

## **PERSONNEL COMMITTEE**

**29 OCTOBER 2009**

### **THE LOCAL GOVERNMENT PENSION SCHEME (LGPS) (ADMINISTRATION) REGULATIONS 2008 – EMPLOYERS DISCRETIONS**

#### **JOINT REPORT OF THE DIRECTOR OF HUMAN RESOURCES AND ORGANISATIONAL DEVELOPMENT AND DIRECTOR OF FINANCIAL RESOURCES**

##### **1. Introduction**

- 1.1 The purpose of this report is to inform Personnel Committee of the requirement to re-affirm current Employer Discretions and to agree the content of additional Employer Discretions.

##### **2. Description of Decision**

- 2.1 Members are invited to consider the contents of this report, and subject to any amendments or additions, agree the Employers Discretions, as set out in the report at Appendix 1.

##### **3. Background**

- 3.1 It is a requirement of the LGPS (Administration) Regulations 2008 that “Each employing authority must prepare a written statement of its policy in relation to the exercise of its functions”. Thus employers must make, and keep under review, Employer Discretions which govern how the pension scheme rules will be applied by the Employer.
- 3.2 This report sets out some of these Employer Discretions. Additional Employer Discretions are in the process of review and will follow in a further report to Personnel Committee.

##### **4. Employers Discretions**

- 4.1 Appendix 1 sets out the current and additional Employers Discretions for consideration and decision. A number of these Employers Discretions are additional new requirements, as set out in the Local Government Pension Scheme (Administration) Regulations 2008, and these are of an administrative nature. The remaining Employers Discretions have been considered and agreed previously by Personnel Committee, and no change is proposed to these Employers Discretions.

##### **5. Financial Implications**

- 5.1 There are no financial implications on the proposed Employers Discretions.

**6. Reason for Decision**

6.1 The reasons for the decision are set out in the report and Appendix 1.

**7. Alternative Options**

7.1 No alternative options are considered appropriate, with the exception of the comments contained within the body of the report and Appendix 1.

**Background Paper**

Local Government Pension Scheme (Administration) Regulations 2008

## Summary of Current and Proposed Employer Discretions

## Appendix 1

Description	Previous Regulation	New Regulation	Current Policy	Proposed Policy	Considerations
Shared cost (employer and employee) Additional Voluntary Contributions	LGPS Regulations 1997  (Regulation 67)  Establishment of Shared AVC Scheme	LGPS Admin. Regulations 2008 (Regulation 25)  LGPS Benefits Regulation 2007 (Regulation 15)	Not to exercise this discretion	No change	Recommended not to approve due to potential cost. Other authorities are not using this option
The discretion to extend the 12 month time limit for members to aggregate two periods of LGPS membership	LGPS Regulation 1997  (Regulation 32(8A))  Re-employed and rejoining members – transfer of LGPS rights	LGPS Administration Regulations 2008  (Regulation 16)  Re-employed and rejoining deferred members – transfer of LGPS rights	Agreement to extend 12 month time limit only in circumstances beyond the member's control, or where it is in the employer's interest to do so. Delegated to the Director of Human Resources and Organisational Development in consultation with the Director of Financial Resources	No change	Applications vetted as there is a potential cost to the employer of accepting late applications to amalgamate service, as the cost of the incoming transfer may not meet the full cost
A scheme member may elect to pay optional contributions to cover a period of authorised absence from duty providing the option is made within 30 days of return to work/cessation of employment or such longer period as the employer allow	Not applicable, new regulation	LGPS Administration Regulations  (Regulation 22)	Not applicable, new regulation	Cases will be considered on the merits of each case and will only be approved if it is in the employer's interest to do so unless there are special factors which justify a departure from such a policy	Discretion of an administrative nature

Description	Previous Regulation	New Regulation	Current Policy	Proposed Policy	Considerations
<p>A person is not entitled to a repayment of contributions under Regulation 46 if he left his employment because of an offence of a fraudulent character, or because of grave misconduct, in connection with his employment. Where this applies, the employing authority may direct the payment out of the appropriate fund to him, or in the case of a fraudulent character, to him or his spouse, civil partner, nominated co-habiting partner or any dependant of his, of a sum equal to all or part of his contributions</p>	<p>Not applicable, new regulation</p>	<p>LGPS Administration Regulations 2008  (Regulation 47)</p>	<p>Not applicable, new regulation</p>	<p>Cases will be considered on the merits of each case and will only be approved if it is in the employer's interest to do so unless there are special factors which justify a departure from such a policy</p>	<p>Discretion of an administrative nature</p>

Description	Previous Regulation	New Regulation	Current Policy	Proposed Policy	Considerations
<p>Forfeiture of pension rights after conviction of employment related offences – if a scheme member is convicted of, and ceases employment as a result of an offence in connection with his/her employment which was gravely injurious to the State or is liable to lead of serious loss of confidence in the public service, the employer can apply to the Secretary of State for the issue of a forfeiture certificate. If the Secretary of State issues a certificate the employer may direct that any of the person's rights be forfeited</p>	<p>Not applicable, new regulation</p>	<p>LGPS Administration Regulations 2008  (Regulation 72)</p>	<p>Not applicable, new regulation</p>	<p>Cases will be considered on the merits of each case and will only be approved if it is in the employer's interest to do so unless there are special factors which justify a departure from such a policy</p>	<p>Discretion of an administrative nature</p>

