



## COUNCIL – 10TH JUNE 2014

**SUBJECT: LOCAL GOVERNMENT PENSION SCHEME 2014 – EMPLOYER DISCRETIONS**

**REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND SECTION 151 OFFICER**

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### 1. PURPOSE OF REPORT

- 1.1 To advise Council of the main changes to the Local Government Pension Scheme (LGPS) regulations for 2014 and to make a decision on the employer discretions that the Council is, under the Pension Scheme, required to publish.

### 2. SUMMARY

- 2.1 Under the Local Government Pension Scheme (LGPS) Regulations employers (the Council) are required to formulate, publish and keep under review a policy statement in relation to the exercise of a number of discretions. Once the decision on the discretions has been made, and published, a copy must be sent to the Pension Fund administering authority (the Greater Gwent Pension Fund at Torfaen County Borough Council). The policy cannot become effective for a month after receipt by the Pension Fund. Under the LGPS Regulations the discretions must be published by 30th June 2014 or the Council could be fined if a LGPS member were to make a complaint. The discretions must be considered by full Council before they can be implemented.
- 2.2 In formulating and reviewing its policy the Council is required by the Regulations to have regard to the extent to which the exercise of its discretionary powers could lead to a serious loss of confidence in the public service.
- 2.3 Under the LGPS Regulations, the Council also has to appoint an Adjudicator to decide on any disputes in relation to the pension fund. This report also highlights this and suggests that the Section 151 Officer assumes this role.

### 3. LINKS TO STRATEGY

- 3.1 These employer discretions under the LGPS Regulations 2014 links to the People Management Strategy and therefore to all other strategies, including all equality strategies, policies and procedures, that relies on employees to deliver the strategy and service provision.
- 3.2 A flexible pensions scheme also supports the prosperous theme of 'Caerphilly Delivers', the LSB single integrated plan and the over-arching Tackling Poverty agenda.

## **4. THE REPORT**

- 4.1 Under the Local Government Pension Scheme (LGPS) Regulations employers (the Council) are required to formulate, publish and keep under review a policy statement in relation to the exercise of a number of discretions. Once the decision on the discretions has been made, and published a copy must be sent to the Pension Fund administering authority (the Greater Gwent Pension Fund at Torfaen County Borough Council). The policy cannot become effective for a month after receipt by the Pension Fund. Under the LGPS Regulations the discretions must be published by 30th June 2014 or the Council could be fined if a LGPS member were to make a complaint. The discretions must be considered by full Council. It is proposed to bring a further report before Members providing further details in autumn 2014.
- 4.2 In formulating and reviewing its policy the Council is required by the regulations to have regard to the extent to which the exercise of its discretionary powers could lead to a serious loss of confidence in the public service. In making these decisions the Council must ensure that the discretions are not over generous, seen to reward failure, show favouritism, be consistently applied across the whole of the workforce and comply with all equalities legislation.
- 4.3 The introduction of LGPS 2014 means that there are a number of new discretions that the Council needs to make a decision upon in addition to the existing discretions from previous regulations that have not been superseded by the introduction of new schemes. In total there are currently 107 discretions that the Council as an employer needs to have a policy on although not all of these need to be published. The Council has considered the majority of these discretions previously but a number of these are no longer applicable or the earlier decision needs to be reviewed. In the majority of cases the current discretions remain fit for purpose and can be reiterated at this time. For transparency it is proposed to publish all the discretions that the Council needs to decide on rather than just those the Regulations require the Council to publish. The discretions will be published on the Council's website and will be publically available for everyone to access. The full list of discretions will be brought forward to Council at a later date prior to publishing on the Council's website.

