

Discretions Policy: The Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions & Savings) Regulations 2014

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	Monitoring Officer	Scott Wooldridge	24.7.18
Summary:	The HR Policy Committee is requested to approve how the Council will use the discretions employers have been given under the Local Government Pension Scheme (LGPS).		
Recommendations:	<p>It is recommended that:</p> <ol style="list-style-type: none"> 1) Minor amendments to the wording of SCC Pensions Discretion Policy are made to accurately reflect the wording of the LGPS Regulations as advised by Peninsula Pensions, relating to – Waiving of Actuarial Reduction where an active member chooses to voluntarily draw benefits on or after age 55 and before age 60 or normal retirement age. (Regulation B30 (5)) 2) The policy decision for our pensions discretion under Regulation R31 – Power of employing authority to grant additional pension, is changed to allow only in exceptional circumstances, to accommodate any future unforeseen requests that may be affordable. <p>Accordingly the Committee is asked to approve the revised Discretions Policy attached at Appendix A to the report which includes the recommended changes to wording and pension decision for Regulation B30(5) and Regulation R31 as listed above and outlined in Section 2 below.</p>		
Reasons for Recommendations:	All employers who participate in the Local Government Pension Scheme are required to draw up a discretions policy in accordance with Regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008, and Regulation 60 of the Local Government Pension Scheme Regulations 2013.		

	<p>The policy must be published and kept under review. A copy of the employer’s published policy statement must be sent to the Pension Fund administering authority (Peninsula Pensions). Any amendments to the policy must be sent to Peninsula Pensions within one month of the amendment.</p> <p>The Council’s Discretions Policy aims to limit the cost of the Local Government Pensions Scheme (LGPS) to the employer, where it has the discretion to do so whilst giving scheme members some flexibility.</p> <p>In February 2018, amended guidance on employer discretions policy wording was provided by Peninsula Pensions the Administering Authority for the Somerset Scheme.</p> <p>We need to amend our discretions policy to ensure the wording under Regulation B30(5) relating to waiving of actuarial reduction where an active member chooses to voluntarily draw benefits early, accurately reflects the options under this section for all LGPS members.</p> <p>Peninsula Pension also provide employer guidance on Fettering discretions (restricting or limiting) and state the government has advised employers should not ‘fetter their discretions’ i.e. policies should not be so rigid or restrictive as to prevent flexibility where a (possibly unanticipated) situation requires it. The Pension Regulator and Local Government Association guidance encourages authorities to make sure their policy statements do not bind the employer to make the same decision in every single case, this does not mean we cannot refuse a request once considered.</p> <p>With consideration to fettering guidance the Council should re-consider the policy decision for Regulation R31 – Power of employing authority to grant additional pension, as this is the only discretion that we currently will not apply.</p>
<p>Links to Priorities and Impact on Service Plans:</p>	<p>Given the Council’s ongoing financial challenges and the need to deliver services within our available resources we are likely to receive increased requests under our Pension Discretions in particular relating to early retirement and voluntary redundancy.</p>
<p>Financial, Legal and HR Implications:</p>	<p>There are many discretions in the current Regulations however, there are only a handful where the employer is required to have a written policy as there would be a cost to the employer for either allowing early access to benefits or effectively enhancing the benefits the member receives.</p> <p>The Council’s Discretions Policy aims to limit the cost of the Local Government Pension Scheme to the employer, where it has the discretion to do.</p> <p>Government guidance has advised that employers should not ‘fetter their discretion’.</p>

