

8. Local Government Pension Scheme Discretions

Purpose of report

1. To recommend a Statement of Policy in relation to the discretionary regulations of the Local Government Pension Scheme for approval as recommended by the Policy and Resources Committee.

Recommendation

The Policy and Resources Committee recommends that:

- i) the Statement of Policy attached at Appendix 1 is approved by the Authority and;***
- ii) the Policy and Resources Committee be delegated responsibility for exercising the discretionary elements of the Local Government Pension Scheme, including the authority for incurring any costs involved.***

Background

2. Under the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (in force 01/04/2008) each employer must formulate, publish and keep under review a Statement of Policy on certain discretions contained within them. These discretionary elements are only applicable to the Local Government Pension Scheme (LGPS).
3. Within H&WFRS, just over 25% of LGPS Scheme members are currently over the minimum pension age (55), and therefore have the option of applying for early payment of pension benefits, which includes flexible/partial retirement.
4. To date, H&WFRS has considered applications for the early payment of pension benefits and other discretionary elements on a case by case basis, with an assessment of the costs and benefits being made. No applications have been approved.
5. In terms of flexible retirement, no applications have been submitted from Support/Control Staff. H&WFRS has previously agreed to allow members of the Firefighters' Pension Scheme (FPS) to retire and take pension benefits, unabated, prior to being re-employed. This arrangement was discontinued in September 2007. FPS members may still retire and subsequently be re-employed where there is a specific need for an employee's specialist skills, but pension benefits are abated in these circumstances.

Options

6. Appendix 2 gives an overview of the discretionary elements, costs and examples of practices in other Fire and Rescue Services, and sets out recommendations.
7. Two viable options would be:
 - To agree to consider each case on the grounds of cost and business efficiency.
 - To agree a framework for decisions, with each case to be considered on an individual basis.

Proposal

8. It is proposed that the Fire and Rescue Authority delegates responsibility for exercising the discretionary elements of the LGPS (including the authority for incurring any costs involved) to the Policy and Resources Committee.
9. The proposed Statement of Policy (attached at Appendix 1) has been prepared to meet the above requirements. The Statement of Policy follows a model that is adopted by a number of other Authorities, including Worcestershire County Council and is intended to minimise H&WFRS liabilities, yet enable the flexibility for situations to be considered on their relative merits.

Consultation

10. Representatives of UNISON and GMB were consulted during the process of drawing up the Statement of Policy. Following the issue of the initial draft statement, no comments were received from UNISON. GMB commented as follows:
 - That the employer should not be in a position whereby they cannot operate their discretion, but some of the wording used in the statement could be interpreted as having this effect, for example, the wording to the second part of the policy on Regulation 18 states “will not grant the benefit to waive any actuarial reduction.”
 - It was suggested that where exceptional or financially justifiable circumstances are referred to, examples could be given.
 - The decision not to allow flexible retirements (where employees can reduce hours or grade and draw pension benefits) except in exceptional or financially justifiable circumstances was considered an unhelpful position. The view of GMB being that flexible retirement could assist with succession planning or to retain an ageing workforce. The statement on not waiving early retirement reductions might be viewed as fettering the Service’s discretion.

11. The Service has considered these comments when drawing up the attached version of the Statement of Policy.

Financial Considerations

Consideration	Yes/No	Reference in Report i.e paragraph no.
There are financial issues that require consideration	Yes	Appendix 2 refers

Legal Considerations

Consideration	Yes/No	Reference in Report i.e paragraph no.
There are legal issues e.g. contractual and procurement, reputational issues that require consideration	Yes	Paragraph 2

Additional Considerations

12. The table below sets out any additional issues arising from the proposals contained in this report and identifies the relevant paragraphs in the report where such issues are addressed.

Consideration	Yes/No	Reference in Report i.e paragraph no.
Resources (e.g. Assets, ICT, Human Resources, Training & Development, Sustainability).	Yes	Appendix 2 refers
Strategic Policy Links (e.g. IRMP, Authority Plan, Equality & Diversity, Partnerships, Environmental Impact).	No	
Risk Management / Health & Safety (e.g. risk management and control measures, risk register score).	No	
Consultation with Representative Bodies	Yes	Paragraph 10

Supporting Information

Appendix 1 – Statement of Policy

Appendix 2 – Overview of the Discretionary Elements

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STATEMENT OF POLICY
Local Government Pension Scheme (LGPS)
Discretions

Under the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (in force 01/04/2008) each employer must formulate, publish and keep under review a Statement of Policy on certain discretions contained within them.