### **Background Information**

- 4.4 From 1 April 2014, 'normal pension age' for the purposes of the LGPS is linked to 'state pension age' and this will not normally be before age 65. Under the new scheme, employees can opt to retire at aged 55 without the consent of their employer, and can gain access to their LGPS pension. The pension will be reduced by a set amount depending on how many years before 'normal pension age' an employee wishes to retire (known as an actuarial reduction). The reduction in pension will be equivalent to the cost of early payment of the pension and lump sum before 'normal pension age'. There is an option for the employer to waive all or part of the actuarial reduction as set out below.
- 4.5 The new scheme will be based on 'career average re-valued earnings' (CARE) from 1 April 2014. All previous contributions built up before April 2014 will be protected and will still be based on final salary at retirement and the current 'normal pension age'. Under the CARE scheme, the Pension earned in each scheme year is added to the individual's Pension Account and inflation is then added to the pension in the account so that it keeps its value. This is very different to the current arrangements where an employee's final salary is the rate of pay used to calculate an individual's annual pension, other than in exceptional circumstances.
- 4.6 The introduction of the new LGPS also requires scheme employers to review their existing discretionary pension policy arrangements and set out how the new discretions will be applied in relation to specific provisions within the scheme. These discretions are set out below.
- 4.7 The new LGPS has introduced a number of changes but in certain areas there has been no change.

## **No Change**

- 4.8 In the new scheme members can still exchange some pension to get a tax-free cash lump sum. For every £1 of annual pension a member forfeits, they receive £12 of tax-free lump sum (subject to HR Revenue & Custom limits).
- 4.9 The death in service benefits remain the same i.e. if an employee dies before receiving their pension, whilst an active member of the Scheme, they will continue to receive death in service cover of three times the annual pensionable pay. The only difference from April 2014 is that non-contractual overtime will be included in the annual pensionable pay figure.
- 4.10 The death in service survivor benefits will also remain unchanged, with 1/160<sup>th</sup> of pensionable pay for each year of membership and notional membership from date of death to Normal Pension Age.
- 4.11 The ill health provision under the Scheme remains unchanged:-
- Tier 1 – Immediate payment with service enhanced to Normal Pension Age (State Pension Age)
- Tier 2 – Immediate payment with 25% service enhancement to Normal Pension Age (State Pension Age)
- Tier 3 – Temporary payment of pension for up to 3 years

## **Summary of Changes to the LGPS**

- 4.12 The Pension accruable has changed from 1/60<sup>th</sup> to 1/49<sup>th</sup> of the member's pensionable pay received in that pension scheme year. This means that if an employee joins the LGPS in April 2014 and remains a contributor to the LGPS for 49 years, until age 65, they will receive 49/49ths pay as a pension. However, whilst at present this would be 49/49ths of final salary, in future each 1/49<sup>th</sup> of annual pay accrued will be in relation to the pay actually earned in each of the 49 years, hence the term "career average". It is also the case that this "specimen employee will have to wait long beyond their 65<sup>th</sup> birthday to receive their State Pension.
- 4.13 From 1<sup>st</sup> April 2014 LGPS contribution rates have changed, however the majority of employees will see little or no increase in their rate. The revised contribution rates are shown in Appendix 1.
- 4.14 The definition of Pensionable Pay has changed. Pensionable Pay will now include non-contractual overtime and additional part time hours worked and any other payments included in an employee's contract as pensionable pay. The following are excluded from the definition of pensionable pay:
- Any sum which has not had income tax liability determined on it
  - Travelling, subsistence, expenses
  - Payment in consideration of loss of holidays
  - Payment in lieu of notice
  - Payment as inducement not to terminate employment
  - Any amount treated as money value for motor vehicle (other)
  - Payment in consideration of loss of future pensionable payments or benefits
  - Any award of compensation (excluding any sum representing arrears of pay) for the purpose of achieving Equal Pay
  - Payment made by scheme employer to member on reserve forces leave
  - Returning officer/acting returning officer fees other than fees paid in respect of:-
    - Local government elections.
    - Elections for Welsh Government.
    - Parliamentary elections or

