ISLINGTON
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Appendix 2

Local Government Pension Scheme

Employer Discretions Policy 2022

Policy Change Control

Policy Owner	Corporate Director of Resources
Approved By	
Date	
Next Revision Due	September 2023
Version	1.2

OVERVIEW

Under the LGPS Regulations, the Fund is required to formally publish its policy on "discretions".

Unless stated otherwise the references to regulations are set out below:

- The Local Government Pension Scheme Regulations 2013 [prefix R]
- The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [prefix TP]
- The Local Government Pension Scheme (Administration) Regulations 2008 [prefix A]
- The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 as amended) [prefix B]
- The Local Government Pension Scheme (Transitional Provisions) Regulations 2008 [prefix T]
- The Local Government Pension Scheme Regulations 1997 (as amended) [prefix L]
- The Local Government Pension Scheme Regulations 1995

This policy statement clarifies Islington Council's position on the discretions.

The policy statement applies to all members of staff who are eligible to be members of the LGPS, as defined in the regulations.

1. Introduction
2. Regulation 30(6) – Flexible Retirement
3. Regulation 31 – award of additional pension
4. Regulation 16(2)(e) and 16(4)(d) – (Funding of additional pension)
5. Regulation 30(8) – Waiving actuarial reductions on compassionate grounds
6. Regulation 1(1)(C) – Switching back on the "Rule of 85" for employees retiring between 55 and 60

1. Introduction

The Local Government Pension Scheme (LGPS) is a statutory scheme; the rules and regulations governing the scheme are laid down under Act of Parliament however there are some provisions of the Scheme that are discretionary.

Discretionary powers allow employers to choose how, or if, they apply certain provisions. Exercising these discretions can have immediate costs for employers, however failing to set a policy in relation to discretions is a breach of the scheme regulations.
Within the list of discretions that an employer must have a policy on, only five have to be published.-

For further guidance on the discretions which exist within the LGPS regulatory framework and the parties responsible for exercising those discretions, please refer to the LGPS Employer's website:

lgpsregs.org/employer-resources/guides

Islington Council Pension Fund require a copy of the discretionary policies held by each employer to ensure that the potential employer costs are correctly reflected in future valuation result; in the absence of a policy being held the actuary will assume the higher cost option is taken by the employer which would increase the employer's liabilities.

An employer's discretionary document confers no contractual rights and an employer retains the right to change the policies at any time without prior notice or consultation. Only the policy which is current at the time a relevant event occurs to an employee/scheme member will be applied to that employee/member. If you do revise your policy, the revised policy must be published for all staff to see for 30 days. Again, only after this period, and only after any queries have been dealt with, can the policy become effective; at this time, an employer should forward a copy to Islington Council's Pension Fund.

Please note the guidance provided in this document is not exhaustive and in formulating and reviewing its policy, an employer must have regard to any serious loss of confidence in the public service which may occur as a result of exercising its discretionary powers.

2. Regulation 30(6) – Flexible Retirement

An employer can allow any of their actively contributing LGPS members who are age 55 or over to access their benefits and continue to work for them. This option is not available for anybody who has opted out of the LGPS (i.e. they are not currently paying into the pension scheme).

An employer will need to develop a procedure whereby members can request to reduce either their hours or their grade (or both) and, with the employer's approval, access their LGPS benefits and continue to work; they can also continue to pay into the LGPS and build up further benefits that will be payable when they fully retire.

The policy wording should be used to explain to a member how they can go about requesting flexible retirement and whether the employer has any specific restrictions that must be adhered to.

In flexible retirement cases, pension benefits will be reduced in accordance with actuarial tables unless the employer waives the reduction (either fully or in part) or if a member has protected rights.

Where there will be a strain cost for approving flexible retirement, any costs associated with this will be payable immediately in one instalment. Where the member is aged between 55 and 60, there most likely will be a strain cost. Where the member is aged 60 or over, there is no strain cost.

Where flexible retirement is agreed for an employee aged 55 or over but under Normal Pension Age the cost of waiving any actuarial reduction, in whole or in part, would have to be met by, and paid to the Pension Fund by the employer.

An employer must take in to consideration that strain costs **will** be higher if they chose to waive reductions.

An employer can request strain costs from Islington Council Pension Fund for flexible retirement. The employer will receive the strain cost information only and will **not** receive a copy of the member benefits (this information is sent directly to the member) – if the employer wishes to see a copy of the information before making a decision, it is the responsibility of the member to supply the employer with this information.

