

Ref RDP/rr

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RECEIVED  
15 OCT 1998

14 October 1998

Dear Tony

**PROBATION COMMITTEE'S DISCRETIONS - LOCAL GOVERNMENT  
PENSION REGULATIONS**

With reference to our recent telephone conversations I confirm that the Avon Probation Committee at its meeting on 23 July 1998 accepted the recommendations contained in the Report and appropriate Policy documents are being drawn up for publication within the Service's Staff Handbook.

You already have a copy of the relevant Committee Report and I will let you have the relevant section of the Handbook as soon as it is available.

Yours sincerely



ROGER POYNTON  
Secretary to the Committee

cc Heather Glanville



Communicated to Roger Poyles  
the comments in the margin.  
He will make them at the  
Policy Sub-Committee as necessary.  
He will send a letter confirming  
that recommendations have been passed.

AVON PROBATION COMMITTEE

POLICY SUB-COMMITTEE

23 July 1998

*AP*, 2/7/98

CHANGES TO THE LOCAL GOVERNMENT PENSION SCHEME

1.0 Purpose of the Report

- 1.1 To bring to the attention of the Committee the important changes to the Local Government Pension Scheme (LGPS) which are operative from 1st April 1998.
- 1.2 To ask the committee to formulate a Statement of Policy in respect of Discretionary provisions within the new Pensions Regulations which the Avon Probation Committee as an employing body is required to determine and forward to Bath and North East Somerset Council as the Administering Authority of the Avon Pension Fund.
- 1.3 To consider revisions to the Committee's Early Retirement Scheme.
- 1.4 To note the Audit Commission's Report - "Retiring Nature" and the administering authority's decision regarding the funding of early retirements.
- 1.5 To consider the implications of the Local Government (Discretionary Payments) (Amendments) Regulations 1998.

2.0 Introduction

2.1 The Local Government Pension Scheme Regulations 1997 and the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 were both made on 30 June 1997 to be effect from 1 April 1998. The original objectives for the Local Government Pension Scheme set out in Proposals for Change published in December 1995 were to give more discretion for local authorities, to have less Department of the Environment involvement and to increase flexibility

3.0 Discretions and Flexibility

3.1 The Department of the Environment, Transport and the Regions (DETR) when introducing the new Regulations issued the following advice:

"The 1997 Regulations provide increased scope for the exercise of discretionary functions by both employers and administering authorities.

Employers and administering authorities are under a particular responsibility to ensure that, when exercising these functions, they do act with prudence and propriety. Administering authorities also have a responsibility to safeguard pension funds and must take into account the extent to which an employer's use of the discretionary functions may necessitate the issue of a revised rates and adjustments certificate."

3.2 The new Regulations do extend considerably the exercise of discretion by both employing authorities and the administering authority giving additional flexibility. However, it is not intended that discretions are exercised in each individual case, but rather that a policy is laid down as to how the discretionary powers are to be exercised.

3.3 Set out below are the main areas for decision to enable the Committee to issue a Statement of Policy which covers the following items:-

- i how discretion will be exercised to allow the early payment of benefits to employees retiring over the age of 50 but before the age of 60;
- ii the augmentation of Scheme benefits by up to 6<sup>2</sup>/<sub>3</sub> years where a member leaves employment after the age of 50;
- iii the augmentation of Scheme membership for new members of the LGPS;
- iv the establishment of a Shared Cost Additional Voluntary Contributions scheme.

3.4 The formulation of such policies is not trivial, involving consideration of:-

- a the financial impact such that all costs/benefits to the employer are taken into account;

and

- b administration issues so that any decisions made are practical and not expensive to implement.

3.5 The policy statement should have been published by 30 June but unfortunately workload pressures meant that it was not possible to prepare the necessary Committee Report. Policy Statements need to be determined without further delay and they need to be regularly reviewed. Any future change in policy can only take effect after publication of the new policy, one month in advance of change.

Effective  
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3.6 Although there is no requirement to formulate and publish a policy on the discretion to reduce or waive members' contributions when a member achieves

40 years' service, and the incidence of such cases is few, it is suggested that the Committee should do so.

#### **4.0 Advice from the Local Government Management Board (LGMB)**

- 4.1 The LGMB has issued advice on the new Pension Regulations in Circular No 58 from the United Kingdom Steering Committee on Local Government Pensions (UKSC).
- 4.2 The UKSC welcomes the opportunity for more local flexibility but strongly advises a careful and considered approach to the Discretions, due regard being paid both to funding and contribution levels.
- 4.3 The UKSC advises that "while immediate and future costs, both to the employer and to the pension scheme, will be the most obvious factors to be taken into account, it will also be important to ensure that discretions are exercised with transparent fairness and without discrimination - pensions are covered by the equal pay legislation; and to avoid outcomes which unbalance the skills-base or experience-profile of the workforce, or which effectively mortgage the future. While policies on the exercise of the new Discretions need to avoid blanket solutions, where all cases are treated identically regardless of their specific circumstances, nevertheless it will be necessary to publish guidelines so that all concerned know what the local policy is."
- 4.4 The UKSC's advice is that established policy statements should be reviewed regularly, and as and when circumstances, including the funding situation, change. In particular, it would be advisable to undertake a review of policy when the results of the 1998 valuations, and consequential employer's contribution rate is known.

#### **5.0 Exercise of Discretions**

- 5.1 In order to assist the Committee there are 10 Appendices attached to this report:-

##### **Appendices 1 and 2**

Summaries of the changes to the Local Government Pension Scheme and the discretions available.

##### **Appendices 3 - 8 Employer discretions**

These are matter which the Committee must determine and publish its policy. There is an appendix for each area of Discretion containing an explanation; relevant comments from the DETR, UKSC and your Officers; a recommended policy for adoption is included.

## Appendices 9 and 10 Administering Authority discretions

These are matters which Bath and North East Somerset Council, as the administering authority has determined.

### 6.0 Avon Probation Committee's Early Retirement Scheme

6.1 The Committee for many years has operated an Early Retirement Scheme under the provisions of the Discretionary Payments Regulations (DPR) where the granting of an early retirement would be "in the interests of the efficient exercise of the employing authority's functions" (RIEELAF). A copy of the Committee's existing Scheme is attached as Appendix 11.

6.2 The 1997 Regulations do not materially alter the RIEELAF Regulations, although the 'augmentation discretion' (Regulation 52, Appendix 5) would enable the Committee to authorise early retirements in circumstances where the RIEELAF criteria were not met (i.e. more widely).

6.3 As the Committee is being recommended not to make general use of the augmentation discretion it is considered appropriate to retain the existing Early Retirement Scheme which operates under DPR.

6.4 Apart from the issue of differing criteria applying under DPR and the Augmentation Discretion the Committee should note that the up-front costs of the DPR (i.e. the existing Avon Probation Service Scheme) are less than those applying to augmentation.

6.5 The following section of this report will highlight the changes to the funding arrangements for early retirements and the Committee will note that whilst the existing arrangements (DPR/RIEELAF) have on-going costs they avoid the significant up-front costs associated with the augmentation arrangements.

### 7.0 Funding Arrangements for Early Retirements

7.1 In December 1991 the Audit Commission published its Report "Retiring Nature" which drew particular attention to the cost of public service early retirements. A summary of the report, together with the recommendations for councillors (and other employers) is attached as Appendix 12.

7.2 As will be seen from the report the predominant message is that those having the responsibility for granting early retirements should be aware of the *full costs* of their decisions.

