulation Number and Subject Matter</b>	<b>Description of Discretion</b>	<b>Environment Agency Policy</b>
30	LG:Disc06 - 5 Calculating redundancy payment using actual pay	Increase to statutory redundancy payments	We have set out details of how we will use this provision in our separate Compulsory Redundancy Operational Instruction.
31	LG:Disc06 - 6 Paying lump sum compensation	Award a discretionary payment for redundancy and efficiency leavers	We have set out details of how we will use this provision in our separate Compulsory Redundancy Operational Instruction.
32	LG:Disc06 - 8 Recovery of overpaid lump sum compensation	If we make a lump sum compensation overpayment to an employee under regulation 6 (over and above any statutory redundancy payment), we may take such steps as are appropriate to recover the overpayment.	The CPO will consider the appropriate action to be taken in any such circumstances.
33	LG:Injury11 Award of injury allowance or other injury benefit	Whether to award an injury allowance or benefit as a result of an employee sustaining an injury or contracting a disease in the course of carrying out duties of the job.	Our position is that we will not normally award injury allowances or benefits.
34	LG:Disc00 - 17 Reduction of compensatory added years pension on re-employment	We must reduce, as we consider appropriate, the amount of pension relating to compensatory added years (CAYs) being paid to a pensioner if they are re-employed with a LGPS employer.	We will reduce a CAYs pension in accordance with the provisions of the regulations. This means the total of the CAY pension, any LGPS pension plus the pay in the new employment should not exceed the pay in the former employment, with all these values increased in line with inflation.
35	LG:Disc00 - 19 & 22(3) Reduction of compensatory added years due to re-employment	We must reduce the amount of compensatory added years that were originally awarded to an employee if that employee is re-employed with a LGPS employer. We will apply the reduction when the further employment ceases and by an amount we consider appropriate. We can also choose to apply this to any spouses' or children's pensions.	We will reduce the amount of compensatory added years in accordance with the provisions of the regulations.

	<b>Regulation Number and Subject Matter</b>	<b>Description of Discretion</b>	<b>Environment Agency Policy</b>
36	LG:Disc00 - 21(4) Apportionment of spouses' / civil partners' compensatory added years pension	We can choose how to apportion a spouse's or civil partner's benefit, on the death of a pensioner who is in receipt of a pension relating to compensatory added years (CAYs), where there is more than one spouse/civil partner.	In these circumstances we will apportion on an equal basis the spouse's or civil partner's CAY pension i.e. for two spouses/civil partners, they will receive 50% of the benefit each.
37	LG:Disc00 - 21(5), (6), (6A), (6B) & (7) Suspension of pre 1/4/98 spouses' / civil partners' compensatory added years pension during marriage/ cohabitation	We may suspend a spouse's or civil partner's pension relating to compensatory added years (CAYs) awarded pre 1 April 1998 if he or she remarries, cohabits or enters a new civil partnership. Further, unless we decide otherwise where we are paying such benefits to two spouses or civil partners (or a combination) who are in a marriage, civil partnership or co-habitation we will cease the payment of one of the pensions.	We will operate in a way that is consistent with how LGPS pensions are treated for CAY retirements after 1 April 1998. We will not suspend spouses' and civil partners' CAY pensions following remarriage, a further civil partnership or cohabitation. We will reinstate any spouse's or civil partner's CAY pension which had previously been suspended on the termination of the marriage, civil partnership or cohabitation. Further, we will not suspend such a pension where two spouses or civil partners (or a combination) are in a marriage, civil partnership or co-habitation.
38	LG:Disc00 - 25(2) Apportionment of children's compensatory added years pension	We may decide how to apportion any pension relating to compensatory added years (CAYs) payable to children and to whom we will make the payments. This only applies where there are no LGPS children's pensions.	We shall apportion these payments equally amongst the relevant children and shall pay them to the surviving parent or guardian until the child reaches age 18, after which we will pay it directly to the child.

## Appendix- Scheme of Delegation and Key to Delegations

### Type 1 Scheme of Delegation:

In relation to	Approval by
Chief Executive	EA Chair & Rem Com
Directors	CE & Rem Com
Executive Managers	CE & CoS
Grades 1 to 7	CoS & CPO
Oversight of all such approvals and completion of processing (including by Capita)	CPO

### Key to Delegations:

Abbreviation	Delegated Person
Board	Environment Agency Board
EA Chair	Chair of Environment Agency Board
PC	Pensions Committee
PC Chair	Chair of Pensions Committee
Rem Com	Remuneration Committee
CE	Chief Executive
CoS	Chief of Staff
CPO	Chief Pensions Officer
GPRM	Policy, Governance & Risk Manager