

# **WEST DUNBARTONSHIRE COUNCIL**

## **Report by Director of Corporate Services**

**Corporate & Efficient Governance Committee: 27 October 2010**

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**Subject: Local Government Pension Scheme (LGPS) Regulatory Changes and Council Policy on Application of Regulatory Pension Discretions**

### **1. Purpose**

- 1.1** To update Committee on the regulatory changes to the Local Government Pension Scheme by virtue of the 'Local Government Pension Scheme (Administration) (Scotland) Regulations 2008' and the 'Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009'.
- 1.2** As a consequence of the regulatory changes to seek Committee approval for revisions to the Council's "Application of Regulatory Pension Discretions".

### **2. Background**

- 2.1** The LGPS (Administration) (Scotland) Regulations 2008 came into effect on 1 April 2009, with some further changes becoming effective from 1 April 2010. The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009 laid before Parliament in May 2009, but effective 1 April 2009.
- 2.2** Under LGPS Admin Reg 61(2) there is a requirement for scheme members to formulate their policy on the application of discretions available to them and to ensure that this policy is kept under review and revised as appropriate following any change in pension regulations.
- 2.3** The Council's "Application of Regulatory Pension Discretions" Policy identifies Council discretions in respect of early leavers, flexible retirement, augmentation of benefits, shared cost AVCs and election to join the Local Government Pension Scheme. The Policy has been reviewed and updated to incorporate the regulatory pension changes.

### **3. Main Issues**

#### Application of Regulatory Pension Discretions

- 3.1** The Council's current Policy on application of discretionary payments has been reviewed and updated to reflect regulatory changes and the discretion which will be applied. The revised Policy is attached at Appendix 1. A summary of the changes are detailed below:

### Benefits Regulation 13 - Award of Additional Pension

- 3.2** The Council has discretion to award an additional amount of pension to a member of the Scheme up to a figure of £5,000 in multiples of £250. This option is extremely expensive and is dependent on age and salary. It is proposed that this discretion is not applied, but will be kept under review.

### Benefits Regulation 18(1)(b) and 18(2) - Flexible Retirement

- 3.3** From 1 April 2010 the age for flexible retirement increased to 55 or over, and members are now permitted to draw all or part of their benefits. The Policy has been updated to show this change and flexible retirement guidance has been developed to support a consistent approach to the application of flexible retirement.
- 3.4** The Council previously agreed to exercise discretion to permit an individual to take flexible retirement where the Council consents to the individual either reducing the hours of the post by at least 25% or the grade of the post, and where there is a benefit to the Council in terms of either savings and/or skills retention. To bring the application of flexible retirement into line with the teacher's scheme, and that of a number of other local authorities, it is proposed to change the % of reduction in hours from at least 25% to at least 20%.

### Benefits Regulation 30(2) and 30(5) - Early Leavers Aged 50 or over leaving on Redundancy or Efficiency Grounds

- 3.5** From 1 April 2009 the minimum pension age for early leavers changed from 50 to 55. Transitional protection arrangements were in place until 31 March 2010 for individuals who joined the scheme between 6 April 2006 - 31 March 2009 however this transitional protection has now ceased. Members who were members of the 1998 Local Government Pension Scheme on 5 April 2006 and have continuous membership, retain eligibility to have redundancy/efficiency retirement benefits paid from age 50.

### Admin Regulation 19 - Late Applications to Pay Optional Contributions

- 3.6** Prior to 1 April 2009 a member returning from an approved period of absence (maternity, paternity or adoption leave, or unpaid leave etc) had 30 days to opt to buy back lost service. The regulations now allow employers to exercise discretion and extend the 30 day limit. SPFO have advised caution against leaving the timescales open-ended and therefore it is proposed that the Council extends the time limit by a further 30 days where the employee provides evidence of extenuating circumstances, i.e. a maximum of 60 days.

### Admin Regulation 78 - Transfer of Previous Pension Benefits

- 3.7** Previously employees had 12 months from their date of joining the scheme to apply to transfer any previous pension benefits into the LGPS and the Council had previously exercised its discretion and waived the 12 month period. From

1 April 2009 employers only have discretion to extend the 12 month period by a further 12 month period. Thus the employee must apply within 24 months from date of joining the Scheme to transfer previous pension benefits into the scheme.

- 3.8** Transfer arrangements only apply to employees seeking to transfer benefits in from other public sector transfer club schemes (such as: Civil Service, Teacher's Pension Scheme and other public sector bodies) and the ability to transfer benefits in from non-club schemes is no longer available.

