

FALKIRK COUNCIL

**Subject: LOCAL GOVERNMENT PENSION SCHEME –
EMPLOYER DISCRETIONS**
Meeting: SPECIAL EXECUTIVE
Date: 9 JUNE 2015
**Authors: CHIEF FINANCE OFFICER AND
DIRECTOR OF CORPORATE & NEIGHBOURHOOD SERVICES**

1. INTRODUCTION

- 1.1 The purpose of this report is to seek Committee approval for the adoption of certain discretionary policy statements which employers are required to put in place under the terms of the recently amended Local Government Pension Scheme (LGPS).
- 1.2 The discretionary policy must be decided and published by no later than 30th June 2015.

2. BACKGROUND

- 2.1 Falkirk Council administers the pension scheme arrangements covering employees of Falkirk Council, and the employees of Stirling and Clackmannanshire Councils, Falkirk Community Trust, the Scottish Environment Protection Agency, the Scottish Children's Reporter Administration and around 30 other smaller non-profit making organisations. There are currently around 14,000 active members and 8,500 pensioner members.
- 2.2 A new version of the LGPS has been introduced with effect from 1st April 2015 and applies to all existing active members on 1st April 2015 and to all new members joining thereafter.
- 2.3 The main changes to the scheme are:
- Pension built up from 1 April 2015 will be based on a career average, rather than the final salary;
 - Normal Pension Age will be State Pension Age (with a minimum of age 65);
 - Pension builds up at 1/49th of pensionable pay, previously 1/60th;
 - A 50/50 option is available which allows members to pay half and receive half benefits.
- 2.4 Regulation 58 of the LGPS (Scotland) Regulations 2014 and paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions and Savings)(Scotland) Regulations 2014 requires that all scheme employers prepare and publish a written statement indicating how they intend to exercise their discretionary powers in each of the following areas:

From the LGPS (Scotland) Regulations 2014:

- i. Award of additional annual pension (regulation 30)
- ii. Funding of additional pension (regulations 16(2)(e) and 16(4)(d))
- iii. Flexible retirement (regulation 29(6))
- iv. Waiving of actuarial reduction (regulation 29(8))

From Paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions and Savings)(Scotland) Regulations 2014:

v. Rule of 85 Protection (para 1(1)(c))

2.5 In addition to the five areas where it is compulsory for employers to publicise their policy, there are other areas of the LGPS (Scotland) Regulations 2014 where, for operational purposes, it is necessary for employers to have a policy. These are as follows:

- Early payment of pension (Regulation 29(5) & (13))
- Members' Contribution Rates (Regulation 9(4))
- Internal Disputes Resolution Procedure (Regulation 71(5)(c))
- Acceptance of Late Transfer Payments (Regulation 98(6))

2.6 The scheme rules require that employers when formulating or reviewing the policy, must have regard to public perception and the extent to which a policy could lead to a serious loss of confidence in the public service. In addition, the government has advised that employers should not 'fetter their discretion'; i.e. policies should not be so rigid or restrictive as to prevent flexibility where a (possibly unanticipated) situation requires it.

2.7 Members may be aware that the Council was required to publish a similar discretions policy for the old scheme regulations. This was last agreed by Members in 2009. A summary of the previous and the newly proposed discretionary policies is attached at Appendix 1 for Members' consideration.

2.8 Trade Unions have been provided with a copy of the proposed discretions policy. Comments received have been considered and a response will be issued.

3. FINANCIAL IMPLICATIONS

3.1 The policy statements seek to ensure that the financial implications of exercising discretions are fully considered before any commitment is made.

4. RECOMMENDATION

4.1 It is recommended that the Executive Committee approve the Discretionary Policies for immediate implementation.

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CHIEF FINANCE OFFICER

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**DIRECTOR OF CORPORATE &
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Date: 24/04/15

LIST OF BACKGROUND PAPERS

1. Local Government Pension Scheme (Scotland) Regulations 2014
2. Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014
3. Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (as amended)

Any person wishing to inspect the above background papers should contact Alastair McGirr on 01324 506304

LOCAL GOVERNMENT PENSION SCHEME 2015 SUMMARY OF EMPLOYER DISCRETIONS

COMPULSORY ITEMS:

Awarding Additional Pension : Regulation 30 LGPS (Scotland) Regulations 2014

Summary of Discretion:

Consider whether at full cost to the employer, to grant extra annual pension of up to £5,000 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.

