

Report of Head of Human Resources

11. Pension Scheme Discretions

Purpose of report

1. To explain the changes to the Firefighters' Pensions Scheme 1992 (FPS), the New Firefighters' Pension Scheme 2006 (NFPS) and the Local Government Pension Scheme 2014 (LGPS) and consider the Authority's policy in relation to various discretions exercisable under those schemes.

Recommendations

It is recommended that the Policy and Resources Committee:

- (i) ***Agree to the discretions detailed in the Statement of Policy for the FPS 1992;***
- (ii) ***Agree to the discretions detailed in the Statement of Policy for the NFPS 2006; and***
- (iii) ***Agree to the discretions detailed in the Statement of Policy for the LGPS 2014.***

Introduction and Background

2. Public service pensions are currently undergoing reforms as a result of the Government commissioned review of public service pensions which has been undertaken by Lord Hutton. Alongside these reforms, the Department for Communities and Local Government has amended both the Firefighters' Pensions Scheme 1992 and the New Firefighters' Pension Scheme 2006 and introduced a new Local Government Pension Scheme 2014. A new Firefighters Pensions Scheme has recently been consulted upon and is due to be implemented from 1 April 2015.
3. The majority of the amendments deal with 'housekeeping' in terms of the overall provisions under the Schemes, specifically deletions and wording changes. However, there are specific discretions that require a decision to be made by the Fire Authority, which are set out below.

FPS 1992 Pension Discretions

4. Appendix 1 provides background information regarding the specific discretions relating to the FPS as follows:

- i. Rule B7 - Discretion to increase the Lump Sum payment to Firefighters who retire prior to age 55 with less than 30 years service
 - ii. Rule K4 - Withdrawal of a pension whilst re-employed in any capacity in any Fire and Rescue Authority (abatement)
 - iii. Rule – B5C - Extension of Additional Pension Benefit (APB) arrangements to allowances
- 5. The policy statement in relation to the discretions proposed for the NFPS 2006 is detailed in Appendix 2.

NFPS 2006 Pension Discretions

- 6. Appendix 3 provides background information regarding the specific discretions relating to the NFPS as follows:
 - i. Rule – 7B - Extension of Additional Pension Benefit (APB) arrangements to allowances
- 7. The policy statement in relation to the discretions proposed for the FPS 1992 is detailed in Appendix 4.

LGPS 2014 Pension Discretions

- 8. Appendix 5 provides background information regarding the specific discretions relating to the LGPS as follows:
 - i. Regulations 16(2)(e) and 16(4)(d) - Funding of additional pension contributions
 - ii. Regulation 30 (6) - Flexible Retirement
 - iii. Regulation 30 (8) – Waiving of actuarial reduction
 - iv. Regulation 31 - Power of the Employing Authority to award Additional Pension
 - v. Choice of early payment of Deferred Pension
- 9. The policy statement in relation to the discretions proposed for the LGPS 2014 is detailed in Appendix 6.

Conclusion/Summary

- 10. This paper provides proposed statement of policy for the discretion that is required to be made by the Fire Authority under each Pensions Scheme to facilitate effective implementation of those decisions.

Corporate Considerations

Resource Implications (identify any financial, legal, property or human resources issues).	Delegations of authority, such as those set out in this report and appendices, are necessary to enable officers to administer the schemes effectively into the future
Strategic Policy Links (identify how proposals link in with current priorities and policy framework and if they do not, identify any potential implications).	None.
Risk Management/Health & Safety (identify any risks, the proposed control measures and risk evaluation scores.	None
Consultation (identify any public or other consultation that has been carried out on this matter).	None.
Equalities (has an Equalities Impact Assessment been completed? If not, why not?)	None – not applicable.