7.3 Traditionally the Committee has been advised of the *direct revenue costs* of early retirements but these have just related to the costs of the 'added years' granted under the RIEELAF provisions. The Audit Commission's Report recommends that the capitalised costs of early retirements, including the loss of

Regulation 52  
is the key  
provision  
Augmentation  
allows added  
years to be  
given under Reg 31.

contributions that would otherwise have been paid and the early payment of pensions and release of lump sum, in future, should be made known to employing bodies; these costs are referred to as 'the strain on the pension fund'.

7.4 Bath and North East Somerset Council, the administering authority, has decided that the full costs, including 'the strain', should be made known to employers and re-couped either by a once-off payment or over a five year period. When Avon County Council was the administering authority for the Avon Pension Scheme the costs were recouped over a 15 year period.

7.5 The Committee should note that, whilst the revised arrangements will focus employing Committee's attention on the up-front fully capitalised costs of early retirement, they will mean that the costs of early retirement are no longer "hidden" and retrospectively picked up in increased employers' contributions. In future the triennial review of employers' contributions should only result in increased contributions if there are significant changes in the age profile of an employer's workforce or if the Pension Fund's investments have underperformed. Under the previous arrangements the 'hidden costs' of early retirements (the 'strain' on the fund) were reflected triennially in revised employers' contributions.

*These factors -  
scheme changes  
& Government policy*

8.0 **The Local Government (Discretionary Payments) (Amendments) Regulations 1998**

8.1 The Secretary of State for DETR has made these Regulations which make minor or clarifying amendments in respect of spouses' pensions arising from added years (compensation) awarded on redundancy or in the interest of efficiency.

8.2 The most important amendment concerns the payment of compensation when a spouse remarries or cohabits: the 1998 Regulations rescind the requirement for compensation to cease on remarriage or cohabitation after 31st March 1998. The requirement for a spouse's compensation to cease on remarriage or cohabitation where the employee ceased employment before 1 April 1998 remains, unless the employing authority resolves that it should not cease.

8.3 It is recommended that spouses pensions and benefits arising from added years (compensations) awarded on redundancy or RIEELAF should not cease on remarriage or cohabitation.

9.0 **Recommendation**

9.1 That in respect of the various Discretions set out in Appendices 3-8 the Committee adopt the general policies as proposed, whilst affirming that each case which arises will be open to individual consideration.

- substituted  
Bath & North  
Somerset  
Council*
- 9.2 That, taking account of these policies and those already adopted by this Committee, the Chief Probation Officer be authorised to prepare a Statement of Policy for communication to ~~the Pensions Sub-Committee of the Council~~ which acts as Administering Authority for the Avon Pension Fund.
- 9.3 That the Committee agrees to review this Statement of Policy in approximately one year's time, when the results of the 1998 triennial valuations are known.
- 9.4 That the Committee's existing early retirement scheme operating under the Discretionary Payments Regulations (RIEELAF) be retained.
- 9.5 That in respect of the Local Government (Discretionary Payments) (Amendments) Regulations 1998 spouse's pensions arising from added years (compensation) awarded on redundancy or in the interests of efficiency should NOT cease on re-marriage or cohabitation where the employee ceased employment before 1 April 1998.

**ROGER D POYNTON**  
Assistant Chief Officer

14 July 1998

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**LOCAL GOVERNMENT PENSION SCHEME  
PRINCIPAL CHANGES INTRODUCED BY THE 1997 REGULATIONS**

**Local Government Pension Scheme Regulations 1997**

**Regulation 12** - There will be a standard contribution rate of 6% for all new members from 1 April 1998, with the exception of manual workers in employment at that date who will continue to pay 5%. The terms officer and manual worker are replaced by the term member.

**Regulation 13** - The definition of 'pay' has been retained rather than left to local discretion as the draft regulations had proposed.

**Regulation 15** - An employer may resolve to reduce or waive the contribution rate of an employee with 40 years local government contributory service. Transferred-in service from a non local government pension scheme will not count towards to the 40 year total. The employee will remain a member of the Scheme during the period of reduced contribution rate.

**Regulation 19** - To qualify for benefits a member will require either a minimum of 2 years membership or the transfer of pension rights having been credited to the member e.g. benefits will be payable with less than two years service providing a transfer value has been received from a non-local government pension scheme. The payment of benefits at the age of 65 with less than 2 years service has been re-introduced.

**Regulation 23** - This regulation deals with the issue of Certificates of Protection of Pension Benefits (formerly Certificates of Material Change) to protect pension benefits in given circumstances. These circumstances usually occurred when an employer reduced an employee's pay. If an employee did not receive the full pay award or was kept on a scale point and did not receive the benefits of pay awards (frozen pay) a Certificate could not be issued under the current Regulations. This Regulation will now allow the issue of a Certificate in these instances.

**Regulation 25** - For new members the Normal Retirement Date (NRD) is their 65th birthday. The NRD of a member who is a member on the 31st March 1998 will be protected, e.g. the NRD is the date on which the member achieves 25 years service, providing the member is age 60 or over, otherwise it is the age of 65. These definitions will affect any reductions made to a member who received his/her benefits early, other than by reason of ill-health, redundancy or efficiency. See Regulation 31.

**Regulation 26** - Those members who retire in the interest of efficiency continue to be treated in the same way under the scheme as members who are made redundant. Both are entitled to a pension and a retirement grant, payable immediately.

**Regulation 31** - Immediate benefits are payable if a member leaves on or after NRD (see Regulation 25). Members who leave over the age of 50 may elect to receive a benefit, although if under the age of 60 this requires their employers consent. If the total of the age and service, in whole years, of the member is less than 85 then reduced benefits are payable, however, a member's appropriate employing authority may determine on compassionate grounds that his retirement pension and grant should not be actuarially reduced. Actuarial tables are still to be produced by the Government Actuary. These will be complicated by the retirement arrangements under the existing rules being different from those under the new regulations. See Regulation 25.

**Regulation 32** - Places the onus on a deferred member to elect to carry earlier periods of membership forward on re-joining the Scheme, enabling an election to be made at any time during the fresh spell of membership. Current Regulations require the member to elect to preserve their benefits in a previous local government employment, otherwise their service will be automatically transferred.

A change of employer within the same fund will give rise to automatic deferred benefits which will not be aggregated with the new period of membership unless the member opts to combine the benefits.

**Regulation 38** - This provides for a death grant of 2 year's salary, if death in service, and a death grant guarantee of 5 years' pension less pension paid. This will not apply to those who are pensioners as at 31st March 1998. These pensioners will be covered by the existing 1995 Regulations.

**Regulations 40, 41, 45 and 46** - These provide for the payment of spouse's and children's pensions to be paid whatever the service of the deceased member, e.g. the 2 year qualifying does not apply. Regulation 41 now provides for a spouse's pension to be payable for life regardless of subsequent remarriage/cohabitation/marriage to another pensioner in receipt of a scheme widow's/widower's pension.

**Regulation 52** - Allows an employing authority to resolve to increase the total membership of a member who leaves his employment on or after his 50th birthday up to 62<sup>3</sup>/<sub>4</sub> years, providing this does not exceed Inland Revenue limits. The administering authority and the employing authority can agree that the employing authority will pay increased contributions to meet the cost of the increase in membership.

