



## Employer's Pensions Discretions Policy 2021

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## 1.0 Policy Statement

### 1.1 SWANSEA COUNCIL EMPLOYER'S PENSIONS DISCRETIONS: 2020 UPDATE

Under regulation 60 of the Local Government Pension Scheme (LGPS) Regulations 2013, employers participating in the pension scheme are required to formulate, publish and keep under review a statement of policy on all mandatory discretions and are recommended to also keep under review all non-mandatory discretions that they may exercise in relation to members of the scheme.

#### 1.2 Scheme employers must also formulate, publish and keep under review all mandatory discretions in accordance with:

Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 [SI 2006/2914]

Regulation 26 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 [SI 2000/1410]

#### 1.3 And all mandatory discretions related to injury allowances in accordance with: Regulation 14 of the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 [SI 2011/2954]

#### 1.4 Also, there is a recommendation that the employer (the Council) formulate, publish and keep under review a statement of policy which relate to injury allowances in respect of leavers, deaths, and reduction in pay that occurred before 16 January 2021; and which relate to gratuities in respect of leavers and deaths that occurred before 16 January 2021, Local Government (Discretionary Payments) Regulations 1996 [SI 1996/1680].

## 2.0 Pensions Regulations

### 2.1 The LGPS Regulations require employers who participate in the Scheme to draw up and publish a discretions policy and to keep it under review. Discretions are powers that enable employers to choose how to apply the scheme in respect of certain provisions. Discretions only apply at the time of application and are subject to change. When the Council sets and reviews these employer discretions, consideration is given to:

- Cost – discretionary powers come with a cost attached - policies mustn't lead to a loss of confidence in public services, therefore have to be affordable
- Basis on which decisions are made – policies should not be so rigid or restrictive as to prevent flexibility where a possibly unanticipated situation requires it

- Equality – criteria that do not discriminate and where decisions are objectively justified
- 2.2 The Council has limited resources and needs to maintain a balanced budget. Any exercise of discretion and must be contained within existing service budgets, therefore discretions are only exercised in exceptional circumstances.
- 2.3 There are many employer discretions in the current Scheme regulations and several more still existing from previous Schemes; however only a relatively small number of employer discretions have to be published.
- 2.4 The LGPS Employer Discretions Policy is therefore the Council's written policy statement detailing all mandatory employer discretions, plus a number of non-mandatory employer discretions the LGPS recommend employers also publish.

### **3.0 Discretions – mandatory and non-mandatory**

- 3.1 There are 5 mandatory discretions and 8 non-mandatory discretions.
- 3.2 The mandatory discretions are:
- Whether to grant extra annual pension
  - Whether to share the cost of purchasing additional annual pension (SCAPC)
  - Whether to permit flexible retirement?
  - Whether to switch on the 85 year rule (excluding flexible retirement) upon the voluntary early payment of deferred benefits
  - Whether to waive, upon the voluntary early payment of benefits, any actuarial reduction on compassionate grounds or otherwise (excluding flexible retirement)
- 3.3 The non-mandatory discretions are:
- Whether to, how much, and in what circumstances to contribute to a shared cost Additional Voluntary Contribution (SCAVC) arrangement?
  - Whether to extend the time limit for a member to elect or purchase additional pension by way of a shared cost additional pension contribution (SCAPC) upon return from a period of absence?
  - Whether to extend the 12 month time limit for a member to elect to transfer pension rights from another registered pension scheme into the Scheme?
  - Whether to extend the 12 month time limit for a member to elect not to aggregate post 31 March 2014 (or combinations of pre April 2014 and post March 2014) deferred benefits
  - Whether to extend the 12 month time limit for a member to elect to aggregate pre April 2014 deferred benefits
  - How an employee's contribution band will be initially determined and thereafter reviewed?
  - Whether to include a regular lump sum payment when calculating assumed pensionable pay (APP)?

- Whether, subject to qualification, to substitute a higher level of pensionable pay when calculating assumed pensionable pay (APP)?
- 3.4 Any change to the discretions exercised under the LGPS Regulations will take immediate effect from the date the changes to the policies are agreed. This policy will remain under review, and all updates will be added and published at the earliest opportunity, subject to consideration of regulations outlined in 3.5.
- 3.5 Any change to the discretions exercised under the Discretionary Compensation Regulations 2000, the Discretionary Compensation Regulations 2006 or the Injury Allowances Regulations 2011 cannot take effect until *one month after the date the statement of the amended policy is published*.
- 3.6 A copy of any revised policy will be sent to the City and County of Swansea Pension Fund within one month of its revision.
- 3.7 The following items highlighted in grey are the 2020 updates to the above, and outlines the Council's policy for each one. The items not greyed out are the existing discretions where no changes have been made.