Supporting Information

Appendix 1 – Background information regarding the FPS 1992 discretions

Appendix 2 – Statement of Policy on the discretions for the FPS 1992 discretions

Appendix 3 - Background information regarding the NFPS 2006 discretions

Appendix 4 – Statement of Policy on the discretions for the NFPS 2006 discretions

Appendix 5 - Background information regarding the LGPS 2014 discretions

Appendix 6 – Statement of Policy on the discretions for the LGPS 2014 discretions

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Background information regarding the FPS 1992 discretions

Rule B7 - Discretion to increase the Lump Sum payment to Firefighters who retire prior to age 55 with less than 30 years service

1. Under existing scheme rules a member of the FPS 1992 can retire from age 50 if they have a minimum of 25 years pensionable service. If they have not reached age 55 or 30 years service the Lump Sum receivable is restricted to a maximum of 2.25 times the gross pension. This discourages employees from retiring at the earliest opportunity and may result in the Authority being unable to reduce its wholtime workforce resulting in other less favourable measures being taken.
2. From 1st July 2013 Fire Authorities have the discretion to increase the lump sum to employees who would be subject to the 2.25 limit up to the maximum level of 25%. When exercising this discretion, the Authority must have regard to *“the economical, effective and efficient management of their functions, and the costs likely to be incurred in the particular case”*. Officers are also advised that in making any policy in respect of this discretion, the Authority may also wish to have regard to the fact that allowing full commutation may cause tax limits to be exceeded, thereby requiring the firefighter and authority to pay tax charges.
3. If the Authority **does** allow the firefighter to commute a greater sum, an amendment to Rule LA2 “Special payments and transfers into Firefighters’ Pension Fund” requires the Authority to transfer into that Fund an amount equal to the difference between the lump sum paid and what it would have been, if restricted to two and a quarter times the full amount of pension. The transfer must take place in the financial year in which the increased lump sum is paid.
4. The example below demonstrates the principle for a firefighter aged 50 with 25 years service based on an indicative annual salary of £28,199:

Under the FPS rules the member would receive the following annual pension and lump sum using the previously restricted pension factors:-

Pension: £12,429.82 per annum. Lump sum: £31,723.88

Under the new discretionary arrangements, if Fire Authority chose to lift the restriction on the lump sum the figures would be:-

Pension: £10,574.63 per annum. Lump sum: £66,972.63

The resulting outcome would be the firefighter leaves with a reduction in their annual pension of £1,855.19 per annum. However, their lump sum would be uplifted by the Fire Authority by £35,248.75. By not back filling the post the cost savings based on salary and on-costs including pension contributions would be recovered by the Fire Authority in the first year. This scheme does not put any further burden on the Pension Scheme. The member, although taking a reduced annual pension and smaller lump sum, in effect retires potentially five years early.

The above pension benefits compares to a firefighter with almost the full 30 years:

Pension: £14,099.50 per annum. Lump Sum: £89,301.30

Rule K4 - Withdrawal of a pension whilst re-employed in any capacity in any Fire and Rescue Authority (abatement)

5. The 1992 Scheme has been amended to increase the scope of the employer's discretion to abate a member's pension, where they are re-employed after retirement. This provision now applies to any scheme member re-employed in any role in any fire and rescue authority and supports Government policy that pension payments should be abated, where a member is re-employed in the public sector and receives a pension and salary exceeding earnings before retirement.
6. Rule K4 now requires an authority that elects not to exercise the discretion to abate, to pay into the pension fund the same amount as the pension paid to the member within the financial year. This amendment will apply retrospectively to cases where a retired member is re-employed on or after 25 September 2009. The Authority has a Flexible Retirement Policy which exercises the discretion to abate pensions of those employees who retire and are re-employed, this policy was implemented in January 2012. The Authority has 12 employees who were re-employed between 25 September 2009 and January 2012. The change in abatement rules will impact on one employee and this will incur a cost to the Authority of a one off payment of around £14,000 plus a future annual cost of around £4,000.

