



NOTTINGHAMSHIRE
Fire & Rescue Service
Creating Safer Communities

Nottinghamshire and City of Nottingham
Fire and Rescue Authority
Human Resources Committee

DISCRETIONS UNDER THE LOCAL GOVERNMENT PENSION SCHEME

Report of the Chief Fire Officer

Agenda Item No:

Date: 27 January 2012

Purpose of Report:

To seek Member approval on the Service policy statement in relation to the discretions under the Local Government Pension Scheme

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1. BACKGROUND

- 1.1 Under the Local Government Pension Scheme there are a number of specific discretions which can be exercised by the employer.
- 1.2 These are detailed within the relevant Local Government Pension Scheme Regulations.
- 1.3 Specific regulations containing employer discretions include:
 - The Local Government Pension Scheme (Administration) Regulations 2008;
 - The Local Government Pension Scheme (Transitional Provisions) Regulations 2008;
 - The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended);
 - The Local Government (early Termination of Employment (Discretionary Compensation) Regulations 2006;
 - The Local Government (early Termination of Employment (Discretionary Compensation) Regulations 2000;
 - The Local Government Pension Scheme Regulations 1997 (as amended);
 - The Local Government Pension Scheme Regulations 1997 (Transitional Provisions) Regulations (as amended);
 - Local Government (Discretionary Payments) Regulations 1996 (as amended);
 - Local Government Pension Scheme Regulations 1995 (as amended)
- 1.4 A report was previously submitted to the Combined Fire Authority on the 7 September 2007. This set out the policy of the Fire and Rescue Authority in respect of severance payments in the event of termination of employment on the grounds of redundancy, efficiency or early retirement as required by Regulation 7 (1) in relation to Regulation 5 and 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) payments 2006.

2. REPORT

- 2.1 Under the Local Government Pension Scheme the Service are required to provide a statement outlining how discretions under relevant pension Regulations will be exercised.
- 2.2 Appendix A therefore sets out the policy statement outlining how Nottinghamshire Fire and Rescue Service proposes to apply these discretions.

The statement sets out the following information:

- The Local Government Pension Scheme Regulation;
- The individual discretion under that regulation;
- The proposed Service policy towards that discretion;
- How the discretion will be exercised by the Service.

3. FINANCIAL IMPLICATIONS

For a number of the discretions set out in Appendix A, the implication of allowing or not allowing that discretion is generally that the financial position of the Authority is protected. Where it is proposed that discretions are allowed, the financial implications cannot be estimated because in each case this may depend on factors such as age and length of service of the employee as well as actuarial assumptions about the pension fund. In some cases, the choice of whether or not to exercise a discretion will be made by either the Discretionary Compensation Payments Board or by the Head of Human Resources, and the financial implications of exercising these particular discretions will be clear at the time the decisions are made.

4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS

- 4.1 Under the Local Government Pension Scheme, Nottinghamshire Fire and Rescue Service is required to provide a statement of its policy towards discretions
- 4.2 The HR Department will be responsible for ensuring that the discretions are dealt with in line with the Service policy (as set out in the attached document).

5. EQUALITIES IMPLICATIONS

The proposed policy on discretions does not disproportionately affect one particular group of employees.

6. CRIME AND DISORDER IMPLICATIONS

There are no crime and disorder implications arising from this report.

7. LEGAL IMPLICATIONS

The Service is required to comply with the Local Government Pension Scheme Regulations.

8. RISK MANAGEMENT IMPLICATIONS

Failure to comply and implement any national change to Pension Regulations would lead to potential future challenge to the Pensions Ombudsman.

9. RECOMMENDATIONS

That Members approve the attached statement of Service Policy in relation to the discretions that exist under the Local Government Pension Scheme

10. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)

None.