## 4.0 Relevant Mandatory Discretions

### 4.1 Previous relevant mandatory discretions

LIST OF PENSIONS DISCRETIONS: 2018 update for check against info above

**SUMMARY OF THE KEY DISCRETIONS TO BE EXERCISED ON AND AFTER 1 APRIL 2014 (AS AT 14 MAY 2018) IN RELATION TO ACTIVE MEMBERS (EXCLUDING COUNCILLOR MEMBERS) AND MEMBERS (EXCLUDING COUNCILLOR MEMBERS), WHO CEASE ACTIVE MEMBERSHIP AFTER 31 MARCH 2014, BEING DISCRETIONS UNDER:**

- The Local Government Pension Scheme (Administration) Regulations 2008 [SI 2008/239] [prefix A]
- The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended) [SI 2007/1166] [prefix B]
- The Local Government Pension Scheme (Transitional Provisions) Regulations 2008 [SI 2008/238] [prefix T]
- The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525] [prefix TP]
- The Local Government Pension Scheme Regulations 2013 [SI 2013/2356] [prefix R]
- The Local Government Pension Scheme Regulations 1997 [SI 1997/1612] (as amended) [prefix L]

**SUMMARY OF KEY DISCRETIONS TO BE EXERCISED ON AND AFTER 1 APRIL 2014. (AS AT 14 MAY 2018) IN RELATION TO ACTIVE MEMBERS (EXCLUDING COUNCILLOR MEMBERS) AND MEMBERS (EXCLUDING COUNCILLOR**

**MEMBERS), WHO CEASE ACTIVE MEMBERSHIP BETWEEN 1 APRIL 2008 AND 31 MARCH 2014:**

Mandatory

Whether to switch on the 85 year rule upon voluntary early payment of deferred benefits

Whether to switch on the 85 year rule upon voluntary early payment of a suspended tier 3 ill health pension

Whether to waive upon the voluntary early payment of deferred benefits any actuarial reduction on compassionate grounds

Whether to waive upon the voluntary early payment of a suspended tier 3 ill health pension any actuarial reduction on compassionate grounds

**SUMMARY OF THE DISCRETIONS TO BE EXERCISED ON AND AFTER 1 APRIL 2014. (AS AT 14 MAY 2018) IN RELATION TO ACTIVE MEMBERS (EXCLUDING COUNCILLOR MEMBERS) AND MEMBERS (EXCLUDING COUNCILLOR MEMBERS), WHO CEASED ACTIVE MEMBERSHIP BEFORE 1 APRIL 1998:**

Mandatory:

Whether to grant early payment of benefits on compassionate grounds?

**SUMMARY OF THE DISCRETIONS TO BE EXERCISED UNDER THE LOCAL GOVERNMENT (EARLY TERMINATION OF EMPLOYMENT) (DISCRETIONARY COMPENSATION) (ENGLAND AND WALES) REGULATIONS 2006:**

Mandatory:

Whether to base redundancy payments on an actual week's pay where this exceeds the statutory week's pay limit?

Whether to award a lump sum compensation up to 104 weeks' pay in cases of redundancy, termination of employment on efficiency grounds, or cessation of a joint appointment?

**SUMMARY OF THE DISCRETIONS TO BE EXERCISED UNDER THE LOCAL GOVERNMENT (EARLY TERMINATION OF EMPLOYMENT) (DISCRETIONARY COMPENSATION) (ENGLAND AND WALES) REGULATIONS 2000:**

Mandatory:

To what extent to reduce or suspend a person's annual compensatory added year's payment during any period of re-employment in local government and thereafter?

How to apportion any surviving spouse's or civil partner's annual compensatory added years' payment?

Whether the spouse's or civil partner's annual compensatory added years payments should continue to be paid following remarriage, commencement of a new civil partnership or cohabitation?

Whether the spouse's or civil partner's annual compensatory added years payments should be reinstated following cessation of a remarriage, a new civil partnership or cohabitation?

Whether to suspend the payment of annual compensatory added years where the spouse or civil partner remarries or cohabits or enters into a civil partnership on or after 1 April 1998 with another person who is also entitled to a spouse's or civil partner's annual CAY payment?