Rule B5C - Extension of Additional Pension Benefit (APB) arrangements to allowances

7. The definition of pensionable pay is amended so that only permanent elements of pay are treated as pensionable under final salary arrangements. The Authority is able to adopt Additional Pension Benefit arrangements for the treatment of other temporary allowances/emoluments. The policy intention is to reduce the financial risks associated with unfunded past service costs being generated in cases where a member receives a temporary allowance close to retirement.
8. Under existing scheme rules where a member of either Firefighters Pension Scheme is in receipt of Continuing Professional Development (CPD) payments they earn pension benefits based on the contributions paid on those payments and not on a Final Salary basis. The Fire Authority now has discretion to extend this arrangement to any of the following payments which it agrees should be pensionable:
 - a. Payments to reward additional skills and responsibilities outside the requirements of the firefighter member's duties under the contract of employment but which are within the wider functions of the job.
 - b. Any additional pay received whilst on temporary promotion or whilst temporarily carrying out the duties of a higher role.
 - c. Any non-consolidated performance related payment.

9. When exercising discretions –
 - a. these powers must be exercised reasonably having regard to the fiduciary duty owed to tax payers of the borough/district/county;
 - b. these powers may not be used for an ulterior motive, for instance to use them for a purpose for which they were not intended; and
 - c. regard must be given to all the relevant factors, disregarding irrelevant factors, and the cost to tax payers must be balanced against the benefits to the employer in deciding whether to adopt these powers.
10. Protection is provided for those members of the FPS in receipt of temporary allowances and emoluments which were treated as pensionable pay in the FPS 1992 prior to 1 July 2013.
11. The Authority currently have four allowances which have previously been paid as pensionable on a final salary basis:
 - a. USAR staff who were appointed prior to 1 July 2013, are paid a pensionable allowance for the provision of a higher level of specialist skills. The change will have no impact on this staff group as they were in receipt of the allowance prior to 1st July 2013 and the allowance will continue to be treated as pensionable pay. Anyone who receives this allowance for the first time since that date will be subject to the new arrangements.
 - b. For those staff temporarily promoted prior to 1 July 2013 who have continued to be paid the pensionable allowance will be protected and will continue to be treated as pensionable pay. Anyone who is temporarily promoted from 1 July 2013 will be subject to the new arrangements.
 - c. Day Crewing Plus staff are paid a pensionable allowance from the introduction of the new duty system in April 2014. This allowance will continue to be treated as pensionable as it does not meet the definition of the APB.
 - d. Flexi Duty Allowance has been specifically excluded from these discretions as it has been determined to be pensionable in accordance with the pension scheme regulations and therefore will continue to be treated as pensionable under Final Salary arrangements.
12. Whilst the change has no impact on the Employee contribution it will increase the rate of Employer contributions. This is because the regulations require a higher rate of Employer contribution to ensure that the benefit payment at retirement is fully funded as outlined by the Scheme Actuaries. The effect for Hereford & Worcester Fire Authority will be to increase the Employers Contribution on those payments covered by a further 5.2% for members of the FPS 1992.

STATEMENT OF POLICY Firefighters Pension Scheme 1992

A Fire Authority is required to make certain decisions in relation to a number of discretionary powers set out in the Firefighters Pension Scheme 1992 (FPS) which the Fire Authority may wish to exercise having regard to the circumstances of any individual case in respect of the pension rights of their firefighters and firefighters' dependants.

This statement of policy details the discretions made by Hereford & Worcester Fire Authority and is applicable to all employees of Hereford & Worcester Fire Authority who are members of the FPS.

Rule B7 Commutation – Discretion to permit the maximum payment

The Fire Authority may apply its discretion to allow a person, whose right to commute is restricted to providing a lump sum of two and one quarter times the amount of the full pension, to commute up to one quarter of pension, i.e. the unrestricted amount allowed to those who retire with an ordinary pension with at least 30 years' service or who have reached normal pension age, or who retire on ill-health grounds.

When exercising this discretion, the Authority must have regard to "the economical, effective and efficient management of their functions, and the costs likely to be incurred in the particular case". The Authority will be required to transfer into Pension Fund an amount equal to the additional pension benefit that the employee will receive on retirement.

Employer's Policy

Hereford & Worcester Fire Authority will give consent for up to one quarter pension to be commuted and to the extent that this can be demonstrated to be in the best financial interests of the Fire Authority.

In exercising their discretion the Fire Authority must have regard to the economical, effective and efficient management of their functions, and the costs likely to be incurred in the particular case which are transferrable to the Firefighters Pension Fund.

