

LGPS EMPLOYER DISCRETIONS (REQUIRED)

Appendix 2

Regulation 60 (2) of The Local Government Pension Scheme Regulations 2013 requires Huntingdonshire District Council (the "Council") to publish a written statement on the following decisions no later than 30 June 2014.

The regulations require the Council to keep its statement under review.

DISCRETION 1 - GRANTING ADDITIONAL PENSION

Regulation 31 of the LGPS Regulations 2013

Whether, and in what circumstances, the Council would grant additional annual pension (at whole cost to themselves as the Employer) of up to £6,500 (figure as at 1 April 2014) to an active Scheme member or to a member who had within the preceding 6 months had their employment terminated on the grounds of redundancy or business efficiency.

Recommendation 2014:

Not to award additional pension. Reason cost.

Change from previous discretion:

Existing discretion, but previously not published.

DISCRETION 2 – FUNDING OF ADDITIONAL PENSION

Regulation 16(2) (e) and 16 (4)(d) of the LGPS Regulations 2013

Whether, and in what circumstances, the Council would agree to fund in whole or part the purchase of additional annual pension of up to £6,500 (figure at 1 April 2014) for an active member by making Shared Cost Additional Pension Contributions (SCAPCs) either by regular payments (16(2)(e)) or lump sum (16(4)) on a voluntary basis, i.e. other than as required by regulation 15(5) of The LGPS Regulations 2013.

Recommendation 2014:

Not to make such voluntary contributions. Reason additional cost.

Note:

This discretion does not apply where a member has a period of authorised unpaid leave of absence and elects within 30 days of return to work to pay a SCAPC to cover the amount of pension 'lost' during that period of absence. That is because, in those cases, the employer must contribute 2/3rds of the cost to a SCAPC; there is no discretion [regulation 15(5) of the LGPS Regulations 2013].

Change from previous discretion:

New discretion, as a result of the LGPS 2014 changes.

DISCRETION 3 – FLEXIBLE RETIREMENT

Regulation 30 (6) of the LGPS Regulations 2013

Whether, and in what circumstances, to consent to the immediate payment of retirement benefits for active members aged 55 or over who reduce their working hours and/or grade and elect for such immediate payment of benefits under Regulation 30(6) ; this is known as flexible retirement.

Whether, in addition to the benefits the member has accrued prior to 1 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 31 March 2008 and before 1 April 2014, and / or

- all, part or none of the pension benefits they accrued after 31 March 2014

Note: If flexible retirement is agreed for a Scheme member aged 55 or over but under 60 who is subject to the 85 year rule protections and who, at the date of flexible retirement, has either met the 85 year rule or would have met the rule before age 60, there would be a strain on fund cost to be met by, and paid to the Pension Fund by, the Council in respect of the pension benefits covered by the protections that are paid following flexible retirement.

Recommendation 2014

On a temporary basis, not to consent to this discretion where there will be an additional cost to the Council.

Further consideration to be given to the development of a formal “flexible retirement policy” in the interests of retaining skills/knowledge. However, any such policy would be on case-by-case basis.

Change from previous discretion:

Existing discretion, but previously not published.

DISCRETION 4 – ‘Switching on’ 85 Year Rule Protection

Paragraph 1(1)(c) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014

Whether to ‘switch on’ 85 year rule protection for those members electing to take payment of benefits before age 60 other than on flexible retirement.

This discretion is required as a result of the scheme changes whereby a member may now retire from age 55 without requiring employer consent for payment of benefits; it is a way for the Council to manage whether they are to be subject to strain costs when a member chooses to retire earlier than age 60, i.e. if the decision were to be to ‘switch on’ the protection, a strain cost for the Council would result. It does not apply in cases of flexible retirement since that type of retirement already includes a requirement for employer consent.

Recommendation 2014:

Each case will be considered on its merits.

By the Council having the option to “switching on” the 85 year rule gives the Council an avenue to manage staff retention.

Change from previous discretion:

New discretion, as a result of the LGPS 2014 changes (i.e. employees can retire from age 55).

DISCRETION 5 WAIVING ALL OR PART OF AN ACTUARIAL REDUCTION

A: Regulation 30(8) of the LGPS Regulations 2013

Whether to waive on any grounds, in whole or in part, an actuarial reduction for active members voluntarily retiring on or after age 55 but before their 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 but before their normal pension age.

Consideration:

The Council needs to make decisions in respect of

1. Whether to agree to waiving of reductions, and if so in full or part, and in what circumstances
2. Subject to the decision on (1), if the recommended compassionate grounds basis (see note below) is sufficiently robust.

Subject to the above decision, in the longer term, the Council may need to think about sustainability of agreeing early retirement from age 55 (i.e. given the increasing gap between aged 55 and future normal pension ages).

“Compassionate Grounds” Definition:

There is no definition in the regulations of “compassionate grounds” hence it is for the Council to determine a reasonable and workable definition.

