

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

Discretion A

Regulation 15 – To reduce or waive employee contributions for those with 40 or more years' local government membership.

Explanation and comment

1. The College has the discretion to waive or reduce an employee's contributions to the pension scheme once he/she has attained 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 increased during this period since the LGPS is a "final salary scheme".
4. If the College uses this discretion to waive or reduce the employee's contributions, the College 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 service to local government. 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 employment 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 College should waive an employee's pension contributions when he/she has achieved 40 years local government membership of the local government pension scheme and is unable to accrue additional pensionable 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.

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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.
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 College to decide whether or not to release the pension benefits. If the College agrees and the sum of the employee's age and pensionable service is 85 or more, then under the Rule 85 pension benefits are paid without abatement. If the employee does not satisfy the "Rule of 85", pension benefits will be actuarially abated unless the College decided 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 estimated that the cost of agreeing to all request 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, due 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 IKSC Circular No58 dated October 1997 estimates that the cost of releasing benefits early for any 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 & 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 College 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".

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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 College'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 applies on compassionate ground, 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 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 College's best interests; or

Where there are compassionate grounds for the early release of pension benefits.

All applications on compassionate grounds will be considered by the Principal and the Director of Finance.

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.

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Discretion C

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

Explanation and comment

1. This will allow discretion for the College 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 Payment Regulations (DPR) 1996. It will also allow the College 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 reason for leaving.
3. The maximum number of years which may be granted by way of augmentation is 6²/₃ 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 College 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.

Recommended Policy

It is recommended that:

The College 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.

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Discretion D

Regulation 53 - The ability to grant additional service to members within 6 months of joining the scheme.

Explanation and comment

1. 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 College 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.

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Discretion E

Regulation 67 - A shared cost additional voluntary contribution (SCAVC) arrangement.

Explanation and comment

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 College makes no financial contribution to this scheme.
2. The ability to set up a shared cost 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 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 payscales.

The College 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 the College will doubtless bear that in mind in considering this discretion as there is not explicit ceiling contained within the Regulation.

4. Within a framework of harmonisation and moving to single status, there seems little attraction in considering a SCAVC scheme for selective employees. Selective application could give rise to equalities claims. The cost 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 College does not intend to set up a Shared Cost AVC scheme in the foreseeable future.

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(TRANSITIONAL PROVISIONS) REGULATIONS 1997**

Discretion F

Regulation 9 - Provision of widowers' pension in respect of service between 1972 – 1988

Explanation and comment

1. The current 1995 Regulations do 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 elect 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”, it being perceived as discriminatory, because married male employees receive cover for widow's pension for this period without having either to elect or to pay for it.
3. As at 31 March 1998 all elections made by eligible female members in respect of service between 1 April 1972 and 5 March 1988 for a widower's pension will be terminated. Employing authorities are required 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 1 April 1972 and 5 March 1988. UKSC policy is for employers to encourage such elections, which will secure widower's pensions at no cost to the employee.
5. For reasons of comparability with other public sector pension schemes, the DETR has placed the responsibility on local authorities to implement this change locally. Employing authorities are required to pass a resolution before 1 November 1998 to the effect that they will treat as post-1988 service all service from 1 April 1972 to 5 April 1988 which is the subject of an election.

Recommended policy

It is recommended that:

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 College 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 College to the contrary.

**ADMINISTERING AUTHORITY'S DISCRETIONS
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(TRANSITIONAL PROVISIONS) REGULATIONS 1997**

Discretion G

Regulation 21 of schedule 3 - To no longer withhold spouse's pensions on remarriage of cohabitation.

Explanation and comments

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 1 April 1998, i.e. that they do not cease upon the pensioner's cohabitation or remarriage. Bath & North East Somerset Council as the Administering Authority has passed the necessary resolution. (see Agenda item number 19 of the Pensions Sub-Committee, dated 28 November 1997).
2. No powers have been granted to administering authorities to reinstate pensions already forfeited before 1 April 1998.

Recommendation

That the College pass a resolution to no longer withhold spouse's pensions.

APPENDIX 8(1)

**ADMINISTERING AUTHORITY'S DISCRETIONS
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Discretion H

Regulation 109 - Abatement of earnings 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 & 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; and
 - (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 & 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 abatement whereas working part of a year does not;
 - (ii) that abatement should not apply to employees who retire at normal retirement age;

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- (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.
5. The obligation would remain on the re-employed pensioner to inform the Pensions Department that he/she had secured new employment in local government.
6. 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.
7. The abatement rules can also be avoided by securing re-employment through a company with whom a local government employer contracts.

Recommendation

It is recommended that:

The modifications to the existing policy which are proposed by Bath & North East Somerset Council, as the Administering Authority, are both sensible and logical and that Bath & North East Somerset Council, as the Administering Authority, be advised that the College has no objection to the policy proposed.