When the Chief Fire Officer considers that circumstances dictate it to be potentially necessary, expressions of interest will be sought from staff. With advice from the Treasurer and Monitoring Officer, the Assistant Chief Fire Officer (ACFO) will make a recommendation to the Chief Fire Officer for decision on a case by case basis.

The decision is delegated to the Chief Fire Officer involving approval of enhanced commutation in the case of employees whose annual salary is less than £45,000 or where the pension costs payable by the Authority do not exceed £45,000.

Rule K4 Withdrawal of a pension whilst re-employed in any capacity in any fire and rescue authority (abatement)

The Fire Authority has discretion to abate a member's pension, where they are re-employed after retirement. This provision applies to any scheme member re-employed in any role in any fire authority and supports Government policy that pension payments should be abated, where a member is re-employed in the public sector and receives a pension and salary exceeding earnings before retirement.

Employer's Policy

Hereford & Worcester Fire Authority will abate a member's pension, in all cases of re-employment of members of the FPS, where they are re-employed after retirement in any role in any fire authority.

Rule B5C - Extension of Additional Pension Benefit (APB) arrangements to allowances

Under existing scheme rules where a member of the FPS is in receipt of Continuing Professional Development (CPD) payments they earn pension benefits based on the contributions paid on those payments and not on a Final Salary basis. The Fire Authority has discretion to extend this arrangement to any of the following payments which it agrees should be pensionable:

- a. Payments to reward additional skills and responsibilities outside the requirements of the firefighter member's duties under the contract of employment but which are within the wider functions of the job.
 - b. Any additional pay received whilst on temporary promotion or whilst temporarily carrying out the duties of a higher role.
 - c. Any non-consolidated performance related payment.
9. When exercising discretions –
- a. these powers must be exercised reasonably having regard to the fiduciary duty owed to tax payers of the borough/district/county;
 - b. these powers may not be used for an ulterior motive, for instance to use them for a purpose for which they were not intended; and
 - c. regard must be given to all the relevant factors, disregarding irrelevant factors, and the cost to tax payers must be balanced against the benefits to the employer in deciding whether to adopt these powers

Employer's Policy

Hereford & Worcester Fire Authority will not grant the benefit contained within this regulation, except when it can be demonstrated that it is in the best needs of the Fire Authority.

With advice from the Treasurer and Monitoring Officer, the Assistant Chief Fire Officer (ACFO) will make a recommendation to the Chief Fire Officer for decision. The decision is delegated to the Chief Fire Officer.

Background information regarding the NFPS 2006 discretions

Rule 7B - Extension of Additional Pension Benefit (APB) arrangements to allowances

1. Under existing scheme rules where a member of either Firefighters Pension Scheme is in receipt of Continuing Professional Development (CPD) payments they earn pension benefits based on the contributions paid on those payments and not on a Final Salary basis. The Fire Authority now has discretion to extend this arrangement to any of the following payments which it agrees should be pensionable:
 - a. Payments to reward additional skills and responsibilities outside the requirements of the firefighter member's duties under the contract of employment but which are within the wider functions of the job.
 - b. Any additional pay received whilst on temporary promotion or whilst temporarily carrying out the duties of a higher role.
 - c. Any non-consolidated performance related payment.
2. When exercising discretions –
 - i. these powers must be exercised reasonably having regard to the fiduciary duty owed to tax payers of the borough/district/county;
 - ii. these powers may not be used for an ulterior motive, for instance to use them for a purpose for which they were not intended; and
 - iii. regard must be given to all the relevant factors, disregarding irrelevant factors, and the cost to tax payers must be balanced against the benefits to the employer in deciding whether to adopt these powers.
3. Flexi Duty Allowance has been specifically excluded from these discretions as it has been determined to be pensionable in accordance with the pension scheme regulations and therefore will continue to be treated as pensionable under Final Salary arrangements.
4. Protection is not provided for those members of the NFPS as the definition of pensionable pay excludes emoluments and allowances that are temporary.
5. Whilst the change has no impact on the Employee contribution it will increase the rate of Employer contributions. This is because the regulations require a higher rate of Employer contribution to ensure that the benefit payment at retirement is fully funded as outlined by the Scheme Actuaries. The effect for Hereford & Worcester Fire Authority will be to increase the Employers Contribution on those payments covered by a further 3.2% for members of the NFPS 2006.