**Regulation 53** - Allows an employing authority to resolve to give a new member additional years of service.

**Regulation 55** - Allows members to purchase additional years of service at their own expense. However the administering authority may pass a resolution requiring the member to satisfy them that he/she is in reasonably good health by producing a report from a registered medical practitioner at his/her own

expense. A similar resolution is currently in force under the 1995 Local Government Pension Scheme Regulations.

**Regulation 58** - Allows a member on retirement to give up all or part of the lump sum for an additional pension. The relevant tables are awaited from the Government Actuary.

**Regulation 59** - Allows members subject to Inland Revenue Class C to commute part of the pension for an additional lump sum. The relevant tables are awaited from the Government Actuary.

**Regulation 66** - Provides an option for a member paying In House AVCs to opt to stop paying them whilst an active member and, when aged 50 or over convert the accumulated fund into a service credit in the Local Government Pension Scheme. Ill-health retirees are required to convert their In House AVC fund into a service credit within the Pension Scheme. The cost of producing a quote for the conversion of the AVC fund into a service credit may be deducted from the AVC fund.

**Regulations 67 to 72** - An employing authority may now resolve to establish a Shared Costs Voluntary Contributions Scheme (SCAVCs) to provide members with additional benefits, including death benefits. The Administering Authority must invest the contributions with an approved Additional Voluntary Contribution Body.

**Regulation 78** - Gives an Administering Body the power to impose an immediate increase in the employer's contribution rate where the liabilities on the Fund exceed those specified in the rates and adjustments certificate determined by the actuary at a previous valuation, i.e. where a greater number of members retire than had been included in the actuary's assumptions. In addition, an employing body may elect to pay additional contributions if it grants added years for members over 50 who retire early. The practical implications of this will need to be investigated.

**Regulation 80** - Unless an employer has agreed with the administering authority that the cost of discretionary added years should be reflected in higher contribution rates, a lump sum calculated by the Government Actuary must be paid into the Pension Fund. In addition, the extra costs arising from ill-health retirements must be paid into the Pension Fund. The Actuary to the Avon Pension Fund will need to be consulted about the implications of this Regulation.

**Regulation 87** - Where a member ceases one employment whilst still an active member in a concurrent employment and the member is entitled to a refund in respect of the terminated post, the options are now:

- (i) a refund of contributions, or
- (ii) a service credit in the remaining employment (amount to be determined through guidance to be received from the Government Actuary)

**Regulation 88** - A member who has claimed a refund and becomes a member of the Pension Scheme again before the refund has been paid no longer has the right to that refund, the service must be aggregated with the new membership.

**Regulation 106** - Each administering authority and employing authorities must formulate and keep under review their policy concerning the exercise of their functions under Regulation 31 (early leavers), Regulations 52,53 (added years) and Regulations 67 to 72 (SCAVCs). Policies are also required to be published.

**Regulation 109** - Each administering authority must formulate and keep under review its policy concerning abatement for re-employed pensioners. A policy statement must be published after consultation with the employing bodies.

**Regulation 127** - A person may be a member of the Scheme if he/she is an employee of -

- (i) the governors of any voluntary school maintained but not provided by a local education authority, or
- (ii) the governing body of any polytechnic, technical institute or other similar institution which is for the time being aided by a local education authority under the Education Act 1996,

and the local education authority have, with the consent of his employer by a statutory resolution specified him/her or a class of employees to which he/she belongs as being eligible to belong to the Scheme.

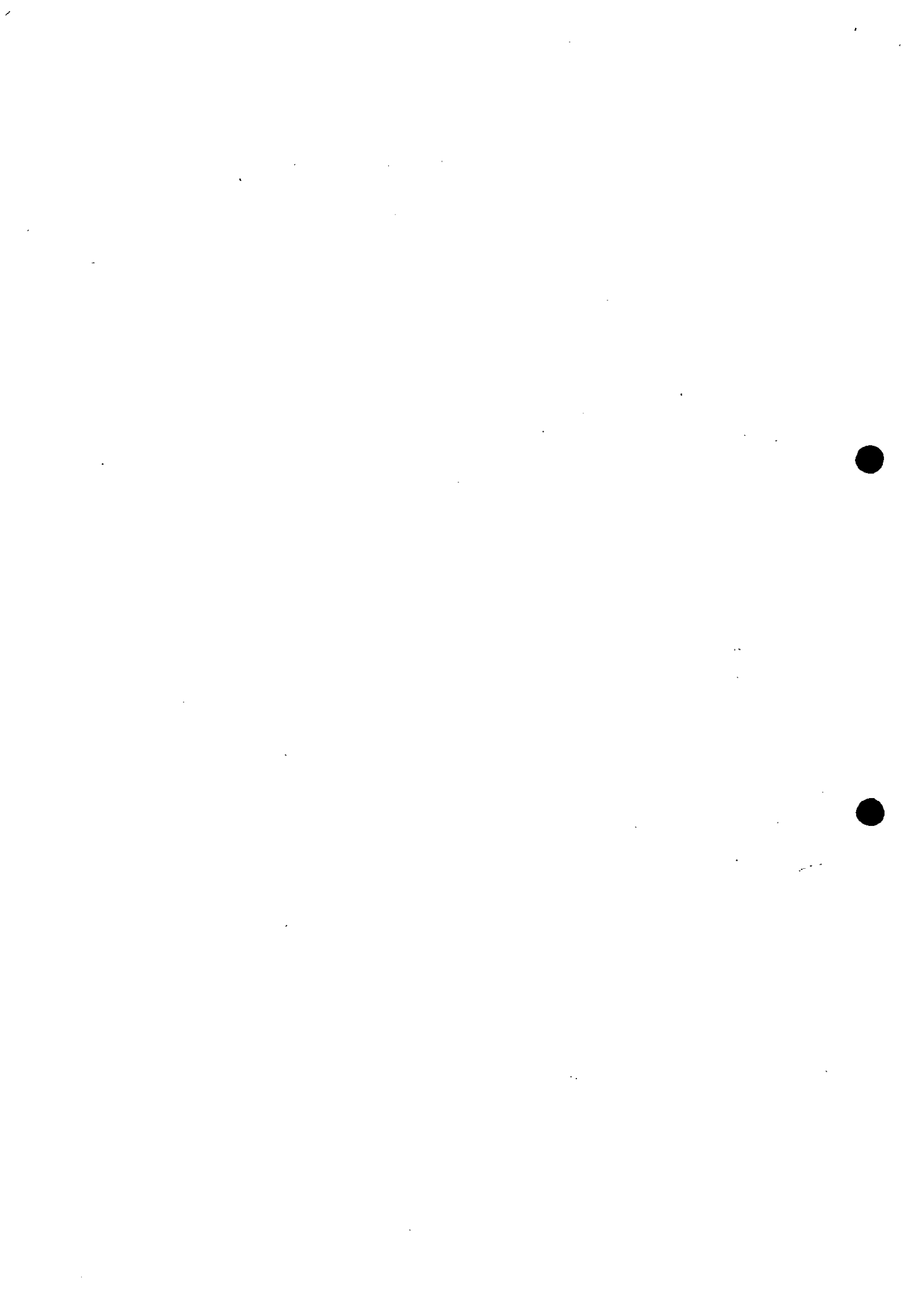
**Regulation 143** - Gives employing authorities the discretion to resolve to convert awards of up to 6<sup>2</sup>/<sub>3</sub>ths years made under the Local Government (Discretionary Payments) Regulations 1996 into scheme membership. These Regulations relate to the award of Compensatory Added Years on redundancy or efficiency. If the employer converts the awards into Scheme membership, payment for these years would be by increased contributions (Regulation 79) or by lump sum calculated in accordance with guidance to be issued by the Government Actuary (Regulation 80).