How to decide to whom any children's annual compensatory added years' payments are to be paid (and apportioned) where children's pensions are not payable under the LGPS?

### **SUMMARY OF THE DISCRETIONS TO BE EXERCISED UNDER THE LOCAL GOVERNMENT (EARLY TERMINATION OF EMPLOYMENT (DISCRETIONARY PAYMENTS) (INJURY ALLOWANCES) REGULATIONS 2011:**

Mandatory:

Whether to pay an injury award and in what circumstances

How to determine the amount of an injury award and for how long it will be paid?

**The following outlines all current discretions and new requirements are included in greyed out sections of each table.**

## **5.0 Discretions (as at 31 July 2021)**

### **5.1 Section 1:**

- **LGPS Regulations 2013 [SI 2013/2356] [R]**
- **LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525] [TP]**
- **LGPS (Administration) Regulations 2008 [SI 2008/239] [A]**
- **LGPS (Benefits, Membership and Contributions) Regulations 2007 (as amended) [SI 2007/1166] [B]**
- **LGPS (Transitional Provisions) Regulations 2008 [SI 2008/238] [T]**
- **LGPS Regulations 1997 (as amended) [SI 1997/1612] [L]**

Discretionary policies from 1 April 2014 in relation to post 31 March 2014 active members (excluding councillor members) and post 31 March 2014 leavers (excluding councillor members):

<b>Regulation</b>	<b>Discretionary Power</b>	<b>Swansea Council Policy</b>
R16(2)(e) & R16(4)(d)	Whether, how much, and in what circumstances to contribute to a shared cost APC scheme.	<b>The Council has determined that it will not fund SCAPCs due to the increased costs associated</b>

R30(6) & TP11(2)	Whether all or some benefits can be paid if an employee reduces their hours or grade (flexible retirement)	<b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b>
R30(8)	Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement.	<b>This policy has been approved and published within the Retirement Policy</b>  <b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b>
R30(8)	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 March 2014 membership).	<b>This policy has been approved and published within the Retirement Policy</b>  <b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b>
TPSch 2, para 1(2) & 1(1)(c)	Whether to “switch on” the 85-year rule for a member voluntarily drawing benefits on or after age 55 and before age 60 (other than on the grounds of flexible retirement).	<b>This policy has been approved and published within the Retirement Policy</b>  <b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b>
TP3(1), TPsch 2, para 2(1), B30(5) & B30A(5)	Whether to waive any actuarial reduction for a member voluntarily drawing benefits before normal pension age other than on the grounds of flexible retirement (where the member has both pre 1 April 2014 and post 31 March 2014 membership):	<b>This policy has been approved and published within the Retirement Policy</b>  <b>The Council will consider each case on its own merits</b>

	<p>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,</p> <p>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, TP3(1), TPSch 2, para 2(1), B30(5) &amp; B30A(5) Employer (or Admin. Council where Employer has become defunct)</p> <p>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,</p> <p>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.</p>	<p><b>and may only agree where there is a robust business case justifying the cost</b></p>
R31	<p>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 <b>£6,500</b> p.a. on 1 April 2014 - this figure is inflation proofed annually)</p>	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
R9(1) & R9(3)	<p>Determine rate of employee contributions</p>	<p><b>All fixed, regular payments which are considered pensionable are taken into account. Regular reassessments and re-bandings will take place to take into account, for</b></p>



		<b>example, pay awards, increments and promotions</b>
R16(16)	Whether to extend the 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, relevant child-related leave or reserve forces service leave)	<b>Extensions only to be allowed in exceptional circumstances and where the delay was outside of the member's control</b>
R17(1) & definition of SCAVC in RSch1	Whether, how much, and in what circumstances to contribute to shared cost AVC arrangements	<b>The Council does not offer shared cost AVC arrangements</b>
TP15(2A)(b), L66(8) & former L66(9)(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 into before 13 November 2001)	<b>Extensions only to be allowed in exceptional circumstances and where the delay was outside of the member's control</b>
R19(2)	No right to return of contributions where a member left their employment due to offence of a fraudulent character or grave misconduct in connection with that employment, unless employer directs a total or partial refund is to be made.	<b>The Council will consider each case on its own merits</b>
R20(1)(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	<b>All fixed, regular payments which are considered pensionable are taken into account. Regular reassessments and re-bandings will take place to take into account, for example, pay awards, increments and promotions</b>
R21(5)	In determining Assumed Pensionable Pay (APP), whether a lump sum payment made in the previous 12 months is a "regular lump sum"	<b>Generally a lump sum payment made in the previous 12 months will not be considered a "regular lump sum", however each case will be considered on its merits</b>
R21(5A) & R21(5B)	Where in the Employer's opinion, the pensionable pay received in relation to an employment (adjusted to reflect any lump	<b>The Council will consider each case on its own merits</b>