Frank Swann
CHIEF FIRE OFFICER

DISCRETIONS UNDER THE LOCAL GOVERNMENT PENSION SCHEME

Local Government Pension Scheme (LGPS) Regulations Policy Statement

This Statement of policy sets out how the Nottinghamshire Fire and Rescue Service will apply certain discretions allowed under the Pension Under Regulation 66 of the LGPS Administration Regulations 2008 (as amended).

<u>Discretion</u>	<u>Regulation</u>	<u>NFRS Policy</u>	<u>Explanation / Process exercising discretion</u>
Whether to extend the 12 month option period for aggregation of deferred benefits	A16(4) (b) (ii)	No	Employees with more than 12 months service may not include previous service for aggregation of deferred benefits
Determine rate of employees contributions	B3 & T9	HR Committee 28.03.08 decision to review on an annual basis	Employees may only move between bands at the beginning of the next financial year
Allow an outsourced manual worker to make a late option to continue to pay 5% contribution rate upon return to the LGPS (where option is more than 30 days after rejoining the LGPS)	T9 & L12 (3) & L14 (3) (b)	No	A member of staff who has been statutorily transferred to another body who was entitled to make contributions at 5% may request, if transferred back into the scheme, to pay contributions at 5% provided that they opt to do so within 30 days.
Specify in an employee's contract what other payments or benefits other than B4 (1) 9a) and not otherwise precluded by B4 (2) or (3) are to be pensionable	Reg 8 of SI 2006/966	No	NFRS do not specify which pension payments or benefits may be pensionable within the employment contract
Whether to recover employee contributions that had been reduced or waived after 40 years pensionable local	Reg 8 of SI 2006/966	Yes	Under the old regulations L15 an employee could opt to pay reduced contributions or no contributions after 40 years service. There may be some employees who did this but then when the regs changed in 2006 theoretically they owed the scheme back contributions.

government service prior to the deletion of L15 by SI 2006/966				
Whether to allow a late application by member to pay optional contributions for a period of unpaid child related leave , strike or unpaid leave of absence beyond 30 days	A22(2)	No		Employee would not be able to make an optional contribution beyond 30 days in the conditions specified
Whether to augment membership of an active member (by up to 10 years)	B12	Refer NFRS discretionary compensations scheme		This allows the Authority to increase pension membership by up to 10 years in specified circumstances At discretion of Discretionary Compensation Payments Board
Whether to grant an additional pension to a member (by up to £5000pa)	B13	No		The Authority would not have discretion to grant an additional pension
Whether, how much, and in what circumstances to contribute to a shared cost AVC scheme	A25 (3) & B15(3)	No		The Authority will not contribute towards the shared cost of an AVC scheme
Allow late application to convert scheme AVC's into membership credit ie allow application more than 30 days after cessation of active membership	TSch1 & L66(8) & former L66 (9) (b)	Yes (on case by case basis)		The Service will consider each case on an individual basis Report to be submitted to Head of Human resources for decision
No right to return of contribution due to offence of a fraudulent character or grave misconduct unless employer directs a total or partial refund is to be made	A47 (2)	Yes		There will no right to return contributions in these circumstances
Employer may deduct	A45(1) & (2)	Yes		This gives the Service the right to deduct contributions from pay.

contributions from an employee's pay or reserve forces pay			Individual will need to inform the Service that they intend to pay pension contributions for the period when undertaking reserve force role
Contribution Equivalent Premium (CEP) in excess of the Certified Amount recovered from a refund of contributions can be recovered from the Pension fund	A49 (1) & (2)	Yes	This means that if an employee transfers out into a non contracted out scheme the employer, if required to make a refund to the employee, must deduct a Certified Amount. If this amount exceeds the value of the refund this discretion allows the employer to take the balance from the fund.
Whether to apply to the Secretary of State for a forfeiture certificate (where member is convicted of a relevant offence)	A72 (1)	Yes	The Service would apply for a certificate in these circumstances
Where forfeiture certificate is issued, whether to direct that benefits are to be forfeited	A72 (1)	Yes	The Service would direct that benefits are forfeited
Where forfeiture certificate issued whether to direct interim payments out of Pension Fund until decision is taken to apply the certificate or to pay benefits	A72 (3)	Yes	The Service would direct interim payments out of the pension fund in this circumstance
Whether to recover from fund any monetary obligation or, if less, the value of the members benefits (other than transferred in pension rights or AVC's/SCAVC's) where the obligation was incurred as a result of a criminal, negligent or fraudulent act	A74(2)	Yes	The Service would recover from fund any monetary obligation incurred in these circumstances