## NOTES

- (i) There is no mention of a lower age limit for entry into the Scheme, currently this is 16 years of age.
- (ii) There is no longer an age restriction of 50 years of age in debarring re-entry into the Scheme after an employee opts out. Any person who opts out of the Scheme then decides to opt in and opts out again can only enter the Scheme if the current or future employer consents.
- (iii) Currently any deferred pensioner or ex-member receiving a pension with service before 1st April 1980 will have their pension reduced (modified) at

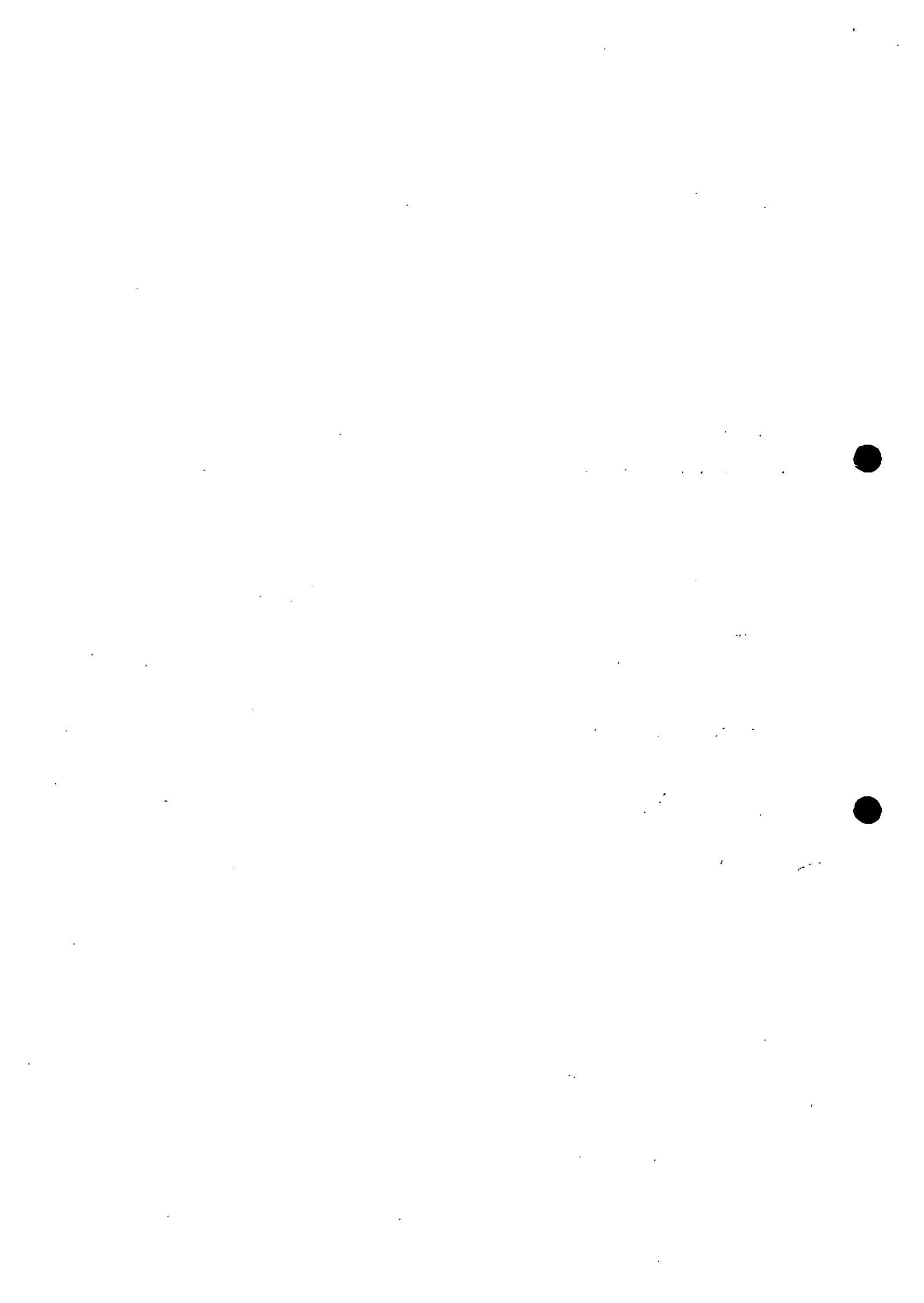
state pension age. This modification will no longer apply to any pension awarded from 1st April 1998

- (iv) Contracts of employment must now specify whether an employee is whole-time, part-time or variable time for the purpose of the Pension Scheme.



**LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997  
DISCRETIONS FOR EMPLOYERS AND THE ADMINISTERING  
AUTHORITY**

LGPS Regulation	Discretion	Appendix	Appendix
15	A	<b>Employer Discretion</b> To reduce or waive employee contributions for those with 40 or more years' local government membership	3
31	B	<b>Employer Discretion</b> Permitting the early release of benefits for those members who leave between the ages of 50-59 inclusive	4
52	C	<b>Employer Discretion</b> The ability to grant additional service to members leaving local government at or after the age of 50	5
53	D	<b>Employer Discretion</b> The ability to grant additional service to members within 6 months of joining the Scheme	6
67	E	<b>Employer Discretion</b> A shared cost additional voluntary contribution arrangement	7
9 (Transitional Provisions)	F	<b>Employer Discretion</b> Widowers' pensions in respect of service between 1 April 1972 and 5 April 1988 inclusive	8
21 (Transitional Provisions)	G	<b>Administering Authority Discretion</b> To no longer withhold spouse's pensions on remarriage or cohabitation	9
109	H	<b>Administering Authority Discretion</b> Abatement of earnings for local government pensioners re-employed in local government or a related service	10



**EMPLOYER DISCRETIONS  
LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997**

**Discretion A**

**Regulation 15**      **To reduce or waive employee contributions for those with 40 or more year's local government membership.**

**Explanation and comment**

- 1      Employers have the discretion to waive or reduce an employee's contributions to the pension scheme once he/she has gained 40 years' local government membership.
- 2      Employees who joined the LGPS before 1989 are limited to 40 years pensionable service at age 60 but may earn up to 5 years' additional service if they work from age 60 - 65.  
  
Employees who joined the LGPS after 1989 are limited to 40 years pensionable service. This means that long serving employees may be required to pay pension contributions for years when they are unable to accrue additional pensionable service and may, therefore, cause individuals to seek early retirement.
- 3      Against this, although it may not be possible to accrue additional service, the employee will still benefit in his/her pension for any salary increases during this period since the LGPS is a "final salary scheme".
- 4      If the employer uses this discretion to waive or reduce the employee's contributions, the employer will have to continue to pay its own contributions and to make up any loss arising from the waived employee contributions. However, this may seem a small cost having regard to the employee's length of public service. This is not likely to arise often as few employees are staying in work for 40 years. In addition, there would be a saving if it persuades the member to postpone retirement and the Fund saves the payment of pension benefits.
- 5      An alternative to waiving contributions altogether would be to reduce them temporarily or permanently.