The statement is applicable to all employees of Hereford & Worcester Fire and Rescue Authority who are eligible to be members of the LGPS.

Regulation 12: Power of employing authority to increase total membership of active members

An employing authority may resolve to increase the total membership of an active member.

The total amount of augmented membership that can be given cannot exceed 10 years.

Employer's Policy

Due to cost implications Hereford & Worcester Fire and Rescue Authority will not usually grant the benefit contained within this regulation, other than in cases where the financial implications can be justified or in other very exceptional circumstances. Each case will be judged on its own merits, with full consideration of the impact on service delivery and financial costs.

Hereford & Worcester Fire and Rescue Authority may allow a member of the Local Government Pension Scheme, who is eligible to receive a compensation payment in accordance with Regulation 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, to be awarded instead, a period of augmented membership which is actuarially equivalent in value to the lump sum compensation payment (in excess of the statutory redundancy payment) that would otherwise have been paid, provided that the augmented membership would not exceed the statutory limits. All such requests must be made before the employee leaves employment.

Regulation 13: Power of employing authority to award additional pension

An employing authority may resolve to award a member additional pension of not more than £5,000 a year payable from the same date as their pension.

Additional pension may be paid in addition to any increase of total membership resolved to be made under regulation 12.

Employer's Policy

Due to cost implications Hereford & Worcester Fire and Rescue Authority will not usually grant the benefit contained within this regulation, other than in cases where the financial implications can be justified or in other very exceptional circumstances. Each case will be judged on its own merits, with full consideration of the impact on service delivery and financial costs.

Regulation 18: Flexible retirement

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.

Employer's Policy

Hereford & Worcester Fire and Rescue Authority will not grant the benefit contained within this regulation, other than in cases where the financial implications can be justified or in other exceptional circumstances. Each case will be judged on its own merits, with full consideration of the impact on service delivery and financial costs.

Hereford & Worcester Fire and Rescue Authority will not usually grant the benefit to waive any actuarial reduction other than on exceptional compassionate grounds. It might, for example, be appropriate to do so where an employee has particular caring responsibilities for a dependent.

Regulation 30: Choice of early payment

Between and including the ages of 55 and 59 members have the right to apply for early payment of their retirement benefits subject to the consent of their employer.

The amount of benefits released early would be reduced in accordance with guidance issued by the Government Actuary.

An employing authority may also determine that a retirement pension and grant should not be reduced on compassionate grounds.

Employer's Policy

Hereford & Worcester Fire and Rescue Authority will not grant the benefit contained within this regulation, other than in cases where the financial implications can be justified or in other exceptional circumstances. Each case will be judged on its own merits, with full consideration of the impact on service delivery and financial costs.

Where granted, Hereford & Worcester Fire and Rescue Authority would not normally waive the reduction to the benefits, other than on exceptional compassionate grounds. It might, for example, be appropriate to do so where an employee has particular caring responsibilities for a dependent.

Appendix 2

Regulation and Discretion - Details	Potential Costs	Practice In Other FRAs	Recommended Policy
<p>Regulation B12</p> <p>A written policy statement is required on:</p> <p><u>Whether to augment membership of an active member (by up to 10 years)</u></p> <p>An employer can increase the pensionable service of an employee who is a current member of the LGPS who is dismissed on grounds of redundancy or efficiency.</p> <p>Up to 10 additional pension membership years may be awarded.</p> <p>(N.B. All LGPS members over minimum pension age (currently 55) have an absolute right to draw unreduced pension benefits in the event of redundancy)</p>	<p>The Authority would be required in all circumstances to pay a one off capital cost to the pension scheme provider, within 1 month of the resolution.</p>	<p>Devon & Somerset – this discretion will not usually be exercised.</p> <p>Essex – will not increase membership.</p> <p>Fife – may augment for up to 6 2/3 years in cases of redundancy or business efficiency (arrangements in Scotland differ to England).</p> <p>Lancashire – will only augment in exceptional and justifiable circumstances.</p> <p>Notts – refer back to their Discretionary Scheme.</p> <p>Royal Berkshire - do not augment with the exception of the option for employees, in accordance with the Early Termination of Employment Discretionary Payment Regs, to ask the Fire Authority to use the additional compensation to purchase additional scheme membership.</p> <p>West Midlands - each specific case will be judged equally and fairly on its own merits, having fully considered service delivery and financial costs.</p>	<p>Due to cost implications it is recommended that only in very exceptional circumstances and where justifiable will additional pension membership years be given under Regulation 12.</p> <p>Each specific case to be judged equally and fairly on its own merits, including affordability.</p>

