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**Report to: Partnership and Performance Committee**

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**Date of Meeting: 31 January 2019**

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**Subject: LGPS Employer's Discretionary Functions Policy 2018**

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**Report by: Strategic Director Partnership & Performance**

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### **1.0 Purpose**

- 1.1. This paper seeks approval of the revised LGPS Employer's Discretionary Functions policy.

### **2.0 Recommendations**

- 2.1. The Partnership and Performance Committee is invited to approve the revised LGPS Employer's Discretionary Functions Policy 2018 as attached..

### **3.0 Considerations**

- 3.1. A new version of the Local Government Pension Scheme (LGPS) came into effect on 1st June, 2018 in the form of the Local Government Pension Scheme (Scotland) Regulations 2018.
- 3.2. As with previous regulations, employers are required to prepare and publish a written statement indicating how they intend to exercise the discretionary powers that are contained in the scheme rules.
- 3.3. It is mandatory that a discretions policy covers the undernoted 4 matters plus the Rule of 85.
- Award of additional annual pension (regulation 30)
  - Funding of additional pension (regulations 16(2)(e) and 16(4)(d))
  - Flexible retirement (regulation 29(7))
  - Waiving of actuarial reduction (regulation 29(9))
- 3.4. In addition, as the new version of the Scheme allows members to retire voluntarily from age 55 (when previously the minimum age was 60), the discretion under Paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions and Savings)(Scotland) Regulations 2014 which protects longer standing members from suffering actuarial penalties (either in full or in part) if they retire early, requires to be reviewed and updated.

3.5. As well as the five areas where it is compulsory for employers to publicise a policy, there are other areas of the LGPS where, for operational purposes, it is sensible for employers to have a policy. These are as follows:

- Members' Contribution Rates (Regulation 9(4))
- Internal Disputes Resolution Procedure (Regulation 68(5)(c))
- Acceptance of Late Transfer Payments (Regulation 95(6))
- Extension of 30 Day Deadline for Shared Cost APCs (Regulation 16(16))

3.6. The draft policy mirrors the discretions adopted by Falkirk Council in its capacity as a Fund employer.

#### 4.0 Sustainability Implications

4.1. There are no sustainability implications arising from this report.

#### 5.0 Resource Implications

##### 5.1 Financial Details

5.2. The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. Yes

5.3. Finance have been consulted and have agreed the financial implications as set out in the report. Yes

##### 5.4 Staffing

#### 6.0 Exempt Reports

6.1. Is this report exempt? Yes  (please detail the reasons for exemption below) No

#### 7.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

(1) **Our Priorities** (Please double click on the check box )

- Clackmannanshire will be attractive to businesses & people and ensure fair opportunities for all
- Our families; children and young people will have the best possible start in life
- Women and girls will be confident and aspirational, and achieve their full potential
- Our communities will be resilient and empowered so that they can thrive and flourish

(2) **Council Policies** (Please detail)

**8.0 Equalities Impact**

8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?

Yes  No  Statutory requirement

**9.0 Legality**

9.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

**10.0 Appendices**

10.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

LGPS Employer's Discretionary Functions Policy 2018

**11.0 Background Papers**

11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

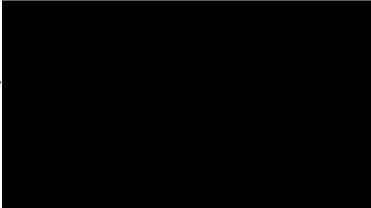
Yes  (please list the documents below) No

**Falkirk Pensions Discretions 2018**

**Author(s)**

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Chris Alliston	HR Service Manager	2184

**Approved by**

NAME	DESIGNATION	SIGNATURE
Stuart Crickmar	Strategic Director Partnership & Performance	
Nikki Bridle	Chief Executive	





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Council**

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Comhairle Siorrachd  
Chlach Mhanann

# **Local Government Pension Scheme Employer's Discretionary Functions Policy**

## Version Control

Version	Date	Author	Changes
0.1		C Alliston	
0.2	Feb 2015	S Coulter	Comments from working group added
1.0	Feb 2015	S Coulter	Procedure formally agreed by Council
1.1	October 2018	C Alliston	Amendments following introduction of The Local Government Pensions Scheme (LGPS) 2018

## 1. Introduction

1.1. The Local Government Pensions Scheme (LGPS) came into effect on 01<sup>st</sup> June 2018 in the form of the Local Government Pension Scheme (Scotland) Regulations 2018.