### **Recommended policy**

That having regard to the small number of cases which are likely to arise and, in recognition of the long service which such employees must have,

**It is recommended that:**

**the Committee should waive an employee's pension contributions when he/she has achieved 40 years' membership of the local government pension scheme and is unable to accrue additional personable service, however should the employee continue in employment beyond the age of 60, contributions would be reinstated where further service could be accrued to a maximum of 45 years at age 65.**

**EMPLOYERS DISCRETIONS  
LOCAL GOVERNMENT PENSION REGULATIONS 1997**

**Discretion B**

**Regulation 31**            **Permitting the early release of pension benefits of members who leave voluntarily between the ages of 50 - 59**

**Explanation and comment**

- 1        Employees over the age of 50 seeking early retirement are likely to volunteer for redundancy, if available, since this provides the best financial package, i.e. a redundancy payment plus an unabated pension together with "added years", if applicable under the Committee's Redundancy Scheme.
  
- 2        Any employee who is between the ages of 50 and 60 and leaves employment may, under this new discretion, apply for the early release of his/her pension benefits. It is open to the employer to decide whether or not to release the pension benefits. If the employer agrees and the sum of the employee's age and pensionable service is 85 or more, then under the Rule of 85 pensions benefits are paid without abatement. If the employee does not satisfy the "Rule of 85", pension benefits will be actuarially abated unless the employer decides to waive the abatement.
  
- 3        There will be an increased cost to the pension scheme of paying benefits early without reduction. The Actuary to the Avon Pension fund estimates that the cost of agreeing to all requests for the early release of benefits could be of the order of 2.5% of pensionable pay, although it clearly will depend on how many requests are received, and at what age. However, to the extent that employers use the "Rule of 85" as an alternative to efficiency/redundancy retirement (or even ill health), then this would reduce the extra costs arising.  
  
As an illustration the UKSC Circular No 58 dated October 1997 estimates that the cost of releasing benefits early for an employee aged 55 with 30 years service will be equivalent to 30 months' salary. For this reason, it will be necessary in the future for the Fund's actuary to take account of this likely cost and it will be possible for Bath and North East Somerset Council, as the administering authority, to require increased contributions from any employer for whom the number of early retirements (including ill-health) is shown to exceed the assumptions agreed.
  
- 4        Taking account of the above, the Committee needs to determine its policy in relation to:
  - a        criteria to be used in considering requests for voluntary early retirement;

- b whether or not pensions should be abated when the employee does not satisfy the "Rule of 85".
- 5 Having regard to the estimated costs, it is recommended that applications for early retirement should normally be accepted only in cases where it can be demonstrated as being in the Committee's best interests. This might be, for example, where a redundancy situation does not exist but a vacancy might facilitate a restructuring, changes in working practice or a better mix of skills. The exception might be where an employee applied on compassionate grounds, for example, in order to give up work to deal with a compelling domestic situation.
- 6 The "Rule of 85" derives from the fact that employees who are age 60 who have 25 years service or more may choose to take their pension benefits without the employer's consent and without abatement provided that they have 25 years' service. In order to be consistent, therefore, it is recommended that pensions released early to employees between the ages of 50 and 59 inclusive should be actuarially abated where the "Rule of 85" is not satisfied.
- 7 It is important to note that where a pension is abated due to early payment, the abatement does not apply to any subsequent spouse's or dependant's pension.

#### **Recommended policy**

**It is recommended that:**

**applications for early release of benefits from employees between the ages of 50 to 59 inclusive will only be accepted in cases where it can be demonstrated as being in the Committee's best interests; or where there are compassionate grounds for the early release of pension benefits.**

**In such cases where the early release of pension benefits is approved, actuarial abatement will be applied to the pension benefits if the sum of the employee's age and pensionable service is less than 85 years.**

**EMPLOYER DISCRETIONS  
LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997**

**Discretion C**

**Regulation 52**      **The ability to grant additional service to members leaving local government at or after age 50**

**Explanation and comment**

- 1      This will allow discretion for the employer to augment (increase) at retirement an employee's service within the pension scheme as an alternative to granting "added years" outside the scheme under the Discretionary Payments Regulations (DPR) 1996. It will also allow the employer to augment an employee's service in circumstances where the DP Regulations do not apply.
- 2      "Added years" may only be granted in cases of retirement by reason of redundancy or efficiency and where the employee is 50 years or over and has at least 5 years service. However, augmentation may be granted irrespective of age, service or reasons for leaving.
- 3      The maximum number of years which may be granted by way of augmentation is 6<sup>2/3</sup> but, depending on service, may not exceed limits imposed by the Pension Schemes Office.
- 4      For the employee, because augmentation is within the pension scheme, the augmentation lump sum payment is wholly tax free whereas an "added years" lump sum is treated as compensation and may be taxed if the total of compensation payments, including redundancy and pay-in-lieu, exceed £30,000.
- 5      For the employer, however, the fact that augmentation is within the pension scheme means that the projected cost must be discharged by an "up front" capital payment to the Pension Fund (unlike "added years" which are paid for by the employer on a £ for £ basis as the costs arise). Augmentation is, therefore, more difficult to finance.
- 6      The Committee has previously granted up to 7 "added years" under the Discretionary Payments Regulations and it is recommended that those provisions should continue: it is not recommended that general use should be made of the augmentation discretionary power.

## **Recommended policy**

**It is recommended that:**

**the Committee notes the new discretion to augment an employee's pension benefits on retirement but has no intention to make general use of this discretionary power but may wish to consider its use in exceptional cases in the future.**