	sum payments) in the 3 months (or 12 weeks if not paid monthly) preceding the commencement of Assumed Pensionable Pay (APP), is materially lower than the level of pensionable pay the member would have normally received, decide whether to substitute a higher level of pensionable pay having had regard to the level of pensionable pay received by the member in the previous 12 months.	
R22(8)(b)	Whether to extend the 12 month option period for a member to elect that post 31 March 2014 deferred benefits should not be aggregated with a new employment.	<b>Extensions only to be allowed in exceptional circumstances and where the delay was outside of the member's control</b>
TP10(6)	Whether to extend the 12 month option period for a member (who did not become a member of the 2014 Scheme by virtue of TP5(1)) to elect that pre 1 April 2014 deferred benefits should be aggregated with a new employment.	<b>Extensions only to be allowed in exceptional circumstances and where the delay was outside of the member's control</b>
R22(7)(b)	Whether to extend the 12 month option period for a member to elect that post 31 March 2014 deferred benefits should not be aggregated with an ongoing concurrent employment	<b>Extensions only to be allowed in exceptional circumstances and where the delay was outside of the member's control</b>
TP12(6)	Whether to use a certificate produced by an IRMP under the 2008 Scheme for the purposes of making an ill health determination under the 2014 Scheme	<b>The Council will consider each case on its own merits</b>
R37(3)&(4)	Determine whether a person in receipt of Tier 3 ill health pension has started gainful employment	<b>The Council will determine eligibility in accordance with the LGPS regulations and will review after 18 months</b>
R37(3)	Whether to recover any overpaid Tier 3 pension following commencement of gainful employment	<b>The Council will determine eligibility in accordance with the LGPS regulations and will review after 18 months (depending on outcome of R37 (3)&amp;(4) above).</b>
R38(3)	Decide whether deferred beneficiary meets criteria of being permanently incapable of	<b>The Council will determine eligibility in</b>

	former job because of ill health and is unlikely to be capable of undertaking gainful employment before normal pension age or for at least three years, whichever is the sooner.	<b>accordance with the LGPS regulations and medical advice</b>
R38(6)	Decide whether a suspended ill health tier 3 member is unlikely to be capable of undertaking gainful employment before normal pension age because of ill health.	<b>The Council will determine eligibility in accordance with the LGPS regulations and medical advice</b>
R91(1)&(8)	Whether to apply to Secretary of State for a forfeiture certificate where member is convicted of a relevant offence (a relevant offence is an offence committed in connection with an employment in which the person convicted is a member, and because of which the member left the employment).	<b>The Council will ordinarily apply this discretion, but reserves the right to consider each case on its own merits.</b>
R91(4)	Where forfeiture certificate is issued, whether to direct that benefits are to be forfeited (other than rights to GMP – but see R95 below)	<b>The Council will ordinarily apply this discretion, but reserves the right to consider each case on its own merits.</b>
R92(1)&(2)	Where forfeiture certificate is issued, whether to direct interim payments out of Pension Fund until decision is taken to either apply the certificate or to pay benefits.	<b>The Council will ordinarily apply this discretion, but reserves the right to consider each case on its own merits.</b>
R93(2)	Whether to recover from Fund any monetary obligation or, if less, the value of the member's benefits (other than benefits from transferred in pension rights or APCs or AVCs or, subject to R95 below, in respect of any GMP) where the obligation was incurred as a result of a grave misconduct or a criminal, negligent or fraudulent act or omission in connection with the employment and as a result of which the person has left employment.	<b>The Council will ordinarily apply this discretion, but reserves the right to consider each case on its own merits.</b>
R95	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 R91 or recovery of a monetary obligation under R93 should deprive the member or the member's surviving spouse or civil partner of any GMP entitlement.	<b>The Council will ordinarily apply this discretion, but reserves the right to consider each case on its own merits.</b>
R98(1)(b)	Agree to bulk transfer payment.	<b>The Council will consider each case on its own merits</b>

