

SUBJECT:	Local Government Pension Scheme Discretionary Policy Statement		
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1. Purpose of Report

- 1.1 This report seeks approval of the discretionary policies that can be exercised by the Councils, as Employers within the Local Government Pension Scheme (LGPS).
- 1.2 This report was considered by the Joint Staffing Committee (JSC) meeting held on 3 July. The agenda and report for CDC Full Council will be published before the JSC meeting. As such, an update on the recommendations of the JSC regarding the discretions, set out below, will be reported at the meeting.

RECOMMENDATION TO COUNCIL

To approve the Local Government Pension Scheme Discretionary Policy Statement as set out in Appendix 1.

2. Summary

- 2.1 All qualifying local government employees are entitled to be members of the statutory Local Government Pension Scheme. The Councils do not have the ability to opt out of this Scheme and / or alter the main Scheme provisions. The Councils do however have a few minor areas of discretion.
- 2.2 By virtue of Regulation 60 of the LGPS Regulations 2013, and paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, the Councils are required to have written policies on the following matters:

- Additional Annual Pension – Regulation 31
- Shared Cost Additional Pension Contribution (SCAPC) – Regulation 16(2)(e) and 16(4)(d)
- Flexible Retirement (aged 55 and over) – Regulation 30(6)
- 85 Year Rule Switch on – LGPS (Transitional Provisions, Savings & Amendment) Regulations 2014 Schedule 2
- Waiving Actuarial Reductions on Voluntary Retirement – Various Regulations.

2.3 Additional discretionary policies under LGPS Regulations 2013 are also recommended for the following:

- Transfers in to Fund – Regulation 100(6)
- Aggregation of Deferred Benefits – Regulation 22(7) & (8).

2.4 Written policies are also required in respect of other legislation as follows:

- Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011.
- The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
 - Regulation 5 – Redundancy Payments to be based on Actual Pay
 - Regulation 6 – Discretionary Termination Payments.
- Deferred Benefits – Ceased active membership between 1st April 2008 and 31st March 2014 – Regulation 66 of the LGPS (Administration) Regulations 2008.

2.5 Additional discretionary policies are also recommended for the following:

- Deferred Benefits – Ceased active membership prior to 1st April 1998 - Regulation D11(2)c LGPS Regulations 1995.

3. Background to the Local Government Pension Scheme

3.1 All qualifying local government employees are entitled to be members of the statutory Local Government Pension Scheme. The Councils do not have the ability to opt out of this Scheme and / or alter the main Scheme provisions. The Councils do however have a few minor areas of discretion.

3.2 Over the years the Local Government Pension Scheme has changed. In particular significant changes occurred from:

- 1 April 2008 – The pension accrual rate reduced from 1/80th to 1/60th, and employee contribution rates became tiered according to FTE earnings.
- 1 April 2014 - The scheme changed from a final salary scheme to a Career Average Revalued Earnings (CARE) basis, and employee contribution rates became tiered according to actual earnings.

3.3 The benefits accruing to Scheme members prior to Scheme changes are normally protected. Therefore policies have to be made to cover entitlement accrued under multiple variations of the Pension Scheme rules.

4. Reasons for Recommendations

4.1 Due to the changes to the Local Government Pension Scheme in April 2014, it is necessary to update the Councils' Discretionary Policy Statements to reflect the current version of the Pension Scheme.

4.2 The discretions proposed aim to minimise the cost to the Councils by not adopting discretions that will result in additional costs, and allow flexibility to Scheme members where this is at no cost.

4.3 This is in line with the existing approach adopted by the Councils, and thus this report essentially reaffirms the current discretions, but with the new legislative references.

4.4 Under the LGPS regulations, councils are required to formulate policies that:

- do not lead to a loss in confidence in the Public Service (this is also explicitly stated in the Compensation discretions), and
- are affordable.

4.5 Furthermore, in order not to be seen to fetter in any way Councils' discretions, the policies should state that each case will be treated fairly. The policy should clearly state the basis and circumstances, on which the decision will be made. It is not recommended to state "case by case basis". If the basis is clearly stated this helps satisfy the "no loss of confidence" clause within the appropriate regulations.

4.6 Whilst comparison with other local authorities may assist with policy decisions, the discretionary aspects of the LGPS are specifically designed to allow each individual employer the flexibility to assist with people management within their own circumstances.