Regulation and Discretion – Details	Potential Costs	Practice In Other FRAs	Recommended Policy
<p>Regulation B13</p> <p>A written policy statement is required on:</p> <p><u>Whether to grant additional pension to a member (up to £5,000 p.a.)</u></p> <p>The Authority may award additional pension of up to £5,000 per annum to an employee.</p>	<p>The Authority would be required in all circumstances to pay a one off capital cost to the pension scheme within 1 month of their resolution.</p>	<p>Devon & Somerset – due to the additional financial burden, this discretion will not usually be exercised.</p> <p>Essex – will not award additional pension.</p> <p>Fife – will not award in any circumstances.</p> <p>Lancashire – yet to adopt a policy.</p> <p>Notts – will not grant additional pension.</p> <p>Royal Berkshire – do not to adopt this discretion.</p> <p>West Midlands - each specific case will be judged equally and fairly on its own merits, having fully considered service delivery and financial costs.</p>	<p>Due to cost implications, it is recommended that only in very exceptional and justifiable circumstances will additional pension be given under Regulation 13.</p> <p>Each specific case to be judged equally and fairly on its own merits, including affordability.</p>

Regulation and Discretion – Details	Potential Costs	Practice In Other FRAs	Recommended Policy
<p>Regulation B18 (1)</p> <p>A written policy statement is required on:</p> <p><u>Whether benefits can be paid if an employee reduces their hours or grade (flexible retirement)</u></p> <p>The Authority may agree requests for flexible (partial) early retirement and the waiver of any actuarial reduction of benefits. (<i>Re waiver – see Regulation B18 (3)</i>)</p> <p>The 2007 Regulations introduce the possibility of employees (from age 55) to take their pension benefits whilst remaining in employment, provided that the employer gives consent, and there has been a reduction in working hours or grade.</p> <p>If early retirement is agreed (before age 65), with the immediate payment of pension benefits, an actuarial reduction will be applied to the member's accrued pension benefits.</p> <p>There are circumstances where flexible (partial or gradual) retirement may be of mutual benefit to the employee and the employer, the employer may wish to retain an employee on reduced hours, for example, to coach others, or if they have specialist skills.</p>	<p>In some cases where pension benefits are taken early (depending on an employee's length of service and age) the Authority may need to pay a 'financial strain' cost' to the pension fund.</p>	<p>Devon & Somerset – employees may make a request, applications will only be approved where there are no significant pension costs or disadvantages to the Authority.</p> <p>Essex – will consider on a case by case basis, with special consideration given to disability cases.</p> <p>Fife – may agree flexible retirement.</p> <p>Lancashire – may agree flexible retirement, each case considered on grounds of cost, business impact.</p> <p>Notts – yes, in line with their flexible retirement policy.</p> <p>West Midlands - each specific case will be judged equally and fairly on its own merits, having fully considered service delivery and financial costs.</p>	<p>It is recommended that the Authority only normally permits flexible retirements where it can be demonstrated as being in the interests of the Authority, and where there are no significant costs or disadvantages to the Authority.</p> <p>Each specific case to be judged equally and fairly on its own merits, having fully considered the impact on service delivery and financial costs.</p>