or omission in connection with the employment and as a result of which the person has left employment				
Whether to recover from Fund any financial loss caused by fraudulent offence or grave misconduct of employee (who has left because of that), or amount of refund if less	A76(2) &(3)	Yes		The Service would recover from the fund to cover any financial loss
Extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS	A83(9)	Yes (case by case basis)		The Service would consider each application on a case by case basis. Report to be submitted to Head of Human resources for decision.
Whether to allow a member to select final pay period for fees to be any consecutive years ending 31 st March in the 10 years prior to leaving	B11(2)	Yes		Where an employees pensionable pay includes an element of variable fees then the employer may allow an averaging of these fees to be used to calculate pension.
Whether all or some benefits can be paid if an employee reduces their hours or grades (flexible retirement)	B18(1)	Yes		In line with the Service flexible retirement policy
Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement	B18 (3)	Yes (in exceptional circumstances)		It is the general policy of the Authority not to waive the actuarial reduction unless exceptional circumstances apply. The Compensation Board will give consideration to such exceptional circumstances. In general, such a waiver would only be enacted where it would be at least cost neutral to the Authority or in the interests of the Authority. Refer flexible retirement policy.
Decide which ill health tier	B20	Yes		This would be in line with selected medical practitioner opinion.

leaver falls into				
Whether to grant an application for early payment of benefits on or after age 55 and before age 60	B30(2)		Yes (case by case basis)	Under the provisions of the Service discretionary compensation payments scheme. Consideration by the Discretionary Compensation Payments Board
Whether to waive on compassionate grounds, the actuarial reduction applied to benefits paid early	B30(5)		Yes (in exceptional circumstances)	Each case to be considered by the compensation board. Consideration by the Discretionary Compensation Payments Board
Decide whether deferred beneficiary meets permanent ill health criteria	B31		Yes	Applications from deferred beneficiary would be considered to establish whether they met permanent ill health criteria. Report to be submitted to the Head of Human Resources.
To accept (late) elections after 31.03.98 from members who want to count membership between 1.4.72 and 5.4.88 for widowers pensions. If a late election is allowed the employer must pass a resolution within 6 months of agreeing to accept the election, to state that the membership will count for widowers pensions	T6(3) & I42(4) (which still refers to the 1997 transitional regulations & OT 9		Yes	Prior to 1988 full "widows" pensions were not payable to widowers and no pensions were payable to civil partners. Members had an option to include this provision post 1988 and this discretion allows late applications to be made.

Discretions under the Local Government Pension Scheme Regulations 1997 (as amended) in relation to active councillor members and pre 1.04.08 scheme leavers