5. Local Government Pension Scheme Regulations 2013 and LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 – Required Policies

Additional Annual Pension – Regulation 31

- 5.1 The ability, at full cost to the employer, to [grant extra annual pension](#) – currently up to £6,500 per annum – to an active Scheme member or within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency.
- 5.2 This option does not require a minimum length of service, and could be used as a recruitment tool, as well as at employment termination.
- 5.3 This option is now the only one available to local authorities to grant additional pension as formally Compensatory Added Years (to April 2006) and subsequently Augmentation (to April 2014) have now been removed from the regulations.
- 5.4 The Authority's do not currently have this as an active discretion.

Proposal

The Council does not adopt this discretion at this time.

Shared Cost Additional Pension Contribution (SCAPC) – Regulation 16(2)(e) and 16(4)(d)

- 5.5 Where an active Scheme member wishes to [purchase extra annual pension](#) - currently up to £6,500 per annum - by making Additional Pension Contributions (APCs), the Councils may voluntarily contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC).

Proposal

The Council does not adopt this discretion at this time.

Flexible Retirement (aged 55 and over) – Regulation 30(6) etc

- 5.6 Whether to [permit flexible retirement](#) for staff aged 55 or over who, with the agreement of the employer, reduce their working hours or grade
- Regulation 30(6)

AND if so, as part of the agreement to permit flexible retirement:

Whether in addition to the benefits the member has accrued prior to 1st April 2008 (which the member must draw), [to permit the member to choose to:](#)

- draw all, part, or none of the pension benefits they accrued after 31st March 2008 and before 1st April 2014, and / or
 - draw all, part, or none of the pension benefits they accrued after 31st March 2014.
- Regulation 11(2) and 11(3) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

AND

[Whether to waive, in whole or part, any actuarial reduction](#) which would otherwise be applied to the benefits taken on flexible retirement before Normal Pension Age (NPA).

- Regulation 3(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation 18(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and Regulations 30(6) and 30(8) of the LGPS Regulations 2013.

Waiving any actuarial reduction will result in a cost to the employer.

Proposal

The Council elects to exercise this discretion in accordance with the Council's Flexible Retirement Policy and permits the member to:

- draw all, part, or none of the benefits accrued after 31st March 2008 and before 1st April 2014, and
- draw all, part, or none of the pension benefits accrued after 31st March 2014.

The Council is unlikely to waive any actuarial reduction.

However the Council elects to review each application fairly based on its circumstances and merits having regard to the Service need, compassionate grounds (as applicable) and costs.

Any application to waive actuarial reduction to be subject to the consent of the Head of Paid Service, following consultation with the relevant Joint Staffing Committee Co-Chairman.

85 Year Rule Switch on -LGPS (Transitional Provisions, Savings & Amendments) Regulations 2014 Schedule 2

- 5.7 Under previous pension scheme rules, if a members age (at the date they drew their benefits) plus the number of years they had been scheme members added up to 85 or more they were entitled to claim a full pension (ie the pension was not actuarially reduced if taken prior to normal retirement age).
- 5.8 Whether, as the 85 year rule does not (other than on flexible retirement) automatically fully apply to members who would otherwise be subject to it and who choose to [voluntarily draw their benefits on or after age 55 and before age 60, to switch the 85 year rule back on for such members.](#)
- Paragraph 1(1)(c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

Where the employer does not do so then:

- a) If the member [has already met the 85 year rule](#), the member's benefits are to be reduced in accordance with the actuarial guidance issued by the Secretary of State (with benefits from any pre 1 April 2008 membership for members who will not be 60 or more on 31 March 2016, and benefits from any pre 1 April 2016 membership for members who will be 60 or more on 31 March 2016, which would not normally have been subject to actuarial reduction nonetheless being subject to a reduction calculated by reference to the period between the date the benefits are drawn and age 60).
- b) If the member [has not already met the 85 year rule](#), the member's benefits are to be reduced in accordance with the actuarial guidance issued by the Secretary of State (with the reduction on the part of the members benefits subject to the 85 year rule being calculated by reference to the period between the date the benefits are drawn and age 60, or the date of attaining the 85 year rule, whichever is the later).
- c) The Councils can exercise [a discretion to waive actuarial reductions](#) (at a cost to the Councils) – See next section.

The application of the 85 rule for benefits drawn early adds additional costs to the Pension Fund which are included in the Triennial revaluations, whilst those incurred prior to age 60 are payable immediately by the employer, the period between 60 and normal pension age is a "hidden" cost.

Any decision by the Councils to switch back on the 85 year rule would need to be justifiable and affordable.

Proposal

The Council does not adopt the discretion to switch the 85 year rule back on at this time.