	Financial and HR implications would be assessed on a case by case basis and decision made at the time of request based on the current budget situation with consideration to the affordability for the future budget impact (2-3 years) alongside workforce planning, employee relations and compassionate considerations as appropriate.
Equalities Implications:	Note under suggested wording for Regulation R31, to avoid fettering our policy it is recommended that the Committee allow this discretion but only in the most exceptional circumstance. We have no specific policy or guidance on the exceptional circumstances that may be considered in these cases; so they would need to be considered on the merits of the business case specifically around cost and any equalities impact would need to be considered at that time. Additional pension by conversion in redundancy cases are justifiable under the equalities act.
Risk Assessment:	The changes proposed to the Discretions Policy aim to control the costs to the Council of the Local Government Pension Scheme whilst giving scheme members reasonable flexibility. There are risks associated with limiting or fettering our policy if a complaint is not resolved internally and reached the Pensions Ombudsman, which can include compensation and financial fines.
Scrutiny comments / recommendation (if any):	Not applicable

1. Background

- 1.1. Under the Local Government Pension Scheme 2014, all employers who participate in the LGPS are required to formulate, publish and keep under review a discretions policy.
- 1.2. The Council's current Discretions Policy was agreed on 8th September 2014 and updated in March 2016 and November 2017.
- 1.3. The proposed amended Discretions Policy and recommended wording is attached at Appendix A to this report. The proposed revisions are highlighted with tracked changes and comment boxes.
- 1.4. Following a query early in 2018, Peninsula Pensions identified the need to update their template employers discretions policy to ensure the wording under Regulation R30(5) accurately reflects the options available for all LGPS members. The template was updated in February 2018 and the wording now reflects the fact that this discretion (to waive actuarial reduction where an active member chooses to voluntarily retire early) applies on or after age 55 and before age 60 and on or after age 60 and before Normal Pension Age. The Council had used the Peninsula Pensions template to write our discretions policy so we also now need to make these minor amendments to the wording in our policy to accurately reflect the regulations.
- 1.5. The facility for employers to grant extra 'augmented' membership of the

Pensions scheme ceased after 31 March 2014. Our pre-2014 discretions policy allowed 'augmentation by conversion' to members being made redundant or being retired on business efficiency grounds. Under the 2014 legislation we followed LGPS guidance to simply carry forward our existing policy (to apply in exceptional cases), but suitably amended to refer to the new regulation to grant additional pension equivalent to the value of any lump sum termination payment (in excess of the redundancy payment) known as 'additional pension by conversion' i.e. under Regulation R31.

- 1.6** Our Pensions provider, Peninsula Pensions, informed us at the end of 2015 that the LGPS guidance had subsequently been amended to clarify a number of points of interpretation raised by local authorities after the legislation came into force. This guidance now clarifies the facility to grant additional pensions under Regulation R31, is not actuarially reduced in cases of retirement on redundancy or business efficiency grounds, where extra pension is drawn before the member's normal pension age. Therefore, enabling this discretion under Regulation R31 would incur additional strain cost on the Council. Whereas, a similar facility to grant additional pension under Regulation R16, is actuarially reduced, so would have no extra strain cost on the Authority. The HR Policy Committee on 14th March 2016 therefore decided to use Regulation R16 and decided the Council will not apply Regulation R31.
- 1.7** Given recent guidance from Peninsula Pensions on Fettering Discretions Policies, it is recommended that the Committee considers any discretions that we do not apply currently. The only discretion that we currently will not apply is Regulation R31.
- 1.8** One consideration is that although we do not apply Regulation R31 we do apply a similar discretion under Regulation R16, so this may be suitably flexible to mitigate against fettering.
- 1.9** However there is a difference between the two discretions. Regulation R31 allows the employer to buy a member additional pension either while they are an active member of the LGPS or, if they are made redundant or retired on efficiency grounds, the employer can buy the member additional pension at any time up to six months after their leaving date. For example, if a member is made redundant on 31st March the employer could buy additional pension under Reg31 before they leave or during the 6 months from 1st April to 30th September after they've left. Peninsula Pensions have commented this very rarely happens.
- 1.10** Regulation R16 only allows the employer to buy an active member of the LGPS additional pensions. Although pension bought under Regulation R16 is reduced if brought into payment before normal pension age in all cases apart from tier 1 or 2 ill health, pension bought under Regulation R31 is not reduced on redundancy/efficiency retirement, so it increases the employers strain cost.
- 1.11** Another consideration would be to apply discretion Regulation R31 as there are potential unforeseen circumstances that are only covered by Regulation R31 which Regulation R16 do not satisfy. It could be stated that Regulation R31 would not normally be exercised, on the grounds of cost, except in the most exceptional circumstance where there is clear merit and where the cost to the Council is not considered to be significant or material. This option would safeguard the Authority against fettering whilst controlling costs.