**EMPLOYER DISCRETIONS  
LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997**

**Discretion D**

**Regulation 53            The ability to grant additional service to members within 6 months of joining the Scheme**

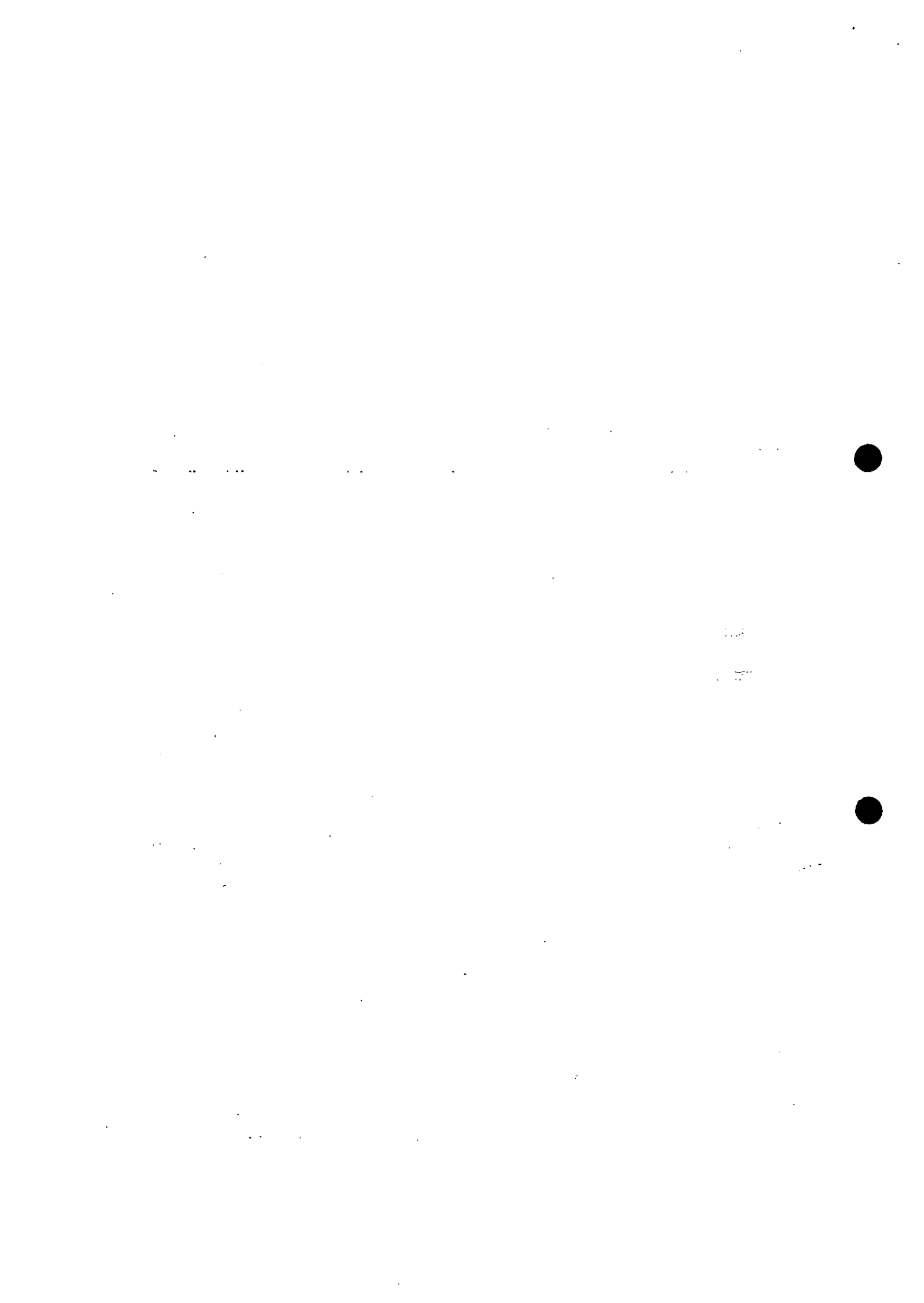
**Explanation and comment**

- 1        This facilities exists to enable employers to offer management incentives to attract key people with scarce skills from outside local government (colloquially referred to as a "golden hello").
- 2        Whilst particular cases may occur in the future where the use of this policy may be worth considering, its use is unlikely to be warranted on a general basis and may give rise to equalities claims.

**Recommended policy**

**It is recommended that:**

**the Committee has no intention to make general use of the discretionary power to augment an employee's service within 6 months of joining the scheme but may wish to consider its use in exceptional cases in the future.**



**EMPLOYER DISCRETIONS  
LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997**

**Discretion E****Regulation 67            A shared cost additional voluntary contribution (SCAVC) arrangement**

- 1        In common with other occupational pension schemes, the LGPS must offer members a facility to make Additional Voluntary Contributions (AVCs). The present facility is through an AVC scheme provided by Equitable Life Assurance Company. The Committee makes no financial contribution to this scheme.
- 2        The ability to set up a shared costs AVC arrangement is seen as providing the opportunity for individual employers to introduce more flexible pension arrangements for their employees.
- 3        The UKSC suggests that it could be used in particular to attract key people into public service and could be less expensive than augmenting their benefits. Alternatively it could be useful as a component of the remuneration package in the context of a reorganisation and restructuring of pay scales.

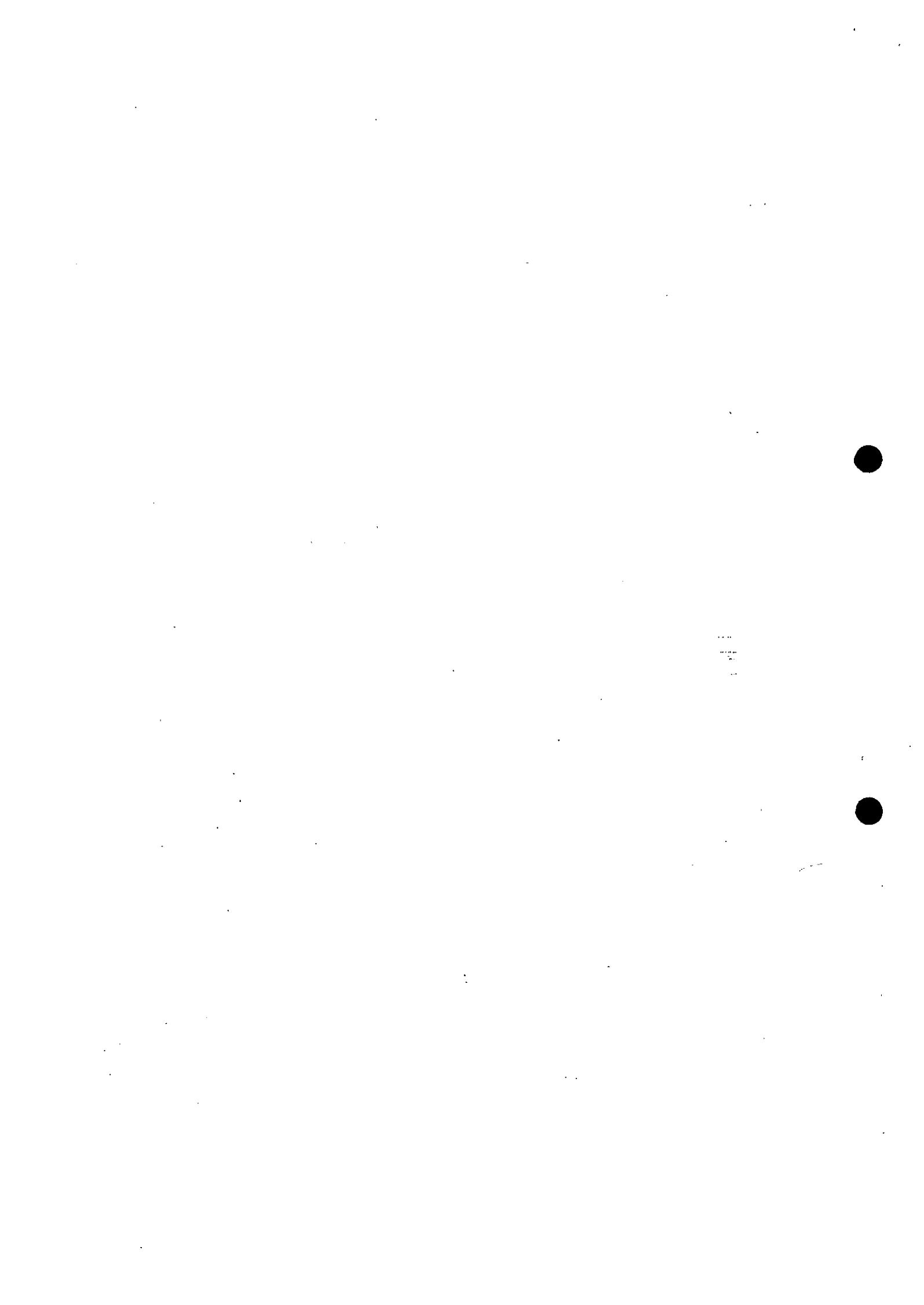
Employers could, for example, consider sharing the cost of increasing the lump sum death benefit up to the legal limits or, more radically perhaps, sharing with those employees who would stand to benefit, the cost of providing adult partners' pensions. The potential costs could be significant and employers will doubtless bear that in mind in considering this discretion as there is no explicit ceiling contained within the Regulation.