1.2. Under the regulations employers are required to publish and keep under review a policy statement in relation to the exercise of a number of discretions under the LGPS.

1.3. It is mandatory that a discretions policy covers the following matters:

- Award of additional annual pension (regulation 30)
- Funding of additional pension (regulations 16(2)(e) and 16(4)(d))
- Flexible retirement (regulation 29(7))
- Waiving of actuarial reduction (regulation 29(9))
- Rule of 85 Protection (para 1(1)(c))

1.4. In addition it is compulsory for employers to publicise a policy in relation to:

- Members' Contribution Rates (Regulation 9(4))
- Internal Disputes Resolution Procedure (Regulation 68(5)(c))
- Acceptance of Late Transfer Payments (Regulation 95(6))
- Extension of 30 Day Deadline for Shared Cost APCs (Regulation 16(16))

1.5. Appendix 1 and Appendix 2 outline the compulsory and non compulsory discretions as adopted by Clackmannanshire Council and are in line with those adopted by Falkirk Council in its capacity as a Fund employer.

## APPENDIX 1 - COMPULSORY ITEMS

### **Awarding Additional Pension : Regulation 30 LGPS (Scotland ) Regulations 2018**

#### **Summary of Discretion:**

Consider whether at full cost to the employer, to grant extra annual pension of up to £5,000 (figure at 1 April 2015 plus annual inflation linking as specified in scheme rules) to an active scheme member or within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency.

#### **Proposed Discretion:**

Additional pension may be awarded up to a maximum of £5000 (figure at 1 April 2015 plus annual inflation linking as specified in scheme rules) to an active scheme member or within 6 months of leaving to a member whose employment was terminated on grounds of redundancy or business efficiency, however this limit must also include any additional pension contributions funded.

The Chief Financial Officer, Strategic Director (Partnership and Performance) and employing Service will consider all relevant factors and only where it can be demonstrated to be in the interests of the Council will additional annual pension be granted. Additional pension will not be granted if the scheme member has been granted Compensatory Added Years.

#### **Previous Policy:**

The proposed policy under the 2018 regulations is the same as the policy under regulation 30 of the 2014 regulations, although annual inflation linking for the maximum amount has now been included.

**Funding of Additional Pension :  
Regulations 16(2e) 16(4d) LGPS (Scotland ) Regulations 2018**

**Summary of Discretion:**

Consider whether, where an active scheme member wishes to purchase extra annual pension of up to £6,500 (figure at 1 April 2015 plus annual inflation linking as specified in scheme rules) by making Additional Pension Contributions (APCs), to voluntarily contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC).

**Proposed Discretion:**

Where an active scheme member wishes to purchase extra annual pension of up to £6,500 ((figure at 1 April 2015 plus annual inflation linking as specified in scheme rules) by making APCs, Clackmannanshire Council will not contribute towards the cost of purchasing that extra pension via SCAPCs.

**Previous Policy:**

The proposed policy under the 2018 regulations is the same as the policy under regulations 16(2e) and 16(4d) of the 2014 regulations, although annual inflation linking for the maximum amount has now been included.

**Flexible Retirement :  
Regulation 29(7) LGPS (Scotland ) Regulations 2018**

**Summary of Discretion:**

Consider whether to permit flexible retirement for staff aged 55 or over who, with the agreement of the employer, reduce their working hours or grade.

**Proposed Discretion:**

The Chief Financial Officer, Strategic Director (Partnership and Performance) and employing Service will consider all relevant factors including costs and changes to the employee's contract of employment, and only where it can be demonstrated to be in the best interests of the Council will benefits be released.

Any flexible retirement request will only be approved where there is no financial benefit to the employee from their continued employment with Clackmannanshire Council in the new role/hours. Any application to reduce hours must be reasonable and not merely a token or cosmetic reduction to allow scheme benefits to be activated.

Where a flexible retirement request has been approved, the employee will be required to take all accrued benefits in relation to that employment. This does not apply to benefits for second/additional posts.

**Previous Policy:**

The proposed policy under the 2018 regulations is the same as the policy under regulation 29(6) of the 2014 regulations.

