

Appendix 2

Discretions Policy

The Exit Cap Regulations which came into force on 4 November 2020 have been revoked.

Further exit pay and pension reforms are expected to be re-introduced (timing not known). Any exit payments will be in line with any regulations and caps in force at the time.

| No. | Area | Regulation | Discretion | Policy Summary | Explanation |
|-----|--|---|--|---|---|
| 1 | Whether to vary an employee's contribution band | Regulations 9 and 10 Pensions Regulations | Members must pay pension contributions at the appropriate rate set on 1st April or the first day of active membership, if later. The employer may vary the contribution rate if there is a change in employment or a material change that affects the member's pensionable pay. | Spelthorne Borough Council may vary the employee's contribution rate if there is a material change and each case will be considered on its merits | Contribution bands are set on 1st April but the employer may change them if a member changes jobs or has a material pay increase / decrease. |
| 2 | Whether to increase assumed pensionable pay in certain specific circumstances | Regulation 21(5), 21(5A) and 21(5B) Pension Regulations | If a member is absent as a result of illness, child related leave or reserve forces leave their pension benefits may be based on assumed pensionable pay (APP). If, in the employer's opinion, the member's APP is materially lower than their pay in the twelve months preceding the absence they can either include (1) a "regular" lump sum received during that period or (2) substitute a higher pensionable pay having regard for their earnings in that period. | Spelthorne Borough Council may increase assumed pensionable pay and each case will be considered on its merits. | If a member's APP is lower than their regular pensionable pay the employer can either substitute a higher rate of pay, based on the pay they received in the year before the absence began, or include regular lump sums received during that period. |
| 3 | Funding of Additional Pension Contributions | Regulations 16(2)(e) and 16(4)(d) Pension Regulations | Whether to fund, in whole or in part, a shared cost additional pension contributions (SCAPC) on behalf of an active member by regular contributions (Regulation 16 (2)(e)) or by lump sum (Regulation 16(4)(d)). NOTE: The amount of additional pension that may be credited to an active member's pension accounts may not exceed the overall additional pension limit of £7316 (April 2021/22 and uplifted annually). | Spelthorne Borough Council will only contribute towards APCs in exceptional circumstances. | The employing authority can choose to pay additional pension contributions on behalf of active employees. |
| 4 | Shared Cost Additional Voluntary Contributions (SCAVCs) | Regulation 17(1) and Schedule 1 (definition of SCAVC) Pension Regulations | Whether to contribute towards a Shared Cost Additional Contribution arrangement. Pre2014 SCAVCs also fall under Regulation 17 by virtue of Regulation 15(2A) Transitional Regulations. | Spelthorne Borough Council will pay SCAVC contributions where an employee has elected to pay AVCs by salary sacrifice. The amount of these employer SCAVC contributions will not exceed the amount of salary sacrificed by the employee. This discretion is subject to the employee meeting the conditions for acceptance into the salary sacrifice shared cost AVC scheme and may be withdrawn at any time | An employer can choose to contribute towards a SCAVC. |
| 5 | Whether to grant early payment of pension on compassionate grounds (pre-1st April 1998 leavers) | Regulation D11(2)(c) of 1995 Regulations | Whether to agree to early payment of pension benefits from age 50 on compassionate grounds. The employer should note that pension benefits paid before age 55 may attract an unauthorised payments surcharge and they may have to pay a strain cost because the pension benefits cannot be reduced. | Spelthorne Borough Council will only contribute to early payment of pension in exceptional circumstances. | The employer may agree to payment from age 50, but they may incur an unauthorised payments surcharge and/or a capital cost. |