2. Options Considered

- 2.1.** The approach taken when determining which discretion to apply is to ensure that the costs to the Council are controlled while providing flexibility for scheme members as allowed by the regulations.
- 2.2** Regulation R31 Option One: No change to the decision made by the Committee on 14 March 2016. Continue our current position not to apply Regulation R31; flexibility exists as a similar facility to grant additional pension can be achieved by applying Regulation R16. Where extra pension is drawn before normal pension age in cases of retirement on redundancy or business efficiency grounds under Regulation R16 it will be actuarially reduced, so would have no extra stain cost on the Council.
- 2.3** Regulation R31 Option Two: Amend the policy decision to apply Regulation R31, but only in very exceptional circumstances. This option will allow flexibility to accommodate unanticipated situations and safeguard the Council from significant/material cost and avoid fettering our policy.
- 2.4** As this is a complex subject – to aid understanding a verbal update and question and answer session was presented on these choices at the HR Policy Committee Meeting on 30th April 2018. Following this discussion the proposed amended pension discretion policy at appendix A, has been drawn up on the basis of option two.

3. Consultations undertaken

- 3.1.** The suggested changes to the Discretion Policy were discussed with union representatives (including Unite) who attended the Joint Negotiating Forum on 15th March 2018 and no objections were raised at the time. UNISON & GMB received the agenda for JNF but did not attend the meeting. The key proposed changes to the pension discretion policy were noted and minutes of the meeting sent to the full JNF circulation list. The suggested tracked changes to the discretions policy and additional guidance notes were also sent and responses requested by Friday 20th April. No comments were received.
- 3.2** Consulted with Peninsula Pensions via telephone discussion early March 2018 and follow up e-mail on 20th March 2018.

4. Implications

Financial

- 4.1** Para. 1.4 above, Regulation R30(5) - the impact of approving requests under Regulation R30(5) will vary depending on the individual circumstances of the scheme member. We have only had one request in the last financial year under Regulation R30(5), which was approved for compassionate reasons as the strain cost was recovered through service restructure savings.
- 4.2** Para. 1.6 – 2.4 above, Regulation R16 and R31 have an impact on the cost to the Authority of approving requests where an employee wishes to consider giving

up part of their redundancy compensation payment to buy additional pension via a Shared Cost Additional Pension Contribution (SCAPC). Applying this discretion under Regulation R31 incurs extra strain cost for the Council as the guidance note excludes cases of retirement on redundancy or business efficiency grounds from actuarial reduction, where that extra pension is drawn before the member's normal pension age. Applying a similar discretion under Regulation R16 (for active members only) does not incur extra cost to the employer as the additional pension granted is subject to actuarial reduction, where the extra pension is drawn before the member's normal pension age.

- 4.3** There are potential risks and costs associated with restricting (fettering) our discretions policy, if a complaint is made to the Pension Ombudsman. By allowing the discretion under Regulation R31 but only in the most exceptional circumstances will avoid excessive financial cost burdens on the authority, while allowing the flexibility to address unforeseen circumstances in the future and mitigate against fettering our policy.

5. Background papers

- 5.1** Appendix A – Discretion Policy (with tracked changes)
- 5.2** Past HR policy committee paper 14/3/16 re: Regulation R16 & Regulation R31
- 5.3** Peninsula pensions guidance on discretions policy

Note: For sight of individual background papers please contact the report author.