Recommended Definition: *“Compassionate grounds are defined as where an active employee or deferred beneficiary needs to care full time for a close relative, spouse, partner or other dependant who, through illness, requires full time care for the rest of their life expectancy which is anticipated to be in excess of 12 months from the date of the agreed medical advice.”*

Recommendation 2014:

It is recommended that if the decision is made to waive reductions on compassionate grounds, that:

- Each case will be considered on its merits.
- A review of such applications takes place each year to assess the financial impact and sustainability of this discretion going forward.

B: Paragraph 2(1) of the LGPS (TPS&A) Regulations 2014 (similar discretion)

Whether to waive on compassionate grounds the full amount of an actuarial reduction for those who have 85 year rule protection, but have not satisfied the 85 year rule upon voluntarily retiring from active membership, electing for payment of deferred benefits or suspended tier 3 ill health pensions where the election to draw benefits (other than on ill health grounds) is effective on or after age 55 but before the member’s normal pension age.

Discretion to be agreed in line with 5A.

Recommendation 2014:

Where a member of the LGPS 2014 who is

- voluntarily retiring from active membership,
- electing for payment of deferred benefits or
- electing for payment of suspended tier 3 ill health pensions, where the election to draw benefits is other than on ill health grounds

has 85 year rule protection but has not satisfied the 85 year rule at the date of their retirement, the early

payment reductions will be waived:

- each case will be considered on its merits.

and

- if the request satisfies the Council's compassionate grounds definition.

Compassionate grounds are defined as where an active employee or deferred beneficiary needs to care full time for a close relative, spouse, partner or other dependant who, through illness, requires full time care for the rest of their life expectancy which is anticipated to be in excess of 12 months from the date of the agreed medical advice.

Change from previous discretion:

Partly new and partly amended.

EMPLOYER DISCRETIONS (RECOMMENDED)

The LGPS Regulations 2013 also state a whole list of minor discretions that an Employer may need to exercise. Notably there are five additional discretions which the national discretions guidance suggests would be appropriate to have a written policy on. These are listed below.

DISCRETION 6

Whether, how much, and in what circumstances to contribute to a shared-cost Additional Voluntary Contribution (SCAVC) arrangement entered into on or after 1 April 2014 [regulation 17 of the LGPS Regulations 2013] and whether, how much, and in what circumstances to continue to contribute to any shared cost Additional Voluntary Contribution (SCAVC) arrangement that the employer had entered into before 1 April 2014.

[Regulation 15(1)(d) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, regulation 25(3) of the LGPS (Administration) Regulations 2008 and regulation 15(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007].

Recommendation Pre 1.4.2014:

The Council did not contribute to any shared cost AVC. Confirm this as a discretion decision.

Recommendation 2014:

The Council do not contribute to any shared cost AVC.

Change from previous discretion:

Updating of previous discretion.

DISCRETION 7

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 he / she has not made such an election within 12 months of joining the LGPS [regulation 100(6) of the LGPS Regulations 2013]

Recommendation 2014:

The new Pensions policy (section 6) requires employees to make an election within 12 months. No reason foreseen to publish otherwise as systems and policy in place to advise employees of time limit and accepting a late application could result in additional cost to the Council.

However, late applications will be considered on a case-by-case basis providing there is no additional cost to the Council.

Note Unlike under the 2008 Scheme, where the discretion to allow a late election rested solely with the employer, under the 2014 Scheme both the employer and the Pension Fund administering authority (CCC) have to agree to the acceptance of a late election. If one agrees, and the other does not, the late election cannot be accepted.

Change from previous discretion:

Updating of previous discretion.

DISCRETION 8

Whether to extend the 12 month time limit within which a Scheme member who has a deferred LGPS benefit in England or 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) [regulations 22(7) and (8) of the LGPS Regulations 2013].

Recommendation 2014:

The Pensions policy (section 6) requires employees to make election within 12 months. No reason foreseen to publish otherwise as systems and policy in place to advise employees of time limit.

However, late applications will be considered on a case-by-case basis providing there is no additional cost to the Council.

Change from previous discretion:

Updating of previous discretion.

DISCRETION 9

How the pension contribution band to which an employee is to be allocated on joining the Scheme, and at each subsequent April, will be determined and the circumstances in which the employer will, in addition to the review each April, review the pension contribution band to which an employee has been allocated following a material change which affects the member's pensionable pay in the course of a Scheme year (1 April to 31 March) [regulations 9 and 10 of the LGPS Regulations 2013].

Recommendation 2014:

The Pensions policy (section 2) explains how employee's contribution bands are assessed.

Change from previous discretion:

New discretion, as prior to 1st April 2014 this was set by "full time equivalent" banding.

