

**SUBJECT: THE LOCAL GOVERNMENT PENSION SCHEME (LGPS) AS
AMENDED AND COMPLIMENTARY REGULATIONS – EMPLOYERS
DISCRETIONS**

**JOINT REPORT OF THE CHIEF FIRE OFFICER, CLERK TO THE AUTHORITY,
THE FINANCE OFFICER AND PERSONNEL ADVISOR**

1 INTRODUCTION

- 1.1 The purpose of this report is to inform Members of the requirement to re-affirm some of the current Employer Discretions appertaining to the Local Government Pension Scheme (LGPS) and to propose the content of additional Employer Discretions.

2 BACKGROUND

- 2.1 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 The Authority last updated and re-affirmed its discretionary powers in February 2008. This report therefore sets out some of these Employer Discretions for consideration by Members.

3 EMPLOYERS DISCRETIONS

- 3.1 Set out below are the Employers Discretions for consideration and decision. A number of these Employers Discretions are additional new requirements, as detailed in the Local Government Pension Scheme (Administration) Regulations 2008, and many are of an administrative nature. The remaining Employers Discretions have been considered and agreed previously and Members are requested to re-affirm those Discretions.
- 3.1.1 **Contributions Payable by Active Members** (Regulation 3¹) - each active member shall make contributions to the Scheme at the contribution rate from their pensionable pay in each employment in which they are an active member. The appropriate administering authority may decide the intervals at which the contributions are made. As Members will be aware, currently contributions are payable in accordance with the timing and frequency of salary or ad-hoc payments.

¹ The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007

Members are recommended to agree this frequency.

- 3.1.2 Power of Employing Authority to Increase Total Membership of Active Members** (Augmentation) (Regulation 12¹) – An employing authority may resolve to increase the total membership of an active member and if so, the total additional membership under this regulation (including additional membership in respect of different employments) must not exceed 10 years.

Investigations have revealed that exercising this discretion has the potential to increase the costs of the Scheme to the employer, therefore, Members are recommended not to exercise this discretion.

- 3.1.3 Power of Employing Authority to Award Additional Pension** (Regulation 13¹) - An employing authority may resolve to award a member additional pension of not more than £5000 a year payable from the same date as his pension payable under any other provisions of these Regulations.

Investigations have revealed that exercising this discretion has the potential to increase the costs of the Scheme to the employer, therefore, Members are recommended not to exercise this discretion.

- 3.1.4 Reduction of Annual Compensation and Effect of Cessation of New Employment** (Regulations 17 and 19²)

Regulation 17 - On re-employment, the employing authority must ensure that the annual rate of new pay plus the financial benefits under the pension regulations are no greater than the annual rate of pay had the person remained in the terminated post.

Regulation 19 - Where a person who has been awarded a credited period has ceased to hold a new employment in which they were a Scheme member or an assumed member, and the total membership for the purpose of calculating under the Pension Regulations exceeds the total membership which would have been used for the purpose of that calculation if the person had held the terminated employment until their 65th birthday, the employing authority must reduce their annual compensation by such amount as they consider appropriate.

Members are therefore recommended to approve a reduction in pension or full abatement as appropriate, the operation of which to be delegated to the Chief Fire Officer.

- 3.1.5 Establishment of Shared Additional Voluntary Contributions (AVCs) Scheme** (Regulation 15³) - A member who has entered into an arrangement to pay AVCs or to contribute to a shared cost AVC in addition to any other contributions paid under the Regulations is entitled to additional benefits in accordance with one of the methods permissible under the Finance Act 2004. A shared cost AVC means an arrangement established and maintained by an

² The Local Government (Early Termination of Employment) (Discretionary Compensation)(England and Wales) Regulations 2000

³ The Local Government Pension Scheme (Administration) Regulations 2008

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employing authority for the purpose of enabling contributions to be paid by and for active members.

Investigations have revealed that exercising this discretion has the potential to increase the costs of the Scheme to the employer and indeed, many other local authorities do not exercise this discretion. Therefore, Members are recommended not to exercise this discretion.

- 3.1.6 ***Deduction and Recovery of Members Contributions*** (Regulation 45³) – An employing authority may deduct from a person’s pay any contributions payable by them under these Regulations or the Benefits Regulations.

This Discretion is primarily of an administrative nature and therefore Members are recommended to approve that the employer shall deduct any pension contributions payable by them under these Regulations or Benefits Regulations.

- 3.1.7 The following Discretions are primarily of an administrative nature only. Members are recommended to approve that these will be delegated to the Chief Fire Officer whereby 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. If it is proved that there are special factors which may justify a departure from such a policy, this will be brought back to this Committee for a decision.

- 3.1.7.1 ***Election to Pay Optional Contributions*** (Regulation 22³) - 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 allows.

- 3.1.7.2 ***Refund of Pensions Contributions*** (Regulation 45³) – 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.

- 3.1.7.3 ***Exclusion of Rights to Return of Contributions*** (Regulation 47³) - A person is not entitled to a repayment of contributions under Regulation 46 (Rights to return of contributions) if they left employment because of an offence of a fraudulent character, or because of grave misconduct, in connection with the employment. Where this applies, the employing authority may direct the payment out of the appropriate fund to the person, or in the case of a fraudulent character, to the person or their spouse, civil partner, nominated co-habiting partner or any dependant of them, of a sum equal to all or part of their contributions.

- 3.1.7.4 ***Forfeiture of pension rights after conviction of employment-related offences*** (Regulation 72³) – If a scheme member is convicted of, and ceases employment as a result of an offence in connection with their employment which was gravely injurious to the State or is liable to lead to a 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.

- 3.1.7.5 **Interim Payment Directions** (Regulation 73³) - 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
- 3.1.7.6 **Recovery or retention where former member has misconduct obligation** (Regulation 74³) - 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
- 3.1.7.7 **Transfer of sums from the pension fund to compensate for former member's misconduct** (Regulation 76³) - 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.

4 RISK MANAGEMENT

- 4.1 A risk assessment has been undertaken to ensure that the risk to the Authority has been minimised as far as practicable. The assessment has considered an appropriate balance between risk and control; the realisation of efficiencies; the most appropriate use of limited resources; and a comprehensive evaluation of the benefits. The risk to the authority has been assessed as low utilising the standard risk matrix based on control measures being in place. The complete risk assessment is available on request from the Chief Fire Officer.

5 FINANCIAL IMPLICATIONS

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

6 EQUALITY AND FAIRNESS IMPLICATIONS

- 6.1 There are no equality and fairness implications in respect of this report.

7 HEALTH AND SAFETY IMPLICATIONS

- 7.1 There are no health and safety implications in respect of this report.

8 RECOMMENDATIONS

8.1 Members are recommended to:

- a) Note the contents of this report;
- b) Approve the Discretions are laid out in Section 3 of this report;
- c) Receive further reports as appropriate.

BACKGROUND PAPERS

The undermentioned Background Papers refer to the subject matter of the above report:

- The Local Government Pension Scheme (Administration) Regulations 2008
- The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007
- The Local Government (Early Termination of Employment) (Discretionary Compensation)(England and Wales) Regulations 2000
- The Local Government Pension Regulations 1997