Election to seek to Rejoin Scheme

- 3.9** The restriction on the number of times an employee could opt out and then seek to rejoin the scheme was removed from the regulations, and therefore this restriction has been removed from the Policy.

Changes through the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulation 2008

- 3.10** The 2 main amendments introduced through these regulations were:

Regulation 20 (amended regulation 35)

- Discretion to increase the maximum lump sum payment for severance from 66 weeks' pay to 104 weeks' pay and

Regulation 26 (new part VI(A))

- Discretion to introduce a one off ill-health compensation payment for members of the scheme who do not meet ill-health criteria

- 3.11** These are discretionary elements which a Local Authority can choose to exercise or not, however if both discretions were applied this would result in significant additional financial cost to be borne by the Council and consideration was given to these issues as follows:

Increase from 66 weeks to 104 weeks

- 3.12** At present the Council exercises the discretion to award up to a maximum of 66 weeks' lump sum payment to employees who cease to be employed by reason of redundancy or business efficiency. The regulations amended the 66 weeks' pay to a maximum of 104 weeks' pay. Discussions with a number of local Councils (South Lanarkshire/East Renfrewshire/North Lanarkshire and South Ayrshire) indicated that due to the current financial climate these Councils would retain a maximum of 66 weeks' pay and would not exercise discretion to increase to 104 weeks' pay. It is therefore proposed that our current Policy remains unchanged in this area and retains a maximum lump sum severance payment of 66 weeks' pay.

### Ill-health Gratuity

- 3.13** The LGPS Regulations in April 2009 introduced a two-tier ill-health structure which outlined the criteria for ill-health retirements. The amendment to the regulations introduced the discretion to introduce a one off ill-health gratuity to employees where employment is terminated on the grounds of ill-health but where the employing authority does not consider the employee to be permanently incapable of discharging the duties of their current employment.
- 3.14** Such a gratuity would not be borne by the LGPS pension fund, which is the case for normal ill-health retirement costs, but the cost would be borne by the employing authority. The compensation payment would be calculated on the basis of 1 weeks' pay for each year of service the employee had (up to a maximum of 30 weeks' pay and this would be an additional costs to be incurred in addition to any payment in lieu of notice. This would therefore be an additional cost which would be difficult to justify at this time.
- 3.15** Exercising this discretion would therefore result in a significant cost to the Council if they opted to award an additional payment to LGPS scheme members who did not meet the 2 tier ill-health retirement criteria. There is a requirement for an employer to include in their discretion policy statement how they intend to exercise this discretion. It is therefore recommended that this discretion is not exercised, but would be kept under review.

## **4. Personnel Issues**

- 4.1** There is a requirement for the Council to formulate their policy on discretions under the LGPS regulations and for this policy to be available if requested by an employee. The amended Policy will be available to download from the intranet or from HR.

## **5. Financial Implications**

- 5.1** There are significant immediate and long term financial costs associated with the application of discretions as early access to pensions incurs additional costs borne by the Council over the long term i.e. strain on the fund, additional lump sum and pension enhancements.
- 5.2** The precise scales of costs and/or long term savings in any particular situation can only be determined through systematic and detailed analysis of information provided through the Strathclyde Pension Fund Office.
- 5.3** In all circumstances of early or flexible retirement, Directors will require to fully consider all immediate and ongoing financial costs prior to the Chief Executive authorising all instances of early release, within his delegated authority, as appropriate.

## **6. Risk Analysis**

- 6.1** Applications of discretions incur a risk of additional financial costs to the Council and each case will require to be considered on an individual basis to fully assess the service risk and financial implications associated with early release.

## **7. Equalities Impact**

- 7.1** The potential for the policy to discriminate on the basis of race, religion and belief, gender and disability have been considered and an Impact Assessment has been undertaken. No further action was identified as being required and a summary pro-forma of the Impact Assessment is attached at Appendix 2.

## **8. Conclusions and Recommendations**

- 8.1** Due to the regulatory changes to the LGPS there is a requirement to revise the Council's policy on application of regulatory pension discretions to ensure that it reflects all regulatory changes. Many of the regulations outline the discretions available to an employer and there is no obligation to exercise this discretion. In all circumstances consideration of impact and cost requires to be considered.

- 8.2** It is recommended that Committee:

- Note the regulatory changes to the pension scheme; and
- Approve the amended Policy.

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**Appendices:** Appendix 1 - Revised Discretions Policy (Application of Regulatory Pensions Discretions - LGPS)  
Appendix 2 - Summary Impact Assessment

**Background Papers:** Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 and the Local Government

(Discretionary Payments and Injury Benefits) (Scotland)  
Amendment Regulations 2008.

**Wards Affected:** All Wards