DISCRETION 10

Whether or not, when calculating assumed pensionable pay when a member is:

- on reduced contractual pay or no pay on due to sickness or injury, or
- absent during ordinary maternity, paternity or adoption leave or during paid additional maternity, paternity or adoption leave, or
- absent on reserve forces service leave, or
- retires with a Tier 1 or Tier 2 ill health pension, or
- dies in service

to include in the calculation the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred. A 'regular lump sum payment' is a payment for which the member's employer determines there is a reasonable expectation that such a payment would be paid on a regular basis.

[Regulations 21(4)(a)(iv), 21(4)(b)(iv) and 21(5) of the LGPS Regulations 2013].

Explanation of Impact:

Example 1 (Absence – all reasons stated above)

Member on reduced or no pay. Member can finish up with a bigger pension accrual than if the member had not been absent and had, instead, been at work.

Member receives a £1,200 annual performance payment in May 2014 and goes onto reduced contractual pay for the period 1 November 2014 to 31 December 2014, returning to full pay from 1 January 2015.

The £1,200 has already been included in the member's pensionable pay cumulatives for 2014/15. If it was included in assumed pensionable pay for November and December 2014, 2/12 of £1,200 (i.e. £200) would be added into the cumulative pensionable pay. If the member had not been sick, that £200 would not have been included in pensionable pay (as the member was not next due to get a lump sum annual performance payment until May 2015)

Example 2 (Ill Health Retirement/Death in Service)

It might seem reasonable to add back any 'regular lump sum payment' received by the member in the 12 months preceding ill health retirement or death in service into the assumed pensionable pay to be used to work out the amount of enhanced pension for a member who retires with a Tier 1 or Tier 2 ill health pension, or used to work out the survivor pension and / or death grant for a member who dies in service.

However, what if the member is, say, only 40 at the time of the ill health retirement / death in service? Is it likely that the employer would have paid such a lump sum to the member every year between age 40 and the member's Normal pension Age? That, in essence, would be implied as being the case if the employer were to add the lump sum back into the assumed pensionable pay figure to be used to calculate the amount of ill health enhanced pension and / or survivor pension.

Recommendation 2014:

Any decision as to whether or not to include in the calculation of a scheme member's assumed pensionable pay the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred would need to be fair, equitable and justifiable.

It is recommended that the Council

1. Does not include lump sum payment for periods of absence.
2. Gives consideration to including regular lump sum payments for ill health retirement and death in service, with the primary criteria being whether it could reasonably be expected that the member would have been likely to receive that regular payment for the foreseeable future.
3. recommended that all decisions are approved by the Head of Resources and guidance is taken from LGSS Pensions.

Change from previous discretion:

Updating of previous discretion, but assumed pensionable pay is a LGPS 2014 issue.

EXISTING EMPLOYER DISCRETIONS

(RECOMMENDED for inclusion by LGSS Pensions)

Forfeiture of Pension Rights

Where an employee has committed an offence that was gravely injurious to the State or liable to lead to serious loss of confidence in the public service, the employer (or former employer) may request a forfeiture certificate directing former pension rights to be forfeited.

Recommendation: The Council will consider each case on its merits.

Recovery or retention where former member has misconduct obligation

Where an individual leaves their employment in consequence of a criminal, negligent or fraudulent act or omission and a monetary obligation is due to the employer, that employer may seek to recover or retain the monetary obligation out of the pension fund.

Recommendation: The Council will consider each case on its merits.

Tier 3 Ill Health Retirement

Determine whether person in receipt of Tier 3 ill health pension has started gainful employment R37 (3) & (4)

Whether to recover any overpaid Tier 3 pension following commencement of gainful employment R 37 (3)

Determine whether person in receipt of Tier 3 ill health pension has started gainful employment (Regulation 37(3) and (4))

Recommendation:

The Council will consider each case on its merits.

Whether to recover any overpaid Tier 3 pension following commencement of gainful employment (regulation 37(3))

Recommendation:

Assumption should be that recovery will be made in each case as the member is required to notify the Council of any employment, however cases will be considered on their merits.

Change from previous discretion:

As previously.

EXISTING EMPLOYER DISCRETIONS REMOVED - For Information Only

Removal - Power of employer to increase total membership – Augmentation

To increase the total membership of an active member by up to 10 years extra service (Augmented Service). The Council's existing decision was not to augment.

In cases of early retirement through redundancy, the Council has determined to increase statutory redundancy benefits. The amount of this benefit will be based on an actual weeks pay and will be enhanced by a factor of 1.5

The facility for employers to grant extra 'augmented' membership of the Pension Scheme ceased after 31 March 2014.

Removal- Early Voluntary Retirement before 60

To allow individuals to retire between 55 and 60 with their employer's consent (protection existed until 31st March 2010 for those individuals in the Scheme at 31st March 2008 to retire from age 50 onwards). This discretion refers to the "85 year rule" where an individual could retire between 55 (50 if protected) and 60, with their employer's consent.

This discretion has been superseded.