| No. | Area | Regulation | Discretion | Policy Summary | Explanation |
|-----|---|---|--|--|---|
| 6 | Flexible Retirement | Regulation 30(6), Pensions Regulations. Regulations 11(2) and (3) of Transitional Regulations | <p>Whether to agree to an employee aged 55 or over reducing their hours of work or their grade so that they may receive all or some of their retirement pension while still employed.</p> <p>Whether, in addition to any pre -1st April 2008 pension benefits which the member must draw, to permit the member to draw; (a) all, part or none of benefits accrued between 1st April 2008 and 31st March 2014 and (b) all, part or none of the pension benefits built up after 31st March 2014</p> | <p>Spelthorne Borough Council will only award flexible retirement in exceptional circumstances.</p> <p>Decisions are delegated to Management Team for cases up to Group Head and to Corporate Policy and Resources Committee for members of Management Team.</p> | <p>The employing authority can agree to an employee aged 55 or over drawing all or some of their pension and continuing to work in the same employment on reduced hours, pay or grade.</p> <p>The employer should note that granting consent would trigger the 85-year rule and may require a capital payment.</p> |
| 7 | Switching on the 85-year rule | Schedule 2 of the Transitional Regulations | Whether to switch on the 85-year rule under Regulation 1(2) and 1(3) of Schedule 2 of the Transitional Regulations. | Spelthorne Borough Council will only switch on the 85-year rule in exceptional circumstances. | The employer can agree to switch on the 85 -year rule, which may mitigate reductions that would, otherwise, apply but the employer may have to make a capital payment. |
| 8 | Waiving of Actuarial Reduction to Pensions | Regulation 30(8), Pensions Regulations. Schedule 2 of Transitional Regulations | <p>(Post 2014) Whether to agree to waive, in whole or in part, any actuarial reduction that would otherwise apply to the pension paid to a former employee aged 55 or over under 30(5) or 30(6) [flexible retirement] using regulation 30(8) of the Pension Regulations.</p> <p>(Pre 2014) Whether to waive actuarial reductions entirely under 30(5) or 30A(5) [deferred pensioner members] of the Benefits Regulations and Regulation 2(1), of Schedule 2 of the Transitional Regulations.</p> | <p>Spelthorne Borough Council will only waive actuarial reductions in exceptional circumstances.</p> <p>Decisions are delegated to the Chief Executive in consultation with the Leader for cases below Management Team and to Corporate Policy and Resources Committee for cases at Management Team.</p> | The employing authority can agree to waive reductions to the pension of a member aged 55 or over who has left employment or been granted flexible retirement. The employer may be required to make a capital payment if they do so. |
| 9 | Award of Additional Pension | Regulation 31, Pensions Regulations | <p>To award additional pension at full cost to the employer:</p> <p>(1)an active member; or</p> <p>(2)a former active member who was dismissed by reason of redundancy, business efficiency or mutual consent on grounds of business efficiency.</p> <p>NOTE: Any additional pension awarded (including any additional pension purchased by the employer or the member under Regulation 16 of the Pensions Regulations) may not exceed the overall additional pension limit of £7316 (April 2021/22 and uplifted annually).</p> <p>Additionally, in the case of a member falling within (2) above, the resolution to award additional pension must be made within 6 months from the date on which the employment ended.</p> | <p>Spelthorne Borough Council will only award additional pension in exceptional circumstances.</p> <p>Decisions are delegated to the Chief Executive in consultation with the Leader for cases below Management Team and to Corporate Policy and Resources Committee for cases at Management Team.</p> | <p>This means the employing authority has the power to award additional pension to an active member.</p> <p>The employer can also award additional pension to members who leave on the grounds of redundancy, business efficiency or mutual consent on grounds to business efficiency - up to six months after termination.</p> <p>The employer would be required to make a capital payment (in addition to the cost of purchase) if the member retired early on any grounds apart from permanent ill-health.</p> |

| No. | Area | Regulation | Discretion | Policy Summary | Explanation |
|-----|--|--|--|--|---|
| 10 | Aggregation of Benefits: Concurrent Employments | Regulation 22 (7)(b), Pensions Regulations | Whether to allow an active member with concurrent employments, who ceases an employment with an entitlement to a deferred pension, more than 12 months to elect not to have their deferred pension aggregated with their active member's pension account. | Spelthorne Borough Council will only extend the deadline in exceptional circumstances. | The employing authority can allow a member who leaves one of two (or more) employments - held at the same time - longer than 12 months to elect not to combine the deferred pension with the ongoing active pension. |
| 11 | Aggregation of Benefits: Deferred Member becoming Active Member | Regulation 22 (8)(b), Pensions Regulations | Whether to allow a deferred member who becomes an active member longer than 12 months in which to elect not to have their deferred benefits aggregated with the benefits in their active member's pension account. | Spelthorne Borough Council will only extend the deadline in exceptional circumstances. | The benefits are usually aggregated (joined-up) unless the member elects to keep them separate. The employing authority can agree to a former member having longer than 12 months to choose not to combine their pensions. |
| 12 | Aggregation of Benefits: Deferred Member becoming Active Member (pre-2014 membership) | Regulation 10(6)(b) Transitional Regulations | Whether to allow a deferred member who becomes an active member longer than 12 months in which to elect for their pre-2014 deferred benefits to be aggregated with their active member's pension account (but, technically, they would lose the final salary link if they have not made an election under 5(5) Transitional Regulations within twelve months of becoming an active member of 2013 scheme). | Spelthorne Borough Council will only extend the deadline in exceptional circumstances. | The pre-2014 preserved benefits will be kept separate unless the member makes a positive election to aggregate them. The employing authority can agree to a former member having longer than 12 months to choose to combine their pensions. |
| 13 | inward Transfer of Pension Rights | Regulation 100, Pensions Regulations | Whether to allow an employee who has been an active member in their current employment for more than 12 months to ask for the transfer of certain accrued pension rights to be considered. NOTE: Regulation 100(6) of the Pensions Regulations requires that a request must be made within 12 months beginning with the date on which the member first became an active member in an employment or such longer period as the employer and the Administering Authority may allow. The discretion is, therefore, only exercisable if both the Employing Authority and the Administering Authority agree. | Spelthorne Borough Council will only extend the deadline in exceptional circumstances. | Members who have been in the pension scheme for more than twelve months can ask for a transfer -in to be considered - but it will only be investigated if both the employing authority and the administering authority agreed. |
| 14 | Redundancy Payments. | Regulation 5, Compensation Regulations 2006 | Whether to base redundancy pay on actual pay where actual pay exceeds the statutory maximum under the Employment Rights Act 1996 (£643 from April 2023). | Spelthorne Borough Council may pay statutory improved redundancy payments and each case will be considered on its merits and any limits under Regulations. | The employer can base the calculation of a week's pay for redundancy on actual pay if it is higher than the statutory limit (currently £643 from 6 April 2023). Any calculation will be subject to the new and potential Regulations detailed in Regulation 6 and may be reduced accordingly. |