Proposed Discretion:

Additional pension may be awarded up to a maximum of £5000 (figure at 1 April 2015) to an active scheme member or within 6 months of leaving to a member whose employment was terminated on grounds of redundancy or business efficiency, however this limit must also include any additional pension contributions funded.

The Chief Finance Officer, Head of Human Resources & Customer First and employing Service will consider all relevant factors and only where it can be demonstrated to be in the interests of the Council will additional annual pension be granted. Additional pension will not be granted if the scheme member has been granted Compensatory Added Years.

Previous Policy:

This replaces the following policy under regulation 13 of the old scheme:
The Director of Finance, Head of Human Resources and Employing Service will consider all relevant factors and only where it can be demonstrated to be in the interests of the Council will additional pension be granted.

Additional pension will not be granted if the scheme member has been granted Compensatory Added Years or Additional Scheme Membership.

Funding of Additional Pension : Regulations 16(2e) 16(4d) LGPS (Scotland) Regulations 2014

Summary of Discretion:

Consider whether, where an active scheme member wishes to purchase extra annual pension of up to £6,500 by making Additional Pension Contributions (APCs), to voluntarily contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC).

Proposed Discretion:

Where an active scheme member wishes to purchase extra annual pension of up to £6,500 (figure at 1 April 2015) by making APCs, Falkirk Council will not contribute towards the cost of purchasing that extra pension via SCAPCs.

Previous Policy:

There was no equivalent policy under the old scheme, however a policy was previously in place that shared cost Additional Voluntary Contributions would not be funded by the Council.

**Flexible Retirement :
Regulation 29(6) LGPS (Scotland) Regulations 2014**

Summary of Discretion:

Consider whether to permit flexible retirement for staff aged 55 or over who, with the agreement of the employer, reduce their working hours or grade.

Proposed Discretion:

The Chief Finance Officer, Head of Human Resources & Customer First and employing Service will consider all relevant factors including costs and changes to the employee's contract of employment, and only where it can be demonstrated to be in the best interests of the Council will benefits be released.

Any flexible retirement request will only be approved where there is no financial benefit to the employee from their continued employment with Falkirk Council in the new role/hours. Any application to reduce hours must be reasonable and not merely a token or cosmetic reduction to allow scheme benefits to be activated.

Where a flexible retirement request has been approved, the employee will be required to take all accrued benefits in relation to that employment. This does not apply to benefits for second/additional posts.

Previous Policy:

This replaces the policy under regulation 18 of the old scheme:

The Director of Finance, Head of Human Resources and Employing Service will consider all relevant factors including costs and changes to the employee's contract of employment, and only where it can be demonstrated to be in the interests of the Council will benefits be released.

**Waiving of Actuarial Reduction :
Regulation 29(8) LGPS (Scotland) Regulations 2014**

Summary of Discretion:

Members whose benefits are released prior to the Normal Pension Age (including those released on flexible retirement grounds) may incur an early payment penalty. In both scenarios, members may incur an early payment penalty as a result of retiring before Normal Pension Age. Consideration has therefore to be given to the circumstances in which the early payment penalty would be waived and the costs borne by the employer.

Proposed Discretion:

The Chief Finance Officer, Head of Human Resources & Customer First and employing Service will consider all relevant factors and only where it can be demonstrated to be in the interests of the Council or where exceptional compassionate circumstances exist will any early payment penalty be waived.

Previous Discretion:

There was no equivalent policy under the old scheme.

Rule of 85 Protection:**Para 1(1)(c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014****Summary of Discretion:**

Scheme members who joined before 1/4/2015 and who are granted retirement between age 55 and 60 are protected in varying degrees against the early payment penalty that would normally apply to a retirement before Normal Pension Age. This is known as Rule of 85 protection. The existence of rule of 85 protection means that if retirement is authorised an employer is required to make a strain payment to the Pension Fund to compensate it for the cost of additional pension payments and the loss of future contributions and investment returns. In some cases, the strain cost may result in the retirement application being refused. Under the new scheme, the option now exists for employers to set aside the rule of 85 protection, in which case the member would receive a lesser benefit but the strain cost to the employer would either be reduced or eliminated. This new flexibility may increase the affordability of such retirements. Consideration has therefore to be given to the circumstances in which the rule of 85 protection would be set aside.