**Waiving of Actuarial Reduction :  
Regulation 29(9) LGPS (Scotland ) Regulations 2018**

**Summary of Discretion:**

Members after age 55 and before Normal Pension Age (including those released on flexible retirement grounds) can choose to access their benefits but may incur an early payment penalty (actuarial reduction). Consideration has to be given to the circumstances in which the early payment penalty would be waived and the costs borne by the employer.

**Proposed Discretion:**

Clackmannanshire Council will not, as a matter of course, waive in whole or in part any reduction that would be applied under Regulations 29(6) or 29(7). The Chief Finance Officer, Strategic Director (Partnership and Performance) and employing Service will consider all relevant factors and only where it can be demonstrated to be in the interests of the Council will a variation be made to the general policy.

**Previous Discretion:**

The proposed policy replaces the policy under regulation 29(8) of the 2014 regulations:

The Chief Financial Officer, Head of Resources and Governance and employing Service will consider all relevant factors and only where it can be demonstrated to be in the interests of Clackmannanshire Council or where exceptional compassionate circumstances exist will any early payment penalty be waived.

**Rule of 85 Protection:  
Para 1(1)(c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and  
Amendment) Regulations 2014**

**Summary of Discretion:**

The above Regulation makes provision for scheme members **who joined LGPS (Scotland) before 1/12/2006 and who retire before Normal Retirement Age** to be protected against the early payment penalties that would otherwise apply in such cases. This is commonly referred to as “Rule of 85” protection.

The protections already in place **for members who retire on or after age 60** are as follows:

- i) For members born before 1/4/1960 who have **met** the Rule of 85(2) at their date of leaving, no actuarial penalty is applied to benefits arising from membership up to 1/4/2020. Benefits accrued from 1/4/2020 will attract a penalty reduction based on the period of time from the member’s date of leaving until their Normal Pension Age (1).
  
- ii) For members born before 1/4/1960 who have **not met** the Rule of 85(2) at their date of leaving, then benefits arising from membership up to 1/4/2020 will only attract a penalty based on the period from date of leaving to the date on which the Rule of 85 (or age 65 at the latest) is met. Benefits accrued from 1/4/2020 will attract a penalty reduction based on the period of time from the member’s date of leaving until their Normal Pension Age(1).

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- iii) For members born on or after 1/4/1960 who have **met** the Rule of 85(2) at their date of leaving, no actuarial penalty is applied to benefits arising from membership up to 1/4/2008. Benefits accrued from 1/4/2008 will attract a penalty reduction based on the period of time from the member’s date of leaving until their Normal Pension Age (1).

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- iv) For members born on or after 1/4/1960 who have **not met** the Rule of 85(2) at their date of leaving, benefits arising from membership up to 1/4/2008 will only attract a penalty reduction based on the period of time from the member’s date of leaving to the date on which the Rule of 85 (or age 65 at the latest) is met. Benefits accrued from 1/4/2008 will attract a penalty reduction based on the period of time from the member’s date of leaving until their Normal Pension Age(1).

Under the 2018 Regulations, scheme members can retire voluntarily once they attain age 55. This requires a consideration as to how the Rule of 85 protections should be updated for persons retiring between ages 55 and 60.

1. Normal Pension Age is different depending on the period of membership it relates to.
2. For the Rule of 85 to be satisfied, a person's age and calendar length of scheme membership with both elements calculated in complete years must add up to at least 85.

**Proposed Discretion:**

**For members who retire between age 55 and 60**

The protections described in paragraphs i) to iv) above will apply with the modification that the actuarial penalty based on the period of time from date of leaving until age 60 will not be waived. The Chief Finance Officer, Strategic Director (Partnership and Performance) and employing Service will consider all relevant factors and only where it can be demonstrated to be in the interests of the Council will a variation be made to the general policy.

This is on the basis that voluntary retirement between 55 and 60 is a new provision from 2018 not envisaged when the original protections were introduced in 2008.

**Previous Discretion:**

The Chief Financial Officer, Head of Resources and Governance and employing Service will consider all relevant factors and only where it can be demonstrated to be in the interests of the Council will rule of 85 protection be set aside either in full or in part.