3. Regulation 31 –Granting additional pension

An employer can grant extra annual pension of up to £7352* (at full cost to the employer) to an active scheme member or, within 6 months of leaving to a member who is dismissed by reason of redundancy or business efficiency or whose employment is terminated by mutual consent on the grounds of business efficiency. The maximum amount of £7352* includes any amount of additional pension already granted by the employer under regulation 13 of the LGPS (Benefits, Membership and Contributions) Regulations 2007. The cost of any extra annual pension awarded would have to be paid to the Pension Fund by the employer as a lump sum payment.

Any extra annual pension granted by the employer would be subject to an actuarial reduction where, other than in a case of ill health retirement or retirement on redundancy or business efficiency grounds, that extra annual pension is drawn before the member's Normal Pension Age. The extra annual pension provides a benefit for the scheme member **only** and is not included in any survivors benefits upon the death if the scheme member.

The amount of extra annual pension purchased (or being purchased) by the employer under a Shared Cost Additional Pension Contributions (SCAPC) arrangement (including a SCAPC arrangement where an employer is contributing 2/3rds of the cost of purchasing pension 'lost' during a period of absence) counts towards the £7352* limit of extra annual pension that the employer can award.

Employers cannot grant extra annual pension if the employer makes an award of lump sum compensation (of up to 104 weeks' pay) under regulation 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006. Employers can, however, grant extra annual pension if the employer makes an award under regulation 5 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 i.e. bases a redundancy payment on an employee's actual weeks' pay where this exceeds the statutory weeks' pay limit.

An issue that potentially arises in granting extra annual pension is that, in some cases, it can result in the value of the scheme member's benefits being increased by more than the permitted standard Annual Allowance of currently, £40000 (2022/23). Any increase in value above that figure could result in a tax charge for the individual.

Any additional pension granted will also count towards the capitalised value of a person's pension benefits which have to be assessed against the member's Lifetime Allowance (LTA) under the tax regime governing pension schemes. If, on retirement under the LGPS, the capitalised value of their total LGPS benefits is more than the person's remaining LTA, they will have to pay tax on the excess (at the rate of 25% if the excess is paid in the form of pension and 55% if paid in the form of a lump sum).

4. Regulation 16(2)(e) and 16(4)(d) - Voluntarily contributing to an active member's APC

This discretion is where an active scheme member wishes to purchase extra annual pension of up to £7352 (figure at 1 April 2022) by making Additional Pension Contributions (APCs) and the employer will voluntarily contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC).

This discretion does not relate to cases 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 may be some cases, even if it is not the employer's general policy to voluntarily contribute to a SCAPC, where an employer might wish to do so.

It should be noted that the amount of extra annual pension purchased (or being purchased) by the employer under a SCAPC arrangement (including a SCAPC arrangement where an employer is contributing 2/3rds of the cost of purchasing pension 'lost' during a period of absence) reduces the amount of extra annual pension the employer could award under Regulation 31 above.

Any extra annual pension granted by the employer under a SCAPC arrangement would be subject to an actuarial reduction where, other than in a case of ill health retirement, that extra pension is drawn before the member's Normal Pension Age.

The maximum amount of £7352 (figure at 1 April 2022) includes any amount of additional pension purchased, or being purchased, by the member under regulation 14 of the LGPS (Benefits, Membership and Contributions) Regulations 2007.

5. Regulation 30(8) – Waiving actuarial reductions on compassionate grounds

This discretion is for:

- active members voluntarily retiring on or after age 55 and before Normal Pension Age who elect under regulation 30(5) of the LGPS Regulations 2013 to immediately draw benefits, and ,

- deferred members and suspended Tier 3 ill health pensioners who elect under regulation 30(5) of the LGPS Regulations 2013 to draw benefits (other than on ill health grounds) on or after age 55 and before Normal Pension Age

It allows the employer to waive (on compassionate grounds) any actuarial reduction that would otherwise be applied to benefits accrued **before** a certain point and/or waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued **after** a certain point.

If the employer does agree to waive any actuarial reduction, the employer will have to meet the cost of the strain on the fund resulting from that waiver.

6. Regulation 1(1)(C) – Switching back on the “Rule of 85” for employees retiring between 55 and 60

This discretion allows the employer to “switch on” (i.e. apply) the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.

The 85 year rule is satisfied if the person was a member of the LGPS on 30 September 2006 and the member’s age at the date they draw their benefits and their scheme membership (each in whole years) add up to 85 or more. If they are part-time, their membership counts towards the 85 year rule at its full calendar length. If the employer does agree to apply the 85 year rule, the employer will have to meet the cost of any strain on fund resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule, or would meet it before age 60. If the member has met the 85 year rule or would have met it before age 60, there would be no strain cost charged to the employer unless the employer has agreed to apply the 85 year rule in the case in question. Instead, the cost would be met by an actuarial reduction to the scheme member’s benefits.