

**PENSION DISCRETIONS POLICY UNDER THE LOCAL GOVERNMENT PENSION
SCHEME (SCOTLAND) REGULATIONS 2018**

1. EXECUTIVE SUMMARY

- 1.1. The Local Government Pension Scheme (Scotland) Regulations 2018 require the Council to agree and publish a Policy on Discretions.
- 1.2. The Council's existing discretions policy was approved on 25 June 2015. The Policy now needs to be reviewed to ensure it meets the legislative requirements following the introduction of the Local Government Pension Scheme (Scotland) Regulations 2018.
- 1.3. The new discretions are shown at Appendix 1.
- 1.4. There are no financial implications arising from this report.

**COSTS AND SAVINGS FROM EARLY DEPARTURES FROM COUNCIL
EMPLOYMENT FOR YEAR 2019/20**

2. INTRODUCTION

- 2.1 The Local Government Pension Scheme (Scotland) Regulations require the Council to agree and publish a Policy on how it will apply the discretions in relation to this legislation.
- 2.2 The Council's existing discretions policy was approved on 25 June 2015. The Policy now needs to be reviewed to ensure it meets the legislative requirements following the introduction of the Local Government Pension Scheme (Scotland) Regulations 2018.

3. RECOMMENDATION

- 3.1 Members are requested to agree to the proposed amendments to the Pensions Discretions Policy and agree onward transmission to Council.

4. DETAIL

- 4.1 The Council has an obligation to formulate and publish a Policy on how it will apply discretions to both current and deferred members of the Local Government Pension Scheme (LGPS). These discretions are subject to periodic updates and these are shown in Appendix 1. The current Policy was approved by full Council on 25 June 2015.
- 4.2 This report highlights to members the amendments to be made to our existing policy. The discretions in Appendix 1 are new and will be added to our Policy.
- 4.3. The new discretions are contained within Tables 1 and 2 of the Policy.

Table 1 applies to post 01 06 18 active members and post 01 06 18 leavers.

Table 2 applies to pension scheme members who ceased active membership on or after 01 04 15 and before 30 06 15.
- 4.4 The recommendation for the first new discretion is to allow employees to join the scheme in accordance with our admission agreement with SPFO. This recommendation follows guidance from SPFO.
- 4.5 Six of the new discretions relate to extending the time limit of 12 months an employee can apply for a particular discretion. The recommended application of this discretion is not to have a general policy to extend time limits but in order to maintain a flexible approach, cases will be considered if there are

extenuating circumstances that prevented the employee doing so within the 12 month period.

- 4.6 The recommendation for the remaining new discretions is to maintain a flexible approach by considering each case on its individual merits and, where applicable, a sound business case can be made to support the granting of the discretion.
- 4.7 The other changes to the Policy are:
- Some regulation numbers have changed but the discretion has remained the same.
 - Removal of references requiring Council permission to retire between ages 55 and 60 as amended by 2018 Regulations.
 - Three discretions have been removed as they have been superseded in the 2018 Regulations.
- 4.8 The Council must ensure when exercising discretions that it is transparent, fair and affordable in light of continuing financial pressures. The Policy must also 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.
- 4.9 The Policy should also meet the principles of good practice recommended by Audit Scotland in the Managing Early Departures report published in May 2013, in particular the re-employment of an employee who received a redundancy package and calculating the cost of redundancy to include the cost of compensatory added years. These continue to be covered in the Policy Statement. The report on Early Departures covering the costs and savings made during the period 19/20 is also on the agenda for this Policy and Resources Committee.
- 4.10 The updated Policy represents the Council's Policy Statement of Application of Discretions, Local Government Pension Scheme (Scotland) Regulations 2018 and once it is agreed for publication it must be provided to Strathclyde Pension Fund within one month of the date the policy is revised.

5. CONCLUSION

The Council is obliged to agree and publish its Policy on Discretions. The revised policy fulfils this obligation and provides a transparent and comprehensive framework for the application of discretions.

6. IMPLICATIONS

- | | | |
|-----|-----------|---|
| 6.1 | Policy | None |
| 6.2 | Financial | There are no immediate financial implications as a result of the review of these discretions. However, the decision to use a discretion could have a financial impact if and when applied |
| 6.3 | Legal | None – the policy meets statutory obligations |

6.4	HR	None – the application of the discretions policy is monitored by HR to ensure consistency of approach.
6.5	Fairer Scotland Duty	
6.5.1	Equalities – Protected Characteristics	Discretions are determined by pension regulations with local authorities determining whether or not to exercise a specific discretion. A number of discretions are age specific but again this is not imposed by the Council but is a requirement of the Regulations. Nevertheless, discretions that are age specific may give rise to an adverse impact on account of age. To mitigate this impact, discretions will be applied in a fair, consistent and transparent manner.
6.5.2	Socio-Economic Duty	None - considered as part of the EqSEIA when proposing savings to service delivery and there are potential redundancies.
6.5.3	Islands	None - considered as part of the EqSEIA when proposing savings to service delivery and there are potential redundancies.
6.6	Risk	The Council must publish its Policy on Discretions under the Local Government Pension Scheme (Scotland) Regulations 2018. HR will monitor the application of the policy to ensure fairness and consistency.
6.7	Customer Service	The provision of a Policy on Discretions will make it clear to both current employees and deferred members the council's position on the discretions and in what circumstances they may be used.