Grant application from a post 13.03.98 / pre 1.04.08 leaver for early payment of benefits on or after age 55 and before age 60	31(2)		Yes	The Service would consider applications on a case by case basis on compassionate grounds. Report to be submitted to Head of Human resources for a decision.
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<p>Waive on compassionate grounds, the actuarial reduction applied to benefits paid early for a post 31.03.98 / pre 1.04.98 leaver</p>	<p>31 (5)</p>	<p>Yes</p>	<p>As above Report to be submitted to Head of Human Resources for a decision.</p>
<p>Decide in the absence from a post 31.3.98 / pre 1.4.08 leaver of an election from the member within 3 months of being able to elect, which benefit is to be paid where the member would be entitled to a pension or retirement grant under 2 or more regulations in respect of the same period of scheme membership</p>	<p>34(1) (b)</p>	<p>Yes</p>	<p>There are some circumstances under which two types of benefit can be payable from the fund. It is common for employers to exercise this discretion but to make clear that it will be made in the interests of the authority and not the employee. They will normally be notified and may appeal. Report to be submitted to the Head of Human Resources for a decision.</p>
<p>No right to return of contributions due to offence of a fraudulent character unless employer directs a total or partial refund is to be made</p>	<p>88(2)</p>	<p>Yes</p>	<p>Service to decide on return of contributions in these circumstances Report to be submitted to the Head of Human Resources for a decision.</p>
<p>Contribution Equivalent Premium (CEP) in excess of the Certified Amount (CA) recovered from a refund of contributions can be recovered from the Pension Fund (Councillor leavers and pre 1.04.08 leavers)</p>	<p>92</p>	<p>Yes</p>	<p>This means that if an employee transfers out into a non contracted out scheme the employer, if required to make a refund to the employee, must deduct a Certified Amount. If this amount exceeds the value of the refund this discretion allows the employer to take the balance from the fund.</p>
<p>Forfeiture of pension rights on issue of Secretary of State's Certificate</p>	<p>111(2) & (5)</p>	<p>Yes</p>	<p>The Service will exercise it's right on issue of certificate</p>

(councillors and pre 1.04.08 leavers)				
Where forfeiture certificate is issued direct interim payments out of Pension Fund until decision is taken to either apply the certificate or pay benefits (councillors and pre 1.04.08 leavers)	112(1)	Yes		The Service will direct interim payments out of Pension fund in these circumstances
Recovery from fund of monetary obligation owed by former employee or, if less, the value of the member's benefits (other than transferred in pension rights) (councillors and pre 1.04.08 leavers)	113(2)	Yes		The Service will recover monetary obligation from the fund of the member in these circumstances
Recovery from financial loss caused by employee, or amount of refund if less (councillors and pre 1.04.08 leavers)	115(2) & (3)	Yes		The Service will recover financial losses

Discretions under the Local Government Pension Scheme (Transitional provisions) Regulations 1997 (as amended)

To accept (late) elections after 31.03.98 from members who want to count membership between 1.4.72 and 5.4.88 for widower's pensions. If a late election is allowed the employer must pass a resolution, within 6 months of agreeing to accept the election, to state that the	112(1)	Yes		Prior to 1988 full "widows" pensions were not payable to widowers and no pensions were payable to civil partners. Members had an option to include this provision post 1988 and this discretion allows late applications to be made.
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membership will count for widowers pensions			
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Discretions under the Local Government Pension Scheme Regulations 1995 (as amended) in relation to pre 1.4.98 scheme leavers

Grant application from a pre 1.4.98 leaver for early payment of deferred benefits on or after age 55 on compassionate grounds	D11 (2) (C)	Yes (case by case basis)	The Compensation Board will consider applications on a case by case basis.
Decide, in the absence from a pre 1.4.98 leaver of an election from the member within 3 months of being able to elect, which benefits is to be paid where the member would be entitled to a pension or retirement grant under 2 or more regulations in respect of the same period of scheme membership	D10	Yes	There are some circumstances under which two types of benefit can be payable from the fund. It is common for employers to exercise this discretion but to make clear that it will be made in the interests of the authority and not the employee. They will normally be notified and may appeal. Consideration by the Discretionary Compensation Payments Board.

Discretions under the local Government (early Termination of Employment (Discretionary Compensation) (England and Wales) Regulations 2006 (as amended)

To base redundancy payments on actual weeks pay where this exceeds the statutory weeks pay limit	5	Yes	In line with the provisions of the Service's compensation payments scheme. Consideration by the Discretionary Compensation Payments Board.
To award lump sum compensation of up to	6	Yes (case by case basis)	In line with the provisions of the Service's compensation payments scheme.