Regulation and Discretion – Details	Potential Costs	Practice In Other FRAs	Recommended Policy
<p>Regulation B18 (2)</p> <p>A written policy statement is required on:</p> <p><u>Whether to grant application for early payment of benefits on or after age 55 and before age 60</u></p> <p>This is known as Employer Consent retirement.</p> <p>LGPS members, leaving local authority employment before they are entitled to receive the immediate payment of retirement benefits may, once they attain the age of 55, choose to receive payment of these benefits. Under the age of 60, they will need the consent of their employing authority before they are entitled to receive the early and immediate payment of retirement benefits. These benefits may, depending on length of service, be reduced on an actuarial basis.</p> <p>(For employees born before 1 April 1956, if the sum of their age and pensionable service is 85 or more, pension benefits are paid without an actuarial reduction for early payment, if they retire before 1 April 2016)</p>	<p>The employer may have to make a financial strain cost to the pension fund.</p>	<p>Devon and Somerset – applications only accepted when in the interests of the Authority, or where there are compassionate grounds.</p> <p>Essex –will agree only if there are compelling business reasons.</p> <p>Fife – may grant.</p> <p>Lancashire – will only grant if there is a justifiable business case that also addresses recruitment to the post left vacant.</p> <p>Notts – yes, on a case-by-case basis.</p> <p>West Midlands - each specific case will be judged equally and fairly on its own merits, having fully considered service delivery and financial costs.</p>	<p>It is recommended that the Authority only normally permits early payment of pension benefits where it can be demonstrated as being in the interests of the Authority, and where there are no significant costs or disadvantages to the Authority.</p> <p>Each specific case to be judged equally and fairly on its own merits, having fully considered the impact on service delivery and financial costs.</p>

Regulation and Discretion – Details	Potential Costs	Practice In Other FRAs	Recommended Policy
Regulation B18 (3)			
<p>A written policy statement is required on:</p> <p><u>Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement</u></p> <p>If the payment of benefits is before age 65, then the benefits may be reduced in accordance with guidance issued by the Government Actuary.</p> <p>Should the Authority so wish, Regulation 18 gives it the power to waive this reduction in benefits.</p>	<p>If an employer decides to waive the actuarial reduction, then they will have to pay the financial strain cost to the pension fund.</p> <p>There would always be a cost to the Authority if the actuarial reduction in benefits were to be waived</p>	<p>Devon & Somerset – will not generally waive.</p> <p>Essex – will consider on a case by case basis, with special consideration to disability cases.</p> <p>Fife – may waive on compassionate grounds.</p> <p>Lancashire – will only consent where there are exceptional reasons for doing so</p> <p>Notts – yes, in exceptional circumstances and if cost neutral or in the interests of the Authority.</p> <p>West Midlands - each specific case will be judged equally and fairly on its own merits, having fully considered service delivery and financial costs.</p>	<p>If flexible early retirement is agreed, with the immediate payment of pension benefits, it is recommended that the Authority waive a pension reduction on very exceptional compassionate grounds only. It might be appropriate to do so, for example, where an employee has particular caring responsibilities for a dependent.</p> <p>Each specific case to be judged equally and fairly on its own merits, including affordability.</p>

Regulation and Discretion – Details	Potential Costs	Practice In Other FRSs	Recommended Policy
<p>Regulation B 30</p> <p>A written policy statement is required on:</p> <p><u>Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early</u></p> <p>Any payment would be subject to a reduction in accordance with guidance issued by the Government Actuary. Regulation 30 gives the Authority power to waive this reduction on compassionate grounds</p>	<p>If an employer decides to waive the actuarial reduction, then they will have to pay the financial strain cost to the pension fund.</p> <p>There would always be a cost to the Authority if the actuarial reduction in benefits were to be waived</p>	<p>Devon and Somerset – will apply an actuarial adjustment. Essex – will not waive. Fife – may waive in exceptional circumstances. Lancashire – will only waive on compassionate grounds and where there are exceptional reasons. Notts – yes, in exceptional circumstances, on a case-by-case basis. This discretion will be exercised by the Chief Fire Officer in conjunction with the Treasurer and Chairman to approve existing severance packages and members will be notified where discretion is exercised. West Midlands - each specific case will be judged equally and fairly on its own merits and would need to be funded by a lump sum contribution into the Pensions Fund by the Fire Authority. This discretion will only be exercised by the Fire Authority in cases where it can be demonstrated that the Fire Authority can fund the cost of the release within a three year period.</p>	<p>If early retirement is agreed, with the immediate payment of pension benefits, it is recommended that the Authority waive a pension reduction on very exceptional compassionate grounds only. It might be appropriate to do so, for example, where an employee has particular caring responsibilities for a dependent.</p> <p>Each specific case to be judged equally and fairly on its own merits, including affordability.</p>