R100(6)	Extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS.	<b>The Council will consider each case on its own merits</b>
TP3(6), TP4(6)(c), TP8(4), TP10(2)(a), TP17(2)(b) & B11(2)	Whether to allow a member to select final pay period for fees to be any 3 consecutive years ending 31 March in the 10 years prior to leaving.	<b>The Council will consider each case on its own merits</b>
TP3(1)(a), TSch 1, L23(4)	Issue a certificate of protection of pension benefits where member fails to apply for one (pay cuts / restrictions occurring pre 1 April 2008)	<b>The Council will consider each case on its own merits</b>

## 5.2 Section 2

- **LGPS (Administration) Regulations 2008 [SI 2008/239] [A]**
- **LGPS (Benefits, Membership and Contributions) Regulations 2007 (as amended) [SI 2007/1166] [B]**
- **LGPS (Transitional Provisions) Regulations 2008 [SI 2008/238] [T]**
- **LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525] [TP]**
- **LGPS Regulations 2013 [SI 2013/2356] [R]**
- **LGPS 1997 (as amended) [1997/1612] [L]**

**Discretionary policies in relation to scheme members (excluding councillor members) who ceased active membership on or after 1 April 2008 and before 1 April 2014**

Discretionary policies from 1 April 2014 in relation to post 31 March 2014 active members (excluding councillor members) and post 31 March 2014 leavers (excluding councillor members):

<b>Regulation</b>	<b>Discretionary Power</b>	<b>Swansea Council Policy</b>
TPSch 2, para 1(2) & 1(1)(c)	Whether to “switch on” the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60 (excluding flexible retirement).	<b>This policy has been approved and published within the Retirement Policy</b>
B30(5), TPSch 2, para 2(1)	Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30 (member).	<b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b>

TPSch 2, para 1(2) & 1(1)(c)	Whether to “switch on” the 85 year rule for a pensioner member with deferred benefits voluntarily drawing benefits on or after age 55 and before age 60 (excluding flexible retirement).	<b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b>
B30A(5), TPsch 2, para 2(1)	Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early under B30A (pensioner member with deferred benefits).	<b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b>
TSch1, L66(8) & former L66(9)(b)	Allow late application to convert scheme AVCs into membership credit i.e. allow application more than 30 days after cessation of active membership.	<b>The Council will consider each case on its own merits</b>
A47(2)	No right to return of contributions where member left their employment due to offence of a fraudulent character or grave misconduct in connection with that employment, unless employer directs a total or partial refund is to be made.	<b>The Council will ordinarily apply this discretion, but reserves the right to consider each case on its own merits.</b>
A49(1) & (2)	Contribution Equivalent Premium (CEP) in excess of the Certified Amount (CA) recovered from a refund of contributions can be recovered from the Pension Fund. Under revoked regulation 52(1) of the OPS (Contracting-out) Regulations 1996 [SI 1996/1172] and regulation 12 of the OPS (Schemes that were Contracted-out) (No.2) Regulations a CEP must have been paid to the commissioner within 6 months after the date of termination of contracted out employment, or one month after the Commissioner’s notifies the administering Council that a CEP is payable. Following the end of the contracted-out reconciliation exercise, this discretionary policy should be spent entirely as all premiums will have been paid and no further notifications will be issued by the commissioners	<b>The Council will consider each case on its own merits</b>
A72(1)&(6)	Whether to apply to Secretary of State for a forfeiture certificate where member is convicted of a relevant offence (a relevant offence is an offence committed in	<b>The Council will ordinarily apply this discretion, but reserves the right to consider</b>

	connection with an employment in which the person convicted is a member, and because of which the member left the employment)	<b>each case on its own merits.</b>
A72(3)	Where forfeiture certificate is issued, whether to direct that benefits are to be forfeited	<b>The Council will ordinarily apply this discretion, but reserves the right to consider each case on its own merits.</b>
A73(1) & (2)	Where forfeiture certificate is issued, whether to direct interim payments out of Pension Fund until decision is taken to either apply the certificate or to pay benefits.	<b>The Council will ordinarily apply this discretion, but reserves the right to consider each case on its own merits.</b>
A74(2)	Whether to recover from 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 incurred 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 employment.	<b>The Council will ordinarily apply this discretion, but reserves the right to consider each case on its own merits.</b>
A76(2) & (3)	Whether to recover from Fund any financial loss caused by fraudulent offence or grave misconduct of employee (who has left employment because of that fraudulent offence or grave misconduct), or amount of refund if less.	<b>The Council will ordinarily apply this discretion, but reserves the right to consider each case on its own merits.</b>
B31(4)	Decide whether deferred beneficiary meets permanent ill health and reduced likelihood of gainful employment criteria.	<b>The Council will consider each case on its own merits</b>
B31(7)	Decide whether a suspended ill health tier 3 member is permanently incapable of undertaking any gainful employment.	<b>The Council will consider each case on its own merits</b>