Proposed Discretion:

The Chief Finance Officer, Head of Human Resources & Customer First and employing Service will consider all relevant factors and only where it can be demonstrated to be in the interests of the Council will rule of 85 protection be set aside either in full or in part.

Previous Discretion:

There was no equivalent policy under the old scheme.

NON-COMPULSORY ITEMS:

Early Payment of Pension: Regulation 29(5) & (13) LGPS (Scotland) Regulations 2014

Summary of Discretion:

Consider whether to agree to a request for early voluntary payment of benefits on or after age 55 and before age 60.

Proposed Discretion:

The Chief Finance Officer, in conjunction with the Head of Human Resources & Customer First and the employing Service, will consider all relevant factors and only where it can be demonstrated that compassionate grounds and exceptional circumstances exist will benefits be authorised for release on or after age 55 and before age 60.

In determining compassionate grounds, financial reasons alone will not be considered sufficient to justify the release of benefits.

Previous Discretion:

This replaces the policy under regulation 30 of the old scheme:

The Director of Finance, in conjunction with the Head of Human Resources and the Employing Service, will consider all relevant factors and only where it can be demonstrated that compassionate grounds exist will benefits be authorised for release. In determining compassionate grounds, financial reasons alone will not be considered sufficient to justify the release of benefits.

Members' Contribution Rates : Regulation 9(3) LGPS (Scotland) Regulations 2014

Summary of Discretion:

Consider whether member's contribution rates will be reassessed where there is a permanent material change to a member's employment.

Proposed Discretion:

Contribution rates will be reassessed where there is a permanent material change to a member's employment eg on promotion, demotion, re-grading or a part-time member's contractual hours change. The new rate will be communicated to the individual along with the date from which it is to be applied and they will be informed of the right of appeal under the Internal Dispute Resolution Procedure.

Previous Discretion:

There was no equivalent policy under the old scheme.

Internal Disputes Resolution Procedure : Regulation 71(5)(c) LGPS (Scotland) Regulations 2014

Summary of Discretion:

The Local Government Pension Scheme contains its own disputes resolution procedure. This involves appeals being heard by the Principal Pensions Officer of Strathclyde Pension Fund with whom the Falkirk Council Pension Fund has a reciprocal arrangement. Some appeals require to be considered by the employer in question (e.g. a dispute over the member's rate of pension contribution or the failure of the employer to grant ill health retirement). Consequently, consideration should be given as to who should be responsible for adjudicating on such "employer related" disagreements.

Proposed Discretion:

Where the appeal concerns “employer related disagreements” the specified person to hear an appeal is the Head of Human Resources & Customer First, or alternatively the Chief Finance Officer.

Previous Discretion:

This replaces the policy under Regulation 53 of the old scheme:
Where the appeal concerns the deduction of pension contributions, the specified person to hear an appeal is the Director of Finance, otherwise it is the Head of Human Resources.

**Acceptance of Late Transfer Payments :
Regulation 98(6) LGPS (Scotland) Regulations 2014****Summary of Discretion:**

Consider whether to extend the normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS.

Proposed Discretion:

Unless there have been administrative delays or omissions as determined by the Chief Finance Officer/Pensions Manager, transfer payments will only be accepted where the request to transfer has been made within 12 months of participating in the Falkirk Council Pension Fund.

Previous Discretion:

The proposed policy under the new scheme is the same as the policy under Regulation 78 of the old scheme.

**Extension of 30 Day Deadline for Shared Cost APCs:
Regulation 16(16) LGPS (Scotland) Regulations 2014****Summary of Discretion:**

Consider whether to 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 (otherwise than because of illness or injury, relevant child-related leave or reserve force service leave).

Proposed Discretion:

In the event of authorised leave of absence, the scheme member will be allowed to elect to buy-back the amount of “lost” pension within three months of the individual returning from that leave of absence, provided they have requested and received details of the cost of the buy-back from Payroll. The employee should allow up to one month for Payroll to administer the calculation within the 3 month period.

Previous Discretion:

There was no equivalent policy under the old scheme.

Any other discretions arising under the regulations of the LGPS 2015 scheme will be considered and determined by the Chief Finance Officer, Head of Human Resources & Customer First and employing Service on a case by case basis.