Description	Previous Regulation	New Regulation	Current Policy	Proposed Policy	Considerations
Where the Secretary of State has issued a forfeiture certificate but the employer has not applied the certificate nor notified the scheme member of an award of benefits under the LGPS the employer may direct that interim payments are made out of the Pension Fund until such time as it decides to apply the forfeiture certificate or to make an award of benefits	Not applicable, new regulation	LGPS Administration Regulations 2008  (Regulation 73)	Not applicable, new regulation	Cases will be considered on the merits of each case and will only be approved if it is in the employer's interest to do so unless there are special factors which justify a departure from such a policy	Discretion of an administrative nature

Description	Previous Regulation	New Regulation	Current Policy	Proposed Policy	Considerations
<p>Recovery or retention where a former member has misconduct obligation. Where a member ceases employment in consequence of a criminal, negligent or fraudulent act or omission in connection with that employment and has incurred a monetary obligation arising out of that omission to the employing authority and is entitled to pension benefits under the LGPS, the employer may recover the amount of monetary obligation or the value of the members pension rights, if less (other than transferred in pension rights) from the Pension Fund and reduce the members benefits accordingly</p>	<p>Not applicable, new regulation</p>	<p>LGPS Administration Regulations 2008  (Regulation 74)</p>	<p>Not applicable, new regulation</p>	<p>Cases will be considered on the merits of each case and will only be approved if it is in the employer's interest to do so unless there are special factors which justify a departure from such a policy</p>	<p>Discretion of an administrative nature</p>

Description	Previous Regulation	New Regulation	Current Policy	Proposed Policy	Considerations
<p>Transfer of pension funds to compensate for former member's misconduct. Where a member ceases employment in consequence of an offence involving fraud or due to grave misconduct in connection with that employment, and the employer has suffered a direct financial loss arising from the offence or misconduct, and the member is entitled to benefits under the LGPS and a forfeiture certificate has been applied, or the pension member is entitled to a refund of contributions, the employer may direct that the direct financial loss (or the refund of contributions, is less) be recovered from the pension fund</p>	<p>Not applicable, new regulation</p>	<p>LGPS Administration Regulations 2008  (Regulation 76)</p>	<p>Not applicable, new regulation</p>	<p>Cases will be considered on the merits of each case and will only be approved if it is in the employer's interest to do so unless there are special factors which justify a departure from such a policy</p>	<p>Discretion of an administrative nature</p>



Description	Previous Regulation	New Regulation	Current Policy	Proposed Policy	Considerations
The discretion to allow the transfer from non LGPS pension funds to be aggregated outside of the 12 month time limit	LGPS Regulation 1997 (Regulation 121)  Inward transfers of pension rights (non LGPS)	LGPS Administration Regulations 2008 (Regulation 83)	Agreement to extend beyond the 12 month time limit delegated authority to the Director of Human Resources and Organisational Development in consultation with the Director of Financial Resources to approve such requests	No change	Recommend applications continue to be vetted in order to retain equality of treatment with Regulation 16 (LGPS to LGPS transfer) however, no cost to employer by accepting late transfer of service
An employing authority may deduct from a person's pay any contributions payable by him under these Regulations or Benefits Regulations	Not applicable, new regulation	LGPS Administration Regulations 2008 (Regulation 45)	Not applicable, new regulation	The employer shall deduct any pension contributions payable by him under these Regulations or Benefits Regulations	Discretion of an administrative nature

Description	Previous Regulation	New Regulation	Current Policy	Proposed Policy	Considerations
Where a scheme member is paid a refund of pension contributions, the employer must pay a Contributions Equivalent Premium (CEP). An element of this is recovered from the refund paid to the scheme member. The balance may be recovered from the fund	Not applicable, new regulation	LGPS Administration Regulations 2008  (Regulation 49)	Not applicable, new regulation	The employer may recover any Contributions Equivalent Premium from the refund payable to the scheme member. Cases will be considered on the merits of each case and will only be approved if it is in the employer's interest to do so unless there are special factors which justify a departure from such a policy	Discretion of an administrative nature
Contributions payable by active members	Not applicable, new regulation	LGPS Benefits Regulations 2007  (Regulation 3)	Not applicable, new regulation	Member contributions will be payable in accordance with the timing and frequency of salary or ad-hoc payments. Regulation 3 will be exercised where it is in the employer's interest to do so	Discretion of an administrative nature

Description	Previous Regulation	New Regulation	Current Policy	Proposed Policy	Considerations
No change	<p data-bbox="421 268 716 355">Discretionary Compensation Regulations 2000</p> <p data-bbox="421 391 712 662">(Regulations 17 and 19 requires an Employing Authority to reduce the annual compensation by such amount (if any) as they consider appropriate if re-employed with a LGPS employer</p>	No change	The current policy is to abate pension remuneration and service as appropriate and to give delegated authority to the Director of Financial Resources	<p data-bbox="1402 268 1693 510">The current policy is to abate pension remuneration and service as appropriate and to give delegated authority to the Director of Financial Resources. Specifically:</p> <p data-bbox="1402 545 1693 909">Regulation 17 On re-employment, if the annual rate of new pay plus LGPS pension plus CAY pension exceeds the rate of pay (plus RPI) from the post on which CAY was granted then the CAY pension would be reduced by the excess or fully abated as appropriate.</p> <p data-bbox="1402 944 1693 1404">Regulation 19 At cessation of each re-employment the CAY pension should be abated to ensure that the original pensionable service plus the CAY service plus the re-employment service should not exceed the service accrued to age 65 if the member had remained in the post on which CAY was granted to age 65.</p>	Recommend continue to abate pensions/service in respect of compensatory added years previously awarded

				For both Regulation 17 and 19 Cases will be considered on the merits of each case with delegated authority given to the Director of Financial Resources and the Director of Human Resources and Organisational Development	
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