### 5.3 Section 3

- **LGPS Regulations 1997 [SI 1997/1612]**
- **The Local Government Pension Scheme (Transitional Provisions) Regulations 2008 [SI 2008/238] [prefix T]**
- **The Local Government Pension Scheme (Administration) Regulations 2008 [SI 2008/239] [prefix A]**
- **LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525] [TP]**
- **The Local Government Pension Scheme Regulations 2013 [SI 2013/2356] [prefix R]**

Discretionary policies in relation to:

Active Welsh councillor members, and councillor members who ceased active membership on or after 1 April 1998, and any other scheme members who ceased active membership on or after 1 April 1998 and before 1 April 2008:

<b>Regulation</b>	<b>Discretionary Power</b>	<b>Swansea Council Policy</b>
R31(2)	Grant application for early payment of deferred benefits on or after age 50 and before age 55.	<b>Generally, the Council will exercise its discretion not to allow such awards in all but very exceptional circumstances. Such cases would be subject to the submission of a robust business case, identifying the true costs of such an award</b>
TPSch 2, para 1(2) & 1(1)(f) & R60	<p>Whether to “switch on” the 85 year rule for a member with deferred benefits voluntarily drawing benefits on or after age 55 and before age 60.</p> <p>Note: TPSch 2, para 2(2) does not reference para 1(1)(f) so strictly speaking there is no requirement to publish a policy under this regulation or R60. However, we understand that this is simply a regulatory omission and the appropriate party should publish a policy accordingly.</p>	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
31(5) & TPSch 2, para 2(1)	Waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>

34(1)(b)	Decide, in the absence 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.	<b>The Council will consider each case on its own merits</b>
71(7)(a)	Consent to a member's former employer assigning to the new employer rights under any SCAVC life assurance policy.	<b>The Council will consider each case on its own merits</b>
88(2)	No right to return of contributions where a member left their employment due to offence of a fraudulent character or grave misconduct in connection with that employment, unless employer directs a total or partial refund is to be made.	<b>The Council will consider each case on its own merits</b>
89(1)&(2)	Employer may deduct contributions from a councillor's pay or reserve forces pay.	<b>The Council will consider each case on its own merits</b>
92	Contribution Equivalent Premium (CEP) in excess of the Certified Amount (CA) recovered from a refund of contributions can be recovered from the Pension Fund. Under revoked regulation 52(1) of the OPS (Contracting-out) Regulations 1996 [SI 1996/1172] and regulation 12 of the OPS (Schemes that were Contracted-out) (No.2) Regulations a CEP must have been paid to the commissioner within 6 months after the date of termination of contracted-out employment, or one month after the Commissioner's notifies the administering Council that a CEP is payable. Following the end of the contracted-out reconciliation exercise, this discretionary policy should be spent entirely as all premiums will have been paid and no further notifications will be issued by the commissioners.	<b>The Council will consider each case on its own merits</b>
111(2)&(5)	Forfeiture of pension rights on issue of Secretary of State's certificate following a relevant offence (a relevant offence is an offence committed in connection with an employment in which the person	<b>The Council will ordinarily apply this discretion, but reserves the right to consider each case on its own merits.</b>



	convicted is a member, and because of which the member left the employment).	
112(1)	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.	<b>The Council will ordinarily apply this discretion, but reserves the right to consider each case on its own merits.</b>
113(2)	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).	<b>The Council will consider each case on its own merits</b>
115(2)&(3)	Recovery from Fund of financial loss caused by employee, or amount of refund if less.	<b>The Council will consider each case on its own merits</b>

#### 5.4 Section 4

- **LGPS Regulation 1995 [SI 1995/1019]**
- **The Local Government Pension Scheme (Transitional Provisions) Regulations 1997 [SI 1997/1613] [prefix TL]**
- **The Local Government Pension Scheme Regulations 1997 {SI 1997/1612} (as amended) [prefix L] • The Local Government Pension Scheme (Administration) Regulations 2008 [SI 2008/239] [prefix A]**
- **LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525] [TP]**
- **The Local Government Pension Scheme Regulations 2013 [SI 2013/2356] [prefix R]**
- **The Local Government Pension Scheme Regulations 1995 [prefix D]**

Discretionary policies in relation to scheme members who ceased active membership before 1 April 1998:

<b>Regulation</b>	<b>Discretionary Power</b>	<b>Swansea Council Policy</b>
TP3(5A)(vi), TL4, L106(1) & D11(2)(c)	Grant application for early payment of deferred benefits on or after age 50 on compassionate grounds. Although the common provisions of the 1997 Transitional provisions regulations do not specify regulation D11(2)(c), the intention was that it should apply to this regulation.	<b>This policy has been approved and published within the Retirement Policy</b>  <b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b>

D10	Decide, in the absence 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.	<b>The Council will consider each case on its own merits</b>
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## 5.5 Section 5

### • The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (as amended) [SI 2006/2914]

Discretionary policies in relation to employees of an employing Council that is defined under regulation 2 of The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (as amended):

Regulation	Discretionary Power	Swansea Council Policy
5	To base redundancy payments on an actual week's pay where this exceeds the statutory week's pay limit.	<b>This policy has been approved and published within the Retirement Policy</b>  <b>The Council will pay according to actual pay.</b>
6	To award lump sum compensation of up to 104 week's pay in cases of redundancy, termination of employment on efficiency grounds, or cessation of a joint appointment.	<b>This policy has been approved and published within the Retirement Policy</b> <b>The Council will apply the statutory redundancy payment according to the regulatory calculator.</b>

## 5.6 Section 6

### • The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 (as amended) [SI 2000/1410]

Discretionary policies in relation to former employees of an employing Council that is a body that is a scheduled body, a designate body, or a body that is deemed to be a scheduled body under the LGPS Regulations 2013 and equivalent predecessor regulations (excluding admitted bodies):

<b>Regulation</b>	<b>Discretionary Power</b>	<b>Swansea Council Policy</b>
21 (4)	How to apportion any surviving spouses or civil partner's annual compensatory added years' payment where the deceased person is survived by more than one spouse or civil partner.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
25 (2)	How it will decide to whom any children's annual compensatory added years payments are to be paid where children's pensions are not payable under the LGPS (because the employee had not joined the LGPS) and, in such a case, how the annual added years will be apportioned amongst the eligible children.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
21 (7)	Whether, in respect of the spouse of a person who ceased employment before 1 April 1998 and where the spouse or civil partner remarries, enters into a new civil partnership or cohabits after 1 April 1998, the normal pension suspension rules should be dis- applied i.e. whether the spouse's or civil partner's annual compensatory added years payments should continue to be paid.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
21 (5)	If, under the preceding decision, the Council's policy is to apply the normal suspension rules, whether the spouse's or civil partner's annual compensatory added years payment should be reinstated after the end of the remarriage, new civil partnership or cohabitation.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>

21(7)	Whether, in respect of the spouse or civil partner of a person who ceased employment before 1 April 1998 and where the spouse or civil partner remarries or cohabits or enters into a civil partnership on or after 1 April 1998 with another person who is also entitled to a spouse's or civil partners annual CAY payment, the normal rule requiring one of them to forego payment whilst the period of marriage, civil partnership or cohabitation lasts, should be dis-applied i.e. whether the spouses' or civil partners' annual CAY payments should continue to be paid to both of them.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
17	To what extent to reduce or suspend the member's annual compensatory added year's payment during any period of re-employment in local government.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>In general, the Council will suspend payment but the Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
19	How to reduce the member's annual compensatory added year's payment following the cessation of a period of re-employment in local government.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>

## 5.7 Section 7

### • The Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 [SI 2011/2954]

Discretionary policies each employing Council may apply in the exercise of its discretionary powers to make any award in respect of leavers, deaths and reductions in pay that occurred post 15 January 2012:

<b>Regulation</b>	<b>Discretionary Power</b>	<b>Swansea Council Policy</b>
3 (1)	Whether to grant an injury allowance following reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
3 (4) and 8	Mandatory written policy Amount of injury allowance following reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
3 (2)	Determine whether person continues to be entitled to an injury allowance awarded under regulation 3(1) (reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job).	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
4 (1)	Whether to grant an injury allowance following cessation of employment as a result of permanent incapacity caused by sustaining an injury or contracting a disease in the course of carrying out duties of the job.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>