STATEMENT OF POLICY
New Firefighters Pension Scheme 2006

A Fire Authority is required to make certain decisions in relation to a number of discretionary powers set out in the New Firefighters Pension Scheme 2006 (NFPS) which the Fire Authority may wish to exercise having regard to the circumstances of any individual case in respect of the pension rights of their firefighters and firefighters' dependants.

This statement of Policy details the discretions made by Hereford and Worcester Fire Authority and is applicable to all employees of Hereford & Worcester Fire Authority who are members of the NFPS.

Rule 7B - Extension of Additional Pension Benefit (APB) arrangements to allowances

Under existing scheme rules where a member of the NFPS is in receipt of Continuing Professional Development (CPD) payments they earn pension benefits based on the contributions paid on those payments and not on a Final Salary basis. The Fire Authority has discretion to extend this arrangement to any of the following payments which it agrees should be pensionable:

- a. Payments to reward additional skills and responsibilities outside the requirements of the firefighter member's duties under the contract of employment but which are within the wider functions of the job.
- b. Any additional pay received whilst on temporary promotion or whilst temporarily carrying out the duties of a higher role.
- c. Any non-consolidated performance related payment.

When exercising discretions:

- i. these powers must be exercised reasonably having regard to the fiduciary duty owed to tax payers of the borough/district/county;
- ii. these powers may not be used for an ulterior motive, for instance to use them for a purpose for which they were not intended; and
- iii. regard must be given to all the relevant factors, disregarding irrelevant factors, and the cost to tax payers must be balanced against the benefits to the employer in deciding whether to adopt these powers.

Employer's Policy

Hereford & Worcester Fire Authority will not grant the benefit contained within this regulation, except when it can be demonstrated that it is in the best needs of the Fire Authority.

With advice from the Treasurer and Monitoring Officer, the Assistant Chief Fire Officer (ACFO) will make a recommendation to the Chief Fire Officer for decision. The decision is delegated to the Chief Fire Officer.

Background information regarding the LGPS 2014 discretions

Under Regulation 60 (1) of the Local Government Pensions Scheme (LGPS) 2013 Regulations, each employer must formulate, keep under review and publish their policies on certain discretions contained within the LGPS Regulations. The new LGPS 2014 scheme means that some discretion are no longer required or have been removed from the scheme or new policy statements are required. The following table provides a summary of the changes to the discretions:

LGPS Pension Scheme	Regulation	Impact
Pre 2014 scheme	Regulation 12 BReg- Power of the employing authority to increase total membership of active members	This discretion has now been removed.
Pre 2014 schemes	Regulation 30 BReg – Choice of Early Retirement Benefits	This discretion has now been removed. LGPS members no longer need their employers consent to retire at 55 years to receive reduced pension benefits.
2014 Scheme	Reg 16 2(e and Reg 16 4(d)) Funding Additional pension	New discretion. This Regulation has replaced Shared Cost – AVC Reg 67
2014 Scheme	Regulation 30 (6) Flexible Retirement	No change to the discretion.
2014 Scheme	Regulation 30 (8) Waiving of Actuarial Reduction.	Employers can exercise discretion to allow LGPS members to receive unreduced pension benefits subject to the member meeting the '85 year rule'.
2014 Scheme	Regulation 31 Power of the Employing Authority to award additional pension	This discretion has not changed however the amount that can be awarded has increased from £5000 to £6500.
2014 Scheme	Choice of Early Payment of Deferred Pension	A policy statement is required for LGPS members who left between 31 March 2008 and 1 April 2014.

STATEMENT OF POLICY

Local Government Pension Scheme (LGPS)

Under Regulation 60 (1) of the Local Government Pensions Scheme (LGPS) 2013 Regulations, each employer must formulate, keep under review and publish their policies on certain discretions contained within the LGPS Regulations. This statement is applicable to all employees of Hereford & Worcester Fire Authority who are eligible to be members of the LGPS.