Waiving Actuarial Reductions on Voluntary Retirement – Various Regulations

5.9 For active members **voluntarily** retiring on or after age 55 and before Normal Pension Age, who elect to immediately draw benefits, and for deferred members and suspended tier 3 ill health pensioners who elect to draw benefits (other than on ill health grounds) on or after age 55 and before Normal Pension Age, and who

a) were not members of the LGPS before 1 October 2006, whether to :

Waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April 2014,

and / or

waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2014.

b) were members of the LGPS before 1 October 2006 and who will be 60 or more on 31 March 2016, whether to:

Waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April 2016,

and / or

waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2016.

c) were members of the LGPS before 1 October 2006 and who will not be 60 or more on 31 March 2016, and will not attain age 60 between 1 April 2016 and 31 March 2020 whether to:

Waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April 2014,

and / or

waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2014.

- d) were members of the LGPS before 1 October 2006 and who will not be 60 or more on 31 March 2016 but will attain age 60 between 1 April 2016 and 31 March 2020 whether to:

Waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April 2020,

and / or

waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2020.

Waiving any actuarial reduction will result in a cost to the employer.

Proposal

The Council is unlikely to waive any actuarial reduction.

However the Council elects to review each application fairly based on its circumstances and merits having regard to the Service need, compassionate grounds (as applicable) and costs.

Any application to waive actuarial reduction to be subject to the consent of the Head of Paid Service, following consultation with the relevant Joint Staffing Committee Co-Chairman.

6. Local Government Pension Scheme Regulations 2013 – Recommended Policies

Transfers in to Fund – Regulation 100(6)

- 6.1 Whether, with the agreement of the Pension Fund administering authority, to permit a Scheme member to elect to transfer other pension rights into the LGPS if the member has not made such an election within 12 months of joining the LGPS.
- 6.2 It should be noted that inward transfer of pension rights could lead to additional costs to the employer. Both the employer and the Administering Body must agree to the transfer for it to be permitted.

Proposal

The Council will decline any request to transfer in pension rights after the 12 month limit has been exceeded, unless there are extenuating circumstances. Any request for extenuating circumstances will be subject to the consent of the Head of Paid Service, following consultation with the relevant Joint Staffing Committee Co-Chairman.

Aggregation of Deferred Benefits – Regulation 22(7) & (8)

- 6.3 Whether to extend the 12 month time limit within which a Scheme member who has a deferred LGPS benefit in England & Wales following the cessation of employment (or cessation of a concurrent employment) may elect not to have the deferred benefits aggregated with their new LGPS employment (or ongoing concurrent LGPS employment) if the member has not made an election to retain separate benefits within 12 months of commencing membership of the LGPS in the new employment (or within 12 months of ceasing the concurrent membership).

Proposal

The Council will decline any request to extend the 12 month deadline for non-aggregation of deferred pensions into a concurrent or new LGPS employment unless there are extenuating circumstances. Any request for extenuating circumstances will be subject to the consent of the Head of Paid Service, following consultation with the Joint Staffing Committee Co-Chairman.

7. Local Government Pension Scheme – Other Required Policies

Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011

- 7.1 Under the above regulations employers within the LGPS must formulate, publish and keep under review a policy on:
- a) 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:
 - 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
 - b) If the employer has a policy to make such payments, how it will determine the amount of injury allowance to be paid.

Proposal

The Council elects not to have an Injury Allowance scheme at this time.

The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

- 7.2 The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 contains provisions relating to discretionary payments that can be made to persons engaged in local government employment.
- 7.3 The following two discretions are open to local authorities.

Regulation 5 – Redundancy Payments to be based on Actual Pay

- (1) Compensation may be paid in accordance with this regulation to a person who is entitled to a redundancy payment under the 1996 Act on the termination of their employment.
- (2) The amount which may be paid must not be more than the difference between -
 - (a) the redundancy payment to which he is entitled under Part 11 of the 1996 Act; and
 - (b) the payment to which he would have been entitled if there had been no limit on the amount of a week's pay used in the calculation of his redundancy payment.

Proposal

The Council adopts this discretion in accordance with its current Redundancy Policy stating that the weekly pay limit shall not apply.

Regulation 6 - Discretionary Termination Payments

- (1) This regulation applies where a person
 - (a) is, or is eligible to be, a member of the LGPS,
 - (b) ceases to hold their employment on the grounds of redundancy or in the interests of the efficient exercise of the employer's functions, and
 - (c) does not receive an award of additional pension under Regulation 31 of the LGPS Regulations 2013.

- (2) Where this regulation applies, the employing authority may, not later than six months after the termination date, decide to pay compensation under this regulation and in that event shall, as soon as reasonably practicable after the decision, notify the person in whose favour it has been made, giving details of the amount of the compensation.

- (3) The amount of compensation (inclusive of any redundancy payment) must not exceed 104 weeks' pay.