104 weeks pay in cases of redundancy, termination of employment on efficiency grounds, or cessations of a joint appointment			Consideration by the Discretionary Compensation Payments Board.
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Discretions under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 as amended

How to apportion any surviving spouse's annual compensatory added years payment where the deceased person is survived by more than one spouse	21(4)	Yes	Service Compensation Board to determine apportionment. Consideration by the Discretionary Compensation Payments Board.
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<p>How it will decide to whom any children's annual compensatory added years payment are to be paid where children's pensions are not payable under the LGPS (because the employee had not joined the LGPS) and, in such a case, how the annual added years will be apportioned amongst the eligible children</p>	<p>25(2)</p>	<p>Yes</p>	<p>Service Compensation Board to determine apportionment</p>
<p>Whether, in respect of the spouse of a person who ceased employment before 1 April 1998 and where the spouse or civil partner remarries, enters into a new civil partnership or cohabits after 1 April 1998, the normal pension suspension rules should be dis-applied ie whether the spouse's or civil partners annual</p>	<p>21(7)</p>	<p>Yes</p>	<p>The annual compensatory added years payments will continue to be paid in these circumstance</p>

compensatory added years payments should continue to be paid				
Whether and to what extent to reduce or suspend the member's annual compensatory added years payment during any period of re-employment in local government	17	Yes		The Service's Compensation Board will determine whether and to what extent to reduce or suspend annual compensatory added years payments in these circumstances.
How to re-introduce the member's annual compensatory added years payment following the cessation of a period of re-employment in local government	19	Yes		The Service would take measures to re-introduce annual compensatory added years payments in these circumstances.

Discretions under the Local Government (Discretionary Payments) Regulations 1996 (as amended)

Amount of injury allowance following loss of employment through permanent incapacity after sustaining an injury or contracting a disease as a result of anything to do in carrying out duties of job	34(2) and 38	Yes		The Service's Compensation Board would determine level of injury allowance (if any) in these circumstances.
Suspend or discontinue injury allowance if person	34(4)	Yes		The Service would take measures to suspend or discontinue injury allowance in these circumstances

becomes capable of working again				
Amount of injury allowance following reduction in pay after sustaining an injury or contracting a disease as a result of anything required to do in carrying out duties of job	35 and 38	Yes		The Service's Compensation Board would determine level of injury allowance (if any) in these circumstances
Amount and duration of injury allowance following cessation of employment where regulation 35 payment was being made but regulation 34 does not apply	36	Yes		The Service's Compensation Board would determine level of injury allowance (if any) in these circumstances
Amount and duration of a dependant's, spouse's or civil partner's injury allowance following death of employee after sustaining an injury or contracting a disease as a result of anything required to do in carrying out duties of job	37(3),37(6) and 38	Yes		The Service's Compensation Board would determine level of injury allowance (if any) in these circumstances
Reinstate spouse's or civil partner's injury allowance following earlier cessation due to	37(4)	Yes		The Service's Compensation Board would determine level of injury allowance (if any) in these circumstances

cohabitation, remarriage or registration of a new civil partnership				
Amount of death in service gratuity payable to surviving dependant, spouse or civil partner	40	Yes		The Service's Compensation Board would determine level of injury allowance (if any) in these circumstances
Amount or retirement gratuity payable	41	Yes		The Service's Compensation Board would determine level of injury allowance (if any) in these circumstances
Amount of gratuity payable to surviving dependant, spouse or civil partner where amount of annuity payments fall short of their capital value at date of award	41(4)	Yes		The Service's Compensation Board would determine level of injury allowance (if any) in these circumstances
Amount of redundancy gratuity payable	42	Yes		This discretion would allow a gratuity to be paid where an employee has been in the scheme for at least 5 years or if over 60 for 1 year. This allows the authority to exercise it discretions properly. Consideration by the Discretionary Compensation Payments Board.
Formulate and keep under review the injury allowance and gratuity policies to be operated by the authority	46a	Yes		The Service to formulate and keep under review the injury allowance and gratuity policies. Head of Human Resources.