- 4        Within a framework of harmonisation of Conditions of Service there seems little attraction in considering a SCAVC scheme for selective employees. Selective application could give rise to equalities claims. The costs of a scheme for all employees would depend on the benefits and cost sharing arrangements involved but would be likely to be considerable. Employees can already make use of additional flexibility within the Inland Revenue rules through the existing AVC scheme and it is likely that the LGPS will have to face up to the issue of pensions for non-married partners sooner rather than later.

**Recommended policy**

**It is recommended that:**

**the Committee does not intend to set up a Shared Cost AVC scheme in the foreseeable future.**



**EMPLOYER DISCRETIONS  
LOCAL GOVERNMENT PENSION SCHEME  
(TRANSITIONAL PROVISIONS) REGULATIONS 1997**

**Discretion F****Regulation 9            Provision of widower's pensions in respect of service  
                                 between 1972 and 1988****Explanation and comment**

- 1        The 1995 Regulations did not allow married female employees to count their pensionable service between 1 April 1972 and 5 March 1988 for a widower's pension, unless they elected to pay for it in some way - by additional voluntary contributions or by a deduction from their lump sum at retirement.
- 2        For several years the UKSC has been campaigning against this "non-provision" as it was perceived as discriminatory, because married male employees receive cover for a widow's pension for this period without having either to elect or to pay for it.
- 3        As from 31 March 1998 all elections made by eligible female members in respect of service between 1st April 1972 and 5th March 1988 for a widower's pension terminated. Employing authorities are enabled under Regulation 9 to pass resolutions treating the full period of the member's election as service to be used in determining the amount of a widower's pension.
- 4        Paragraph 4 of Regulation 9 allows employing authorities to accept an election from a married woman, who has not previously elected, to provide a higher widowers pension in respect of her service between 1st April 1972 and 5th March 1988. UKSC policy is for employers to encourage such elections, which will secure widowers' pensions at no cost to the employee and would, according to the UKSC's and the Actuary to the Avon Pension Fund cost the employers less than 0.1% of their pensionable pay bill.
- 5        For reasons of comparability with other public sector pension schemes, the DETR has placed the responsibility on local employers to implement this change locally. The Policy Sub-Committee, at its meeting on 12 March 1998, in line with all other employing bodies in the Avon Pension Scheme, agreed to the use of the 'deeming option' to the effect that it will treat as post-1988 service all service from 1st April 1972 to 5th April 1988 which is the subject of an election.

### **Recommended policy**

**In the interests of completeness and to ensure that all of the Committee's decisions in relation to the 1997 Regulations are recorded together it is suggested that the following resolution be made -**

**for the purposes of Paragraph 9 of the above Regulations the service of married female members from 1 April 1972 to 5 April 1988 which is covered by an election will be treated as service to be used in determining the amount of a widower's pension. The Committee also agrees to accept late elections from any eligible female member. It will be assumed that such female employees will wish to elect unless they notify the Committee to the contrary.**

**ADMINISTERING AUTHORITY'S DISCRETIONS  
LOCAL GOVERNMENT PENSION SCHEME  
(TRANSITIONAL PROVISIONS) REGULATIONS 1997**

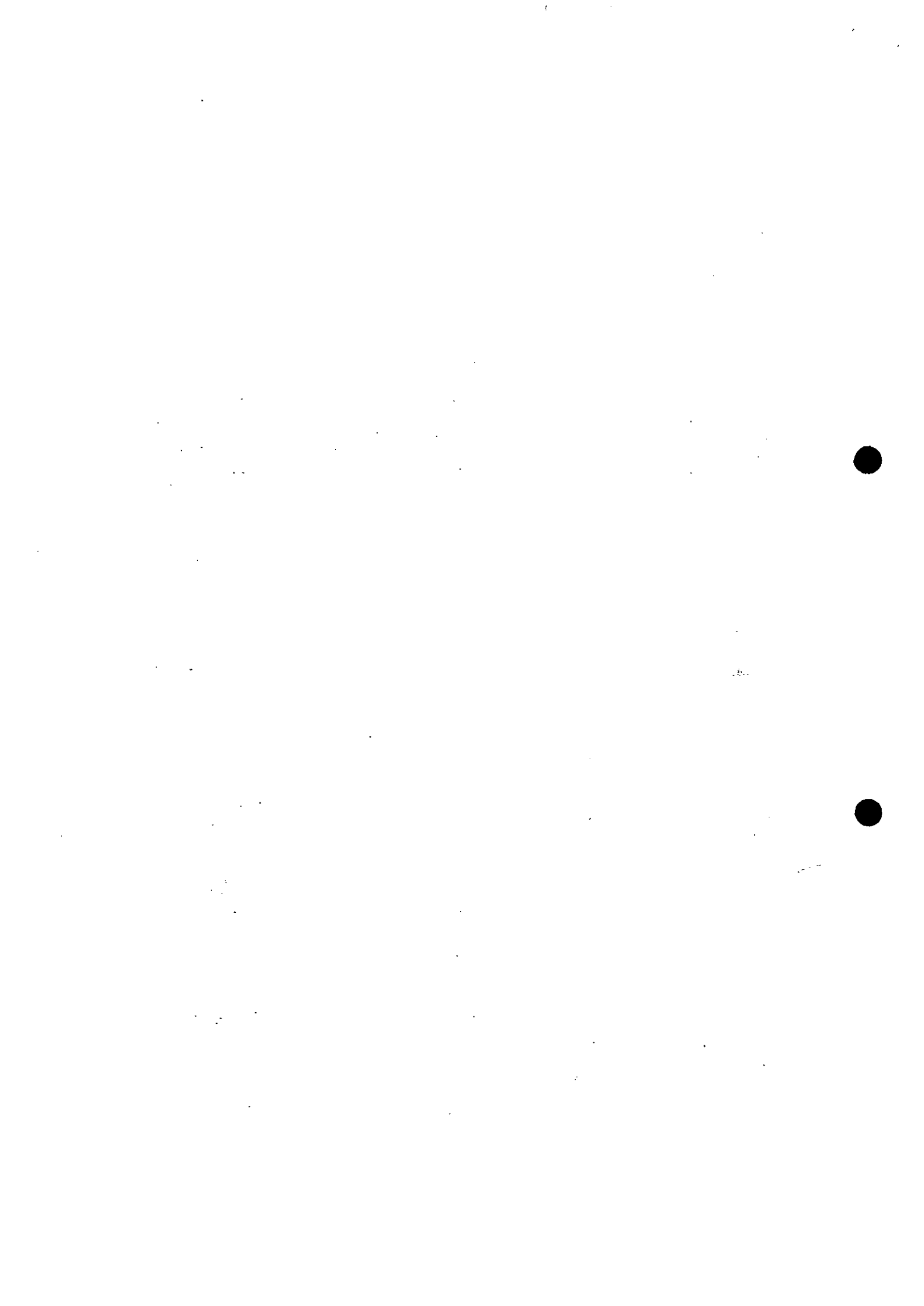
**Discretion G**

**Regulation 21 of Schedule 3            To no longer withhold spouse's pensions on  
remarriage or cohabitation**

- 1        The Local Government Pension Scheme Regulations 1997 do not require a spouse's pension to be stopped in cases of remarriage or cohabitation.
- 2        The Transitional Provisions give administering authorities the discretion to resolve that spouse's pensions awarded under previous Regulations should be treated in line with the 1997 Regulations if they remarry on or after 1st April 1998, i.e. that they do not cease upon the pensioner's cohabitation or remarriage. Bath and North East Somerset Council as the Administering Authority has passed the necessary resolution.
- 3        No powers have been granted to administering authorities to reinstate pensions already forfeited before 1 April 1998.