- (4) Chapter 2 (a week's pay) of Part 14 (Interpretation) of the 1996 Act shall apply for the purpose of calculating a person's week's pay as it applies for the purpose of calculating redundancy payments but -
 - (a) with the substitution for references to the calculation date of references to the termination date; and
 - (b) without the limit on a week's pay imposed by section 227 of that Act.

- (5) If the person in whose favour a decision under paragraph (2) has been made receives a redundancy payment under Part 11 of the 1996 Act or compensation under regulation 5 of these Regulations, the equivalent amount shall be deducted from the compensation otherwise payable to him under this regulation.

- (6) Compensation under this regulation shall be paid by the employing authority as soon as practicable after the decision under paragraph (2).

- (7) The compensation shall be payable in the form of a lump sum.

Proposal

The Council shall exercise this discretion in exceptional or extenuating circumstances only.

Each case will be considered fairly, on its merits and subject to the consent of the Head of Paid Service, following consultation with the relevant Joint Staffing Committee Co-Chairman, ensuring no serious loss in confidence in the Public Service and that any payment is affordable.

Deferred Benefits – Ceased active membership between 1st April 2008 and 31st March 14

- 7.4 By virtue of Regulation 66 of the LGPS (Administration) Regulations 2008 the Authority is required to prepare and publish a policy on the following discretions.
- 1) Whether to grant applications for the early payment of deferred pension benefits on or after age 55 and before 60 - Regulation 30(2) LGPS 2007.
 - 2) Whether, [on compassionate grounds](#), to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65 - Regulation 30(5) LGPS 2007.
 - 3) Whether to grant applications for the early payment of a suspended tier 3 ill health pension on or after age 55 and before age 60 - Regulation 30A(3) LGPS 2007.
 - 4) Whether, [on compassionate grounds](#), to waive any actuarial reduction that would normally be applied to any suspended tier 3 ill health pension benefits which are brought back into payment before age 65 - Regulation 30A(5) LGPS 2007.
- 7.5 Permitting early application of deferred pensions on the basis of 1) & 3) above incur no direct costs to the employer, subject to 85 year rule switch on not being applied.
- 7.6 Waiving of actuarial reductions for early release of pension will result in a pension strain cost immediately payable by the employer.

Proposal

The Council adopts the discretion to grant early release of deferred pension. The Council is unlikely to waive any actuarial reduction.

However the Council elects to review each application fairly based on its circumstances and merits having regard to compassionate grounds (as applicable) and costs.

Any application to waive actuarial reduction to be subject to the consent of the Head of Paid Service, following consultation with the relevant Joint Staffing Committee Co-Chairman.

8. Local Government Pension Scheme – Other Recommended Policies

**Deferred Benefits – Ceased active membership prior to 1st April 1998
– Regulation D11(2)c LGPS Regulations 1995**

- 8.1 The ability to grant, [on compassionate grounds](#) only, the early payment of deferred pension benefits on or after age 50 and before 65.
- 8.2 Each application will depend on the individual circumstances as to whether actuarial reductions would apply or a pension strain incurred.

Proposal

The Council adopts the discretion to grant early release of deferred pension on compassionate grounds.

The Council is unlikely to waive any actuarial reduction.

However the Council elects to review each application fairly based on its circumstances and merits having regard to compassionate grounds (as applicable) and costs.

Any application to waive actuarial reduction to be subject to the consent of the Head of Paid Service, following consultation with the relevant Joint Staffing Committee Co-Chairman.

9. Consultation

- 9.1 Unison have been informally consulted. However this policy confers no formal contractual rights to employees.

10. Options

- 10.1 The discretionary aspect of the LGPS is specifically designed to allow each individual employer the flexibility to assist with people management within their own circumstances. The Councils may therefore agree different discretions to those proposed in the report.
- 10.2 The Councils are also able to not agree policies in some areas. However it is recommended that policies are agreed for all areas to provide clarity and consistency.

11. Corporate Implications

- 11.1 Depending on the discretions agreed, there may be an additional cost to the Councils. However the proposals included in this report minimise the cost.
- 11.2 The Councils must have proper regard to the extent to which the exercise of these discretions could lead to a loss of confidence in Public Service, they must be workable, affordable and reasonable, be fairly applied and have regard to foreseeable costs.

12. Links to Council Policy Objectives

- 12.1 This policy relates to delivering cost effective, customer focused services. In particular treating staff fairly, in order to attract, retain and develop dedicated staff.

13. Next Step

- 13.1 If agreed by the Joint Staffing Committee, the Discretionary Policy Statement will be presented to the respective Full Councils for formal approval.

Background Papers:	None
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