| No. | Area | Regulation | Discretion | Policy Summary | Explanation |
|-----|--------------------------------------|---|--|--|---|
| 15 | Compensation for loss of Employment. | Regulation 6, Compensation Regulations 2006 | <p>Whether to pay compensation to a person whose employment ceases</p> <ul style="list-style-type: none"> - by reason of redundancy; - in the interests of the efficient exercise of the employing authority's functions; or <p>in the case of a joint appointment, because the other holder of the appointment leaves.</p> <p>NOTE: Compensation may not be paid under this Regulation if: - a person's period of membership of the Pension Scheme has been increased under Regulation 12 of the Benefits Regulations 2007 (see above); or - a person has been awarded an additional pension under Regulation 13 of the Benefits Regulations 2007 (see above).</p> <p>In all cases the amount of compensation paid under this Regulation may not exceed 104 week's pay less any redundancy payment payable.</p> <p>In all cases the decision to pay compensation under this Regulation must be made no later than 6 months after the date of termination of the person's employment.</p> | <p>Spelthorne Borough Council will only award compensation for loss of employment in exceptional circumstances.</p> <p>Payments to be agreed by the Chief Executive in consultation with the Leader or the Chief Financial Officer in consultation with the Leader as appropriate.</p> <p>Payments to be agreed by Council for the Chief Executive, Management Team and Statutory Officers.</p> <p>Redundancy payments to be at twice statutory minimum using Government redundancy calculator (to maximum of 60 weeks). To be inclusive of statutory redundancy payments. The policy will be kept under review. The Council retains the right to change the policy at any time. No added years.</p> <p>All redundancy payments to be calculated on the employee's actual week's pay (not including allowances unless agreed as detailed above).</p> <p>Redundancy payments as a result of the Transfer of Undertakings Protection of Employment Regulations (TUPE)</p> <p>Other redundancy payments may apply as a result of a TUPE transfer.</p> <p>Efficiency of the Service a one off lump sum payment, based on the merits of each individual case, up to the maximum of 104 weeks' pay. No added years</p> <p>The Exit Cap Regulations which came into force on 4 November 2020 have been revoked.</p> <p>Further exit pay and pension reforms are expected to be re-introduced (timing not known). Any exit payments with be in line with any regulations and caps in force at the time.</p> | <p>The employing authority can make an award of up to 104 weeks' pay (less any statutory redundancy payment payable). Subject to the maximum regulatory statutory maximum.</p> <p>The Exit Cap Regulations which came into force on 4 November 2020 have been revoked.</p> <p>Further exit pay and pension reforms are expected to be re-introduced (timing not known). Any exit payments with be in line with any regulations and caps in force at the time.</p> |

| No. | Area | Regulation | Discretion | Policy Summary | Explanation |
|-----|-------------------|--|---|---|--|
| 16 | Injury Allowances | 14(1) of the Compensation Regulations 2011 | <p>Scheme employers (LGPS employers), apart from admission bodies, must formulate, publish and keep under review a policy on:</p> <p>1. whether to make an injury award to those who sustain an injury or contract a disease as a result of anything they were required to do in performing the duties of their job and in consequence of which they:</p> <ul style="list-style-type: none"> - suffer a reduction in remuneration, or - cease to be employed as a result of an incapacity which is likely to be permanent and which was caused by the injury or disease, or - die leaving a surviving spouse, civil partner or dependent, and <p>2. if the Scheme employer has a policy to make such payments, how it will determine the amount of injury allowance to be paid?</p> | Spelthorne Borough Council will only pay injury allowances in exceptional circumstances | An employing authority may award an injury allowance to employees who contract an injury or illness related to their employment. |

This Policy is effective from 27 February 2020. The Policy will be kept under review. Any future changes to the policy will come into effect one month after the amended policy is agreed and published. The Council retains the right to change the Policy at any time.

Reviewed by Council 22 February 2024