- European Parliamentary elections.
- 4.15 The introduction of a new 50/50 Option. This is designed to provide a short-term alternative to opting out of the main scheme. The scheme allows staff to stay in or join LGPS when pay is low or due to financial difficulties and the main features are:-
- No limit to the amount of times a member changes within the scheme.
  - 50% contributions for a 50% pension (1/98<sup>th</sup>)
  - Employee maintains contribution band
  - Full value of Death in Service grant is maintained
  - Employer continues to pay 'full' rate
- 4.16 The normal pension age has changed from 65 to become 'Equal to State Pension Age'.
- 4.17 The Voluntary Retirement Age is reduced to 55 from 60 although there will be an actuarial reduction in the employee's pension. The amount of the reduction will be in line with Government Actuarial guidelines and will depend on the number of years prior to the employee's normal pension age.
- 4.18 The vesting period (qualifying period for pension) has been extended from 3 months to 2 years. In addition, there is no immediate payment of benefits/enhancements if the member retires by mutual consent on the grounds of efficiency / redundancy / ill health / flexible retirements and has been in the scheme for less than 2 years.
- 4.19 There is also the introduction of Additional Pension Contributions (APC's) to allow a LGPS member to buy up to a maximum of £6,500 pension. This can be used to buy back authorised unpaid leave of absence / unpaid child related leave / trade dispute or provide for additional pension.
- 4.20 Assumed Pensionable Pay replaces 'notional pensionable pay'. Employer pension contributions must be paid on assumed pensionable pay for periods of sickness / injury on reduced or nil pay and child related leave. This is also used to calculate ill health enhancements and Death in Service benefits.
- 4.21 Employees have been made aware of the changes through a variety of ways, pension briefings presented by representatives of the Greater Gwent Pension fund have been held for council employees, all current scheme members have been provided with information by the Greater Gwent fund, a dedicated section on the HR Portal has been created to include information on the changes and LGPS 2014 and it is a requirement of the scheme that new starters to the scheme are being provided with information on the scheme.
- 4.22 There are six 'Employer Discretions' available within the LGPS which require a decision by each employing local authority, these are detailed below:-

**Decision 1 –**

*Whether, how much, and in what circumstances to contribute to a shared cost Additional Pension Contribution (APC) Scheme. (APC is extra pension that an employee may wish to purchase with or without a contribution from their employer. APC can be bought as a one off lump sum or by regular payments. There are certain circumstances where an employee may decide to purchase APC for a period of unpaid absence. In this case if the employee decides to purchase the pension to cover for the absence, the employer has no choice but to pay their contribution too. The cost of covering the absence is split one third to the employee and two thirds to the employer.)*

**Recommendation:** That this discretion is not adopted, apart from those that the Council has to enter into under the Pension Regulations such as when an employee is paying for a period

of unpaid absence and the employer must pay their contributions, because of the associated costs.

**Decision 2 –**

*Whether all or some benefits can be paid if an employee reduces their hours or grade (flexible retirement)*

**Recommendation:** The Council does not currently have Flexible Retirement Scheme in place but it is proposed to introduce one shortly. Therefore it is proposed that this discretion should not be introduced at the current time. However, it is proposed to bring forward a Flexible Retirement Scheme within the next few months and this will require a further report asking Council to enact this discretion at that time.

**Decision 3 –**

*Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement.*

**Recommendation:** The Council does not currently have a Flexible Retirement Scheme in place. Therefore, it is proposed that this discretion is not adopted at the current time.

However, it is proposed to bring forward a Flexible Retirement Scheme within the next few months. A further decision will be required at that time and a report will be brought forward asking Council whether or not to enact this discretion at that time.

**Decision 4 -**

*Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal retirement age.*

**Recommendation:** It is proposed that the Council will not exercise this discretion due to the associated costs and to ensure consistency and fairness under equalities legislation.