4 (3) and 8	Amount of injury allowance following cessation of employment as a result of permanent incapacity caused by sustaining an injury or contracting a disease in the course of carrying out duties of the job.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
4 (2)	Determine whether person continues to be entitled to an injury allowance awarded under regulation 4(1) (loss of employment through permanent incapacity).	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
4 (5)	Whether to suspend or discontinue injury allowance awarded under regulation 4(1) (loss of employment through permanent incapacity) if person secures paid employment for not less than 30 hours per week for a period of not less than 12 months.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
6 (1)	Whether to grant an injury allowance following cessation of employment with entitlement to immediate LGPS pension where a regulation 3 payment (reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job) was being made at date of cessation of employment but regulation 4 (loss of employment through permanent incapacity) does not apply.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
6 (1)	Determine amount of any injury allowance to be paid under regulation 6(1) (payment	<b>This policy has been approved and published</b>

	of injury allowance following the cessation of employment).	<p><b>within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
6 (2)	Determine whether and when to cease payment of an injury allowance payable under regulation 6(1) (payment of injury allowance following the cessation of employment).	<p><b>This policy has been approved and published within the Retirement Policy.</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
7 (1)	Whether to grant an injury allowance to the spouse, civil partner, cohabiting partner (the requirement to nominate a co-habiting partner has ceased entirely under these regulations due to the outcome of the Elmes v Essex high court judgement) or dependent of an employee who dies as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job.	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
7 (2) and 8	Determine amount of any injury allowance to be paid to the spouse, civil partner, nominated co-habiting partner (for awards made on or after 1 April 2008 the requirement to nominate a co-habiting partner has ceased due to the outcome of the Elmes v Essex high court judgement) or dependent of an employee under regulation 7(1) (employee who dies as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job).	<p><b>This policy has been approved and published within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
7 (3)	Determine whether and when to cease payment of an injury allowance payable under regulation 7(1) (employee who dies	<b>This policy has been approved and published</b>

	as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job).	<p><b>within the Retirement Policy</b></p> <p><b>The Council will consider each case on its own merits and may only agree where there is a robust business case justifying the cost</b></p>
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**5.8 Section 8  
The Local Government Discretionary Payments Regulations 1996 (as amended) [SI 1996/1680]**

Discretionary policies which relate to injury allowances, apply only in respect of leavers, deaths and reductions in pay that occurred before 16 January 2012; and which relate to gratuities, apply only in respect of leavers and deaths that occurred before 16 January 2012:

<b>Regulation</b>	<b>Discretionary Power</b>	<b>Swansea Council policy</b>
34(4)	Suspend or discontinue injury allowance if person becomes capable of working again.	<b>The Council will consider each case on its own merits</b>
35(3) &38	Amount of injury allowance following reduction in pay after sustaining an injury or contracting a disease as a result of anything required to do in carrying out duties of job.	<b>The Council will consider each case on its own merits</b>
36	Amount and duration of injury allowance following cessation of employment where regulation 35 payment (injury allowance following reduction in pay after sustaining an injury or contracting a disease as a result of anything required to do in carrying out duties of job) was being made but regulation 34 (injury allowance following loss of employment through permanent incapacity after sustaining an injury or contracting a disease as a result of anything required to do in carrying out duties of job) does not apply.	<b>The Council will consider each case on its own merits</b>
37(3),37(6) & 38	Amount and duration of a dependant's, spouse's or civil partner's injury allowance following death of employee after sustaining an injury or contracting a disease as a result of anything required to do in carrying out duties of job.	<b>The Council will consider each case on its own merits</b>



37(4)	Reinstate spouse's or civil partner's injury allowance following earlier cessation due to cohabitation, remarriage or registration of a new civil partnership.	<b>The Council will consider each case on its own merits</b>
41(4)	Amount of gratuity payable to surviving dependant, spouse or civil partner where amount of annuity payments fall short of their capital value at date of award. 41(4)	<b>The Council will consider each case on its own merits</b>
42(4)	Amount of gratuity payable to surviving dependant, spouse or civil partner where amount of redundancy annuity payments fall short of their capital value at date of award.	<b>The Council will consider each case on its own merits</b>
42(7)	Amount of gratuity payable to any other surviving dependant, spouse or civil partner where amount of annuity payments paid under 42(4) fall short of their capital value at date of award. 42(7)	<b>The Council will consider each case on its own merits</b>
46A	Formulate and keep under review the injury allowance and gratuity policies to be operated by the Council.	<b>The Council will consider each case on its own merits</b>

<b>Version Number</b>	<b>Details of Change</b>	<b>Date</b>
1.0	Full review and update of the Policy, including addition of all previous mandatory and non-mandatory discretions.	July 2021
EARLIEST REVIEW: This policy must remain under constant review due to frequent changes to technical guidance.		December 2021