

**FLEXIBLE RETIREMENT FOR MEMBERS OF THE
LOCAL GOVERNMENT PENSION SCHEME**

Introduction

1. Changes to the Local Government Pension Scheme (LGPS) from 6 April 2006 introduced a new retirement category of 'Flexible Retirement' for non-teaching staff. This report sets out issues for consideration by the Council in the light of the changes.

Statutory powers

2. Her Majesty's Revenue and Customs (HMRC) amended its overriding rules for all pension schemes from 6 April 2006. HMRC rules had previously required a person to retire / leave their employment before pension benefits could be paid. The new rules however, allow scheme members to receive their pension benefits while continuing in employment.
3. The LGPS was also amended from 6 April 2006 to allow 'Flexible Retirement', from age 50, with the payment of accrued pension benefits, if the employer consents to:
 - Hours of employment or responsibility (grade) being reduced.
 - Release of the accrued pension benefits
4. Every employer operating the LGPS is required to formulate, publish and keep under review their policy on flexible retirement.
5. If a person is granted flexible retirement between the ages of 50 and 65 and the 'rule of 85' (service and age in complete years totalling 85) is not satisfied, their pension benefits will be reduced. In this case:
 - a. There will be no cost to the employer as no strain on the Pension Fund is incurred.
 - b. However, the employer could chose to waive the reduction in pension benefits, either in whole or in part. By doing so it must make a payment to the Pension Fund to cover the fund strain. This can be paid over three years with the addition of interest.
6. If the person is aged between 50 and 60 and satisfies the rule of 85, or would do so before age 60, there will be a cost to the employer to cover the strain on the Pension Fund. If the employer consents to flexible retirement in this case, the employee will receive unreduced benefits.

7. If the person is over 60 and satisfies the rule of 85, there will be no strain on the Pension Fund and the employee will receive unreduced benefits. The employee must still seek the employer's consent for flexible retirement in this instance.
8. A person can remain in the LGPS following flexible retirement and accrue further benefits in the continuing employment. They can continue in employment until they achieve the Council's Normal Retirement Age, at which point the Planned Retirement process will be initiated.

Benefits of Flexible Retirement

9. Flexible retirement can bring benefits for both the employer and employee.
10. For the employer, flexible retirement enables retention of valuable experience and knowledge which would otherwise be lost if an employee were to retire or leave. It also offers an effective means to reduce capacity and increases opportunities for succession planning.
11. For the employee it enables a step down towards retirement and allows them to make a gradual adjustment to life without paid employment and to break free of the routine and habits of work.
12. Any benefits paid as a result of flexible retirement are not subject to abatement (i.e. liable to reduction or suspension if the new pay plus pension exceed the earnings at retirement) during such time as the person remains with the same employer.

Costs

13. Where a person is between the ages of 50 and 65 and has not satisfied the 'rule of 85', then pension benefits must be reduced on flexible retirement as with other early retirements. This will fully offset the strain on the Pension Fund.
14. Where a person is between the ages of 50 and 60 and either already satisfies the LGPS 'rule of 85', or would do before age 60, a strain will be placed upon the Pension Fund by the payment of pension benefits on flexible retirement prior to age 60. In this case, the Council would have to make an additional payment to the Pension Fund. This payment can be spread over no more than three years with the addition of interest.
15. The Council can decide to waive the reduction in pension benefits and pay the strain on the Pension Fund of doing so.
16. If the person is over 60 and satisfies the rule of 85, there will be no strain on the Pension Fund and the employee will receive unreduced benefits. The employee must still seek the Council's consent for flexible retirement in this instance.

Other Matters for Consideration

17. The Council has a range of other matters to consider when deciding on whether or not to approve requests for flexible retirement. These are as follows:

- The Council could decide to have a policy not to approve any requests for flexible retirement. However, in doing so the Council would be ignoring the potential benefits that flexible retirement can bring for both the employee and the Council.
- The implications for the service, in particular the resourcing impact from a person's reduction in working hours or level of responsibility, must be considered in all cases.
- The Council should consider whether or not to require a minimum reduction in hours or grade. The LGPS Regulations do not specify a minimum and there is nothing to prevent a person being in receipt of a greater income, by way of combined pay and pension following flexible retirement, than they received prior to retirement. Nevertheless, the Council could decide to only agree to flexible retirement if the reduction in hours or grade was sufficient to ensure the person is not, overall, better off than before flexible retirement. This could be achieved by implementing a policy requiring a minimum reduction in salary of say 40% in most cases. Furthermore, the Council has a responsibility to act in a prudent manner and the public perception of workers receiving pension benefits while continuing to receive close to full salary must also be taken into account.
- The Council should consider whether, in relation to reduction in hours cases, to restrict flexible retirement requests only to those cases where the request is being made to take a reduction in hours in the same job. Alternatively, the Council could extend this to cover cases where the employee applies for and obtains a different job.
- The Council could decide to grant flexible retirement requests only when the employee commits to a reduction in hours or grade for a minimum period of time (say six months) or commits to remain in employment for a minimum period of time (say 1 year or to age 60). However, this could prove difficult in practice as the Council would have no real recourse if the employee applied for and obtained a new post on a higher grade or higher hours within the specified period, or if they broke their commitment to remain employed for a minimum period of time.
- The Council could be open to a challenge on age discrimination grounds if it only agrees to flexible retirement requests that do not incur a strain on the Pension Fund (i.e. requests made on or after age 60 or requests made prior to age 60 where the person has not already met the 'rule of 85' and would not have met it before age 60). This is because the Council's decision would be based on whether or not the person has met the 85 year rule, which the High Court has already determined is discriminatory on age grounds. Economic factors such as business needs and considerations of efficiency may be legitimate aims but discrimination cannot be justified merely because it would be more expensive not to discriminate. The Council must therefore ensure that every request for flexible retirement is considered by taking account of the whole range of relevant business factors, rather than just on cost factors alone.

Proposed policy

18. In formulating and reviewing its policy in relation to flexible retirement, it is proposed that the Council:

- a. has regard to the extent to which the exercise of its discretionary powers (in accordance with the policy), unless properly limited, could lead to a loss of confidence in the public service; and
- b. is satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.

19. In response to written requests from eligible employees for flexible retirement, it is proposed that the Council will:

- Consider all requests for flexible retirement.
- Approve requests only when it is in the Council's interests to do so. All costs falling on the Council as an employer must be affordable and within existing cash limits. Where this is not achievable, the proposal should be accompanied by a supplementary plan detailing how any costs will be recovered.
- A request should typically involve a reduction in salary of 40%, either through reduced hours or level of responsibility (grade).
- The employee's contract of employment will be amended by mutual agreement to reflect the new hours or grade, as agreed, and continuity of service will be preserved for terms and conditions purposes. They can continue in employment until they achieve the Council's Normal Retirement Age, at which point the Planned Retirement process will be initiated.
- The waiving of pension benefit reductions will only be considered in exceptional circumstances.
- Flexible retirements will be approved by the relevant Head of Service in consultation the Head of Personnel and Directors Management Board, where there is a cost implication for the council then this will require approval from Cabinet.

Recommendations

1. Subject to the proposals in this report being agreed, that the draft statement of policy as set out in **Appendix A** be adopted.

Nicky Orchard
Head of Personnel

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1. This statement is made in accordance with regulation 12 of the Local Government Pension Scheme (Amendment) (No. 2) Regulations 2006 ('the regulations'). This policy will be reviewed annually. If the Council decides to change its policy, it will publish a statement of the amended policy within one month of the date of its decision.
2. In formulating and reviewing its policy, the Council
 - a. has regard to the extent to which the exercise of its discretionary powers (in accordance with the policy), unless properly limited, could lead to a loss of confidence in the public service; and
 - b. is satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.
3. In response to written requests from eligible employees for Flexible Retirement, the Council will:
 - Consider all requests for flexible retirement.
 - Approve requests only when it is in the Council's interests to do so. All costs falling on the Council as an employer must be affordable and within existing cash limits. Where this is not achievable, the proposal should be accompanied by a supplementary plan detailing how any costs will be recovered.
 - A request should typically involve a reduction in salary of 40%, either through reduced hours or level of responsibility (grade).
 - The employee's contract of employment will be amended by mutual agreement to reflect the new hours or grade, as agreed, and continuity of service will be preserved for terms and conditions purposes. They can continue in employment until they achieve the Council's Normal Retirement Age, at which point the Planned Retirement process will be initiated.
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- Flexible retirements will be approved by the relevant Head of Service in consultation the Head of Personnel and Directors Management Board, where there is a cost implication for the council then this will require approval from Cabinet.