**Decision 5 -**

*Whether to 'switch on' the 85-year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.*

**Recommendation:** The "85 year rule" can be activated for active members of the pension scheme, prior to age 60, the cost of which will be borne by the employer. It is proposed that this discretion is adopted subject to each case being supported by a viable business case and approved by the Council's Pension and Compensation Committee. This will allow the Council to achieve its targets under the Medium Term Financial Plan as employees are more likely to come forward and request access to their pension benefits and employees will have less of an actuarial reduction or no actuarial reduction applied to their pension benefits depending on their individual circumstances. This is currently happening for employees who qualify under the 85-year rule. This discretion is time limited as the 85-year rule protections begin to taper off from 1<sup>st</sup> April 2016 and disappear completely from 1<sup>st</sup> April 2020.

**Decision 6 –**

*Whether to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency (by up to £6500 p.a.).*

**Recommendation:** It is proposed that the Council will not exercise this discretion due to the associated costs and to ensure consistency and fairness under equalities legislation.

4.23 Under the LGPS 2014, there is a requirement for the Council to appoint an Adjudicator on pensions matters. The role of the Adjudicator is to consider and to make a decision on an application for 'adjudication of disagreements' from any person whose rights or liabilities under the LGPS are affected by either:-

- **A 'First Instance Decision' that your organisation makes** (i.e. under **Regulation 72**); or
- **Any other act or omission of the organisation.**

A '**First Instance Decision**' is the term the Regulations use for a statutory decision that either the Employer or the Fund makes on an individual's rights and liabilities under the LGPS.

4.24 It is proposed that the Council appoints a panel to deal with any Adjudicator decisions with the Council's Section 151 Officer as the Chair of the Panel and acting as the Council's Adjudicator on pension matters. It is recommended that the person appointed has a 'reasonable working knowledge' of the pensions legislation that the Council must comply with as an LGPS Employing Authority. The Adjudicator must also understand the LGPS '**Internal Disputes Resolution Procedure**' (IDRP). The other Panel members are the Head of Workforce and Organisation Development and the Cabinet Member for HR and Constitutional Affairs. The final decision will be made by the Section 151 Officer and the outcome issued in their name.

## **5. EQUALITIES IMPLICATIONS**

- 5.1 Ensuring the Council has a flexible and comprehensive Pensions scheme in place allows greater numbers of staff, regardless of the individual circumstances and backgrounds, access to and options for, securing their financial future, both in the run up to their retirement and afterwards.
- 5.2 This directly links to Age issues but also helps secure better Gender equality as it improves opportunities for women to gain better pension opportunities.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 The financial implications of the proposals will depend on the number of pensions cases that the Council receives. Additional pension costs in respect of early release of pension are considered on a case-by-case basis based on a business case. There are no initial costs of implementing the discretions.

## **7. PERSONNEL IMPLICATIONS**

- 7.1 There are no personnel implications of implementing these proposals.

## **8. CONSULTATIONS**

- 8.1 Full consultation has been undertaken with the Officers listed in the Consultee's paragraph below.

## **9. RECOMMENDATIONS**

- 9.1 It is recommended that Council notes the provisions of the new LGPS Scheme with effect from 1<sup>st</sup> April 2014 and approve the implementation of the employer discretions as set out in section 4.22 above and the publication of the Discretions Policy (Appendix 2).

## **10. REASONS FOR THE RECOMMENDATIONS**

- 10.1 The Council has to publish its discretions policy under the LGPS 2014 Regulations and the adoption of the discretions outlined above will help the Council meet its financial targets under the Medium Term Financial Plan.

## **11. STATUTORY POWER**

- 11.1 Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2014  
Local Government Pension Scheme Regulations 2013

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### Background Papers:

Local Government Pension Scheme Regulations and Newsletters  
Discretions Document published by the Local Government Association

### Appendices:

Appendix 1 Employee and Councillor Pension Contribution Rates  
Appendix 2 Discretions Policy