Regulations 16(2)(e) and 16(4)(d) - Funding of Additional Pension (New)

Where an active member opts to make Additional Pension Contributions (APC) under Rule 16(2)(e) these may be funded in whole or in part by the Employer. Under Rule 16(4)(d) the employee may opt to pay APC as a Lump Sum and this may also be funded in full or part by the employer.

Employer's Policy

Hereford & Worcester Fire Authority will not fund in whole or in part any APC purchased either by periodical payments or Lump Sum.

Regulation 30 (6) - Flexible Retirement (no change)

An employing authority may resolve to give their consent to grant flexible retirement to employees from age 55 who reduce their hours or move to a lower grade and draw all of their pension whilst continuing in employment and building up further benefits in the scheme.

The pension benefits may be reduced in accordance with guidance issued by the Government Actuary, if paid before age 65, and the employer has discretion not to apply all or part of the reduction. Where the discretion is applied the Authority will be required to transfer into Pension Fund an amount equal to the additional pension benefit that the employee will receive on retirement.

Employer's Policy

Hereford & Worcester Fire Authority will grant the benefit contained within this regulation, in accordance with the needs of the Service.

With advice from the Treasurer and Monitoring Officer, the Assistant Chief Fire Officer (ACFO) will make a recommendation to the Chief Fire Officer for decision. The decision is delegated to the Chief Fire Officer.

The decision is delegated to the Chief Fire Officer involving approval of enhanced commutation in the case of employees whose annual salary is less than £45,000 or where the pension costs payable by the Authority do not exceed £45,000.

Regulation 30 (8) – Waiving of actuarial reduction (New)

From age 55, members who have left local government employment receive early payment of their retirement benefits and do not need their employer's consent. The pension benefits must be reduced in accordance with guidance provided by the Government actuary. Employers may determine on compassionate grounds that the benefits are not reduced.

For a member who joined the scheme prior to 1 October 2006 where the member's age and membership (in whole years) satisfies the "rule of 85" then the benefits would be reduced, unless the employer chooses to exercise the discretion within the regulations. For a member who joined the Scheme on or after 1 October 2006, then reduced benefits would be payable if taken before age 65.

Employer's Policy

Hereford & Worcester Fire Authority will grant the benefit in this regulation to the extent that it can be demonstrated to be in the best financial interests of the Fire Authority.

In exercising their discretion the Fire Authority must have regard to the economical, effective and efficient management of their functions, and the costs likely to be incurred in the particular case which are transferrable to the pension fund.

With advice from the Treasurer and Monitoring Officer, the Assistant Chief Fire Officer (ACFO) will make a recommendation to the Chief Fire Officer for decision on a case by case basis.

The decision is delegated to the Chief Fire Officer involving approval of enhanced commutation in the case of employees whose annual salary is less than £45,000 or where the pension costs payable by the Authority do not exceed £45,000.

Regulation 31 - Power of the Employing Authority to award Additional Pension (change to the amount of additional pension)

An employer may resolve to award a member additional pension of not more than £6,500 a year, payable from the same date as their pension is payable under any other provision of these regulations. An additional pension may be paid in addition to any increase to total membership resolved under Regulation 16 so long as the overall total does not breach the limits laid down within these regulations.

Employer's Policy

Hereford & Worcester Fire Authority will not normally grant the benefit contained within this regulation, other than in very exceptional circumstances where the financial implications can be justified in the best interests of the Authority.

With advice from the Treasurer and Monitoring Officer, the Assistant Chief Fire Officer (ACFO) will make a recommendation to the Chief Fire Officer for decision on a case by case basis.

Choice of early payment of Deferred Pension (New)

Where a member became a deferred member between 31 March 2008 and 1 April 2014, they can apply for early release of benefits, and the Fire Authority can fund the costs of the release.

Employer's Policy

Hereford & Worcester Fire Authority will not grant the benefit contained within this regulation.