Executive Director with responsibility for Customer Support Services

Policy Lead: Mary-Jean Devon

Date: 21 September 2020

For further information contact:

Aileen McCosh

HR Project Officer

Tel: 01546 604409

Jane Fowler

Head of Customer Support Services

Tel: 01546 604466

APPENDIX 1 – REVISIONS TO EXISTING POLICY

Argyll and Bute Council Policy Statement on Application of Discretions, Local Government Pension Scheme (Scotland) Regulations 2018 (LGPS)

We are aware of our obligations under:

- the LGPS (Scotland) Regulations 2018
- the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014
- the LGPS (Scotland) Regulations 2014
- the LGPS (Administration) (Scotland) Regulations 2008 (in respect of leavers between 1 April 2009 and 31 March 2015)
- the LGPS (Scotland) Regulations 1998 (in respect of leavers between 1 April 1998 and 31 March 2009)

In developing our policy statement, we are aware that the LGPC has produced a document called “Discretions Policies” that contains tips for employers, see: <http://www.lgpsregs.org/index.php/scotland/admin-guides>

Note: * in the following tables beside a regulation denotes the discretions where we are required to have a policy statement under the regulations

Table 1 details our discretions under the LGPS (Scotland) regulations 2018

Table 2 details our discretions in relation to scheme members who ceased active membership on or after 01 04 15 and before 31 05 18.

TABLE 1

The following table details our discretions from 01 06 18 in relation to post 01 06 18 active members and post 01 06 18 leavers, being discretions under:

- the LGPS (Scotland) Regulations 2018 [prefix **R**]
- the LGPS (Scotland) Regulations 2014 [prefix **R2**]
- the LGPS (Transitional Provisions and Savings) (Scotland) Regulations 2014 [prefix **TP**]
- the LGPS (Administration) (Scotland) Regulations 2008 [prefix **A**]
- the LGPS (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (as amended) [prefix **B**]
- the LGPS (Transitional Provisions) (Scotland) Regulations 2008 [prefix **T**]
- the LGPS (Scotland) Regulations 1998 (as amended) [prefix **L**]

Regulation	Discretion	Argyll & Bute Council policy on the exercise of this discretion
R3(1)(b)	Decide which employees to nominate for membership (admission bodies)	All employees who are eligible to join the Scheme will be nominated for membership in accordance with Argyll & Bute Council admission agreement with SPFO.
RSch 2, Part 2, para 12(c)	Whether, in respect of an admission body providing a service in respect of outsourced work, to set off against payments due to that body any sums due from that body to the Fund	Argyll & Bute Council will consider any application of this discretion on a case by case basis.
R22(7B)	Whether to extend the 12 month option period for a member to elect that post 2015 deferred benefits should not be aggregated with an ongoing concurrent employment	Argyll & Bute Council will not normally extend the 12 month time limit but may do so if extenuating circumstances can be demonstrated. Each case will be considered on its merits.

R22(8B)	Whether to extend the 12 month option period for a member to elect that post 2015 deferred benefits should not be aggregated with a new employment	Argyll & Bute Council will not normally extend the 12 month time limit but may do so if extenuating circumstances can be demonstrated. Each case will be considered on its merits.
TP10(6)	Whether to extend the 12 month option period for a member to elect that pre 2015 deferred benefits for a member who re-joined post 31 March 2015 can be aggregated to purchase an amount of CARE pension	Argyll & Bute Council will not normally extend the 12 month time limit but may do so if exceptional circumstances can be demonstrated. Each case will be considered on its merits.
R93(5)	Decide whether to issue a Certificate of Protection if the member does not request one within 12 months of a reduction or restriction in pay	Argyll & Bute Council will normally issue a Certificate of Protection of pension benefits if requested by the employee within twelve months of the date of reduction. A certificate may be issued on application from the member outwith the 12 month period specified in the regulations if exceptional circumstances can be demonstrated, such as the employee being unaware of this facility.

TABLE 2

The following table details discretions in relation to scheme members who ceased active membership on or after 01 04 15 and before 30 06 15, being discretions under:

- the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 [prefix **A**]
- the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (as amended) [prefix **B**]
- the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008 [prefix **T**]
- the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 [prefix **TP**]
- the Local Government Pension Scheme (Scotland) Regulations 2014 [prefix **R2**]
- the Local Government Pension Scheme (Scotland) Regulations 2018 [prefix **R**]
- the Local Government Pension Scheme (Scotland) Regulations 1998 (as amended) [prefix **L**]

Regulation	Discretion	Argyll & Bute Council policy on the exercise of this discretion
TP10(6)	Whether to extend the 12 month option period for a member to elect that pre 2015 deferred benefits for a member who re-joined post 31 March 2015 can be aggregated to purchase an amount of CARE pension	Argyll & Bute Council will not normally extend the 12 month time limit but may do so if exceptional circumstances can be demonstrated. Each case will be considered on its merits.
TP3(1), (5) and (12), TPSch 2, para 2(1)	Whether to waive, in whole or in part, any actuarial reduction on pre and post April 2015 benefits which a member voluntarily draws before normal pension age other than on the grounds of flexible retirement (where the member has both pre 1/4/15 and post 31/3/15 membership)	Argyll & Bute Council will consider each case on its individual merits, but will ensure that decisions are made in line with the exigencies of the service.
R2 ~ 93(5)	Decide whether to issue a Certificate of Protection if the member does not request one within 12 months of a reduction or restriction in pay	Argyll & Bute Council will normally issue a Certificate of Protection of pension benefits if requested by the employee within twelve months of the date of reduction. A certificate may be issued on application from the member outwith the 12 month period specified in the regulations if

		exceptional circumstances can be proved such as the employee being unaware of this facility.
R2 29 (6) and 29 (9)	Whether to grant application to waive all or part of the actuarial reduction applied for early payment of benefits on or after age 55	Argyll & Bute Council will not have a general policy to waive in whole or in part, any actuarial reduction which a member voluntarily draws before normal retirement age other than on the grounds of flexible retirement but may consider doing so where a sound business case can be made for exercising this discretion. Each case will be considered on its individual merits