**Recommendation**

**TO NOTE that Bath and North East Somerset Council, as the Administering Authority, has decided to no longer withhold spouse's pensions.**



**ADMINISTERING AUTHORITY'S DISCRETIONS  
LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997**

**Discretion H**

**Regulation 109            Abatement of earning for local government pensioners  
re-employed in local government or related service**

**Explanation and comment**

- 1        Under the 1995 Local Government Pension Scheme (LGPS) Regulations re-employed pensioners have their pensions abated if the total of their new monthly earnings and pension when annualised, exceeds the amount of their pensionable earnings, indexed and again annualised, immediately prior to retirement. Under the Local Government Pension Scheme Regulations 1997 the adoption of an abatement policy with effect from 1 April 1998 becomes the responsibility of the Bath and North East Somerset council as the Administering Authority.
  
- 2        In formulating its policy there are a number of criteria set out in the new regulations to which an administering authority must have regard. These are :-
  - (a)      to determine the 'de minimus level' for the application of abatement;
  - (b)      the administrative costs which are likely to be incurred as a result of abatement;
  - (c)      the extent to which a policy not to apply abatement could lead to a serious loss of confidence in the public service.
  
- 3        The effect of these criteria is to make it very difficult for the principle of abatement to be discarded. However, any abatement policy must not be more stringent than the present abatement rules.
  
- 4        The Bath and North East Somerset Council, as the Administering Authority, has proposed several minor amendments which are briefly as follows:
  - (i)      that, when compared with annualised pensionable earnings at the retirement date, post-retirement earnings should be assessed at yearly intervals rather than be annualised on a monthly basis. The effect of this would be that a retiree could work for a part-year without being penalised. At the present working part-time often avoids abatements whereas working part of a year does not;
  - (ii)     that abatement should not apply to employees who retire at normal retirement age;

- (iii) that the Pensions Department should be given discretion to waive abatement where the additional administration involved in implementing abatement cannot be justified in relation to the amount of pension abated.
- 6 The obligation would remain on the re-employed pensioner to inform the Pensions Department that he/she had secured new employment in local government.
- 7 At the present time there are only a small number of pensioners subject to abatement because re-employment terms are normally structured so that abatement will not apply, i.e. the pensioner is re-employed on a part-time basis.
- 8 The abatement rules can also be avoided by securing re-employment through a company with whom a local government employer contracts.

#### **Recommendation**

**TO NOTE that Bath and North East Somerset Council, as the Administering Authority, has decided to revise the Avon Pensions Scheme abatement rules in accordance with amendments outlined in paragraph 4 above.**

*2.15 Probation  
Early Retirement Scheme (Pers)**Page 1**1 Background*

The Superannuation Regulations allow employing authorities to grant "in the interests of the efficient exercise of the employing authority's functions", early retirement to pensionable employees who meet certain criteria. There is no definition as to what "efficient exercise" means, and thus the provisions could be used flexibly to cover a variety of circumstances, including facilitating internal re-organisations, encouraging the retirement of officers who cannot match the modern requirements of their jobs, and correcting bad age distributions in particular grades which consequently create serious promotion blockages and management difficulties. It is important to note that the application of the provisions does not imply that the employee is, or has become, inefficient, and to avoid employees drawing such an inference, the Early Retirement Scheme will only be applied by mutual agreement: no employees will therefore be retired under the Scheme against their wishes.

The enabling Regulations are discretionary, and the extent to which any individual employer can apply them is largely determined by the availability of finance. In Avon the costs of early retirements have to be borne by the employing Committee rather than the Superannuation Fund, and the County Council does not, therefore, widely promote an early retirement scheme within its departments. The Probation Committee has, however, agreed to adopt a scheme, but its application will be strictly limited within the financial constraints of its budget.

*2 Details of Scheme*

2.1 Pensionable employees (male or female) aged 55 or over, with at least ten years' continuous service with the Avon Probation Service can apply for early retirement.

2.2 Up to seven years added service will be granted, provided that when this is added to the

**2.15**      *Probation Early Retirement Scheme (Pers)*      **Page 2**

Cont'd ...

- 2.3 employee's reckonable service, the total does not exceed 40 years, or the service that would have been achieved at 65.
- 2.4 A maximum of two early retirements will be approved in each year and retirements will be with effect from 31 December.
- 2.5 All applications for early retirement must be submitted in writing to the Chief Probation Officer during the application period. Applications will be considered on merit, in the context of the efficient exercise of the Probation Committee's function, and taking account of the financial implications. The Committee's decision will be final, and employees whose applications are unsuccessful will not have the right of appeal against the decision or be able to exercise a grievance under the Grievance Procedure.
- 2.6 Unsuccessful applicants may re-apply in a subsequent year.
- 2.7 Applications for retirement under the Scheme will be invited (in the Bulletin) during April each year to enable the Committee to reach a decision during the summer so that applicants have adequate time to plan for their retirement which would take effect on 31 December.
- 2.8 Employees considering making an application under the Scheme may wish initially to discuss the matter informally with their ACPO and seek further information and financial details from the Assistant Chief Officer (Admin).

## AUDIT COMMISSION REPORT – “RETIRING NATURE”

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<b>Recommendations for councillors and managers</b>	
To improve their accountability, councillors need to be informed about early retirement decisions, both individual high-cost proposals as well as the cumulative effect of all decisions.	9
To ensure accountability, the departments that wish to allow an early retirement should pay for the full cost of that early retirement.	9
● Councils should regularly update their early retirement policy, taking account of their ability to pay for enhancements.	10
To ensure that the real cost of an early retirement is appreciated, the full cost – including enhancement and strain on the pension fund – should be made available to councillors when the decision is taken.	10
To improve the quality of decision-making, the cost of a discretionary early retirement should be paid by the time the benefits of that early retirement expire; this means by the normal retirement age or within five years, whichever is sooner. Where the funding level of the pension fund concerned is below 90 per cent, a three-year period would be appropriate.	11
Councils should tackle the culture of expectation that has led to staff seeing early retirement as a right.	11
● Councillors should apply the advice of the Association of Local Authority Medical Advisers (ALAMA) rigorously when making ill-health decisions.	11
Pensions administering authorities should make use of in-house or contracted occupational health advisers who follow the ALAMA guidelines. Employing authorities should pay for the service on the basis of use, with the aim of achieving a standard approach to ill-health retirement across their fund.	12
Councils should develop staff plans with the objective of avoiding early retirement. These should incorporate alternatives to early retirement such as redeployment, retraining, freezing recruitment and, when appropriate, dismissal rather than automatic early retirement.	13
Councils should make effective management of early retirement part of the normal performance measurement system.	13

## Recommendations for councils, the Government and actuaries

Councils and their actuaries should introduce a system for monitoring the pension fund between valuations. This will involve actuaries providing each employing authority with information covering their assets and liabilities, ill-health assumptions, cash value of individual contribution rates, etc. All information should be provided in advance, not retrospectively. 14

Councils with funding levels below 100 per cent should implement a real recovery plan. No council with less than 100 per cent funding should have a negative individual contribution rate. 14

The legislation governing the LGPS was designed to address the needs of the 1970s. It should now be reviewed in the context of the needs of the 1990s and beyond. 15