## APPENDIX 2 - NON COMPULSORY ITEMS

<b>Early Payment of Pension: Regulation 29(5) &amp; (13) LGPS (Scotland ) Regulations 2014</b>
<b>Summary of Discretion:</b> <p>This applies to those who left the scheme before 1st June 2018 and have deferred rights under former regulations (ie not 2018). If the option to access benefits from age 55 becomes an automatic right for former members then this discretion will cease to apply.</p> <p>Consider whether to agree to a request for early voluntary payment of benefits on or after age 55 and before age 60.</p>
<b>Proposed Discretion:</b> <p>The Chief Financial Officer in conjunction with the Strategic Director (Partnership and Performance) and the employing Service, will consider all relevant factors and only where it can be demonstrated that compassionate grounds and exceptional circumstances exist will benefits be authorised for release on or after age 55 and before age 60.</p> <p>In determining compassionate grounds, financial reasons alone will not be considered sufficient to justify the release of benefits.</p>
<b>Previous Discretion:</b> <p>This policy is unchanged bar replacement of Head of Resources and Governance with Strategic Director (Partnership and Performance)</p>

**Members' Contribution Rates :  
Regulation 9(4) LGPS (Scotland ) Regulations 2018**

**Summary of Discretion:**

Consider whether member's contribution rates will be reassessed where there is a permanent material change to a member's employment.

**Proposed Discretion:**

Contribution rates will be reassessed where there is a permanent material change to a member's employment eg on promotion, demotion, re-grading or a part-time member's contractual hours change. The new rate will be communicated to the individual along with the date from which it is to be applied and they will be informed of the right of appeal under the Council's grievance procedure.

**Previous Discretion:**

The proposed policy under the 2018 regulations is the same as the policy under regulation 9(3) of the 2014 regulations.

**Internal Disputes Resolution Procedure :  
Regulation 68(5)(c) LGPS (Scotland ) Regulations 2018**

**Summary of Discretion:**

The Local Government Pension Scheme contains its own disputes resolution procedure. This involves appeals being heard by the Principal Pensions Officer of Strathclyde Pension Fund with whom the Falkirk Council Pension Fund has a reciprocal arrangement. Some appeals require to be considered by the employer in question (e.g. a dispute over the member's rate of pension contribution or the failure of the employer to grant ill health retirement). Consequently, consideration should be given as to who should be responsible for adjudicating on such "employer related" disagreements.

**Proposed Discretion:**

Where the appeal concerns "employer related disagreements" the specified person to hear an appeal is the Strategic Director (Partnership and Performance), or alternatively the Chief Financial Officer.

**Previous Discretion:**

The proposed policy under the 2018 regulations is the same as the policy under Regulation 71(5c) of the 2014 regulations. Head of Resources and Governance replaced with Strategic Director (Partnership and Performance)

**Acceptance of Late Transfer Payments :  
Regulation 98(6) LGPS (Scotland ) Regulations 2014**

**Summary of Discretion:**

Consider whether to extend the normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS.

**Proposed Discretion:**

Unless there have been administrative delays or omissions as determined by the Accountant/Pensions Manager, transfer payments will only be accepted where the request to transfer has been made within 12 months of participating in the Falkirk Council Pension Fund.

**Previous Discretion:**

The proposed policy under the new scheme is the same as the policy under Regulation 98(6) of the 2014 regulations.

**Extension of 30 Day Deadline for Shared Cost APCs:  
Regulation 16(16) LGPS (Scotland ) Regulations 2014**

**Summary of Discretion:**

Consider whether to extend the 30 day deadline for a member to elect for a shared cost APC upon return from a period of absence from work with permission with no pensionable pay (otherwise than because of illness or injury, relevant child-related leave or reserve force service leave).

**Proposed Discretion:**

In the event of authorised leave of absence, the scheme member will be allowed to elect to buy-back the amount of "lost" pension within three months of the individual returning from that leave of absence, provided they have requested and received details of the cost of the buy-back from Payroll. The employee should allow up to one month for Payroll to administer the calculation within the 3 month period.

**Previous Discretion:**

The proposed policy under the new scheme is the same as the policy under Regulation 16(16) of the 2014 regulations.

Any other discretions arising under the regulations of the LGPS 2018 regulations will be considered and determined by the Chief Finance Officer, Strategic Director (Partnership and Performance) and employing Service on a case by case basis.

Policy Name	Discretionary Elements
Department	HR Services
Policy Lead	Chris Alliston
Equality Impact Assessment	
Full EQIA required	Yes <input type="checkbox"/> No* <input checked="" type="checkbox"/>
* In no please provide rationale Statutory requirement to have in place	
Date Full EQIA complete	N/A
Date Approved	
Review Date	

