

# EAST AYRSHIRE COUNCIL

CABINET – 17 JUNE 2009

## CHIEF OFFICERS, LOCAL GOVERNMENT EMPLOYEES, CRAFT OPERATIVES LOCAL GOVERNMENT PENSION SCHEME EMPLOYERS' DISCRETIONS

### Report by Depute Chief Executive/Executive Director of Corporate Support

#### 1. PURPOSE OF REPORT

- 1.1 The purpose of the report is to seek Cabinet's approval to proposed revisions to the current Statement of Policy of Employers Discretions which are necessary following the implementation of the new Local Government Pension Scheme (LGPS) to meet regulatory requirements, subject to consultation with Trade Unions.

#### 2. BACKGROUND

- 2.1 In terms of Regulation 61 of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008, and Regulation 51 of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 as amended, the Council is required to formulate, publish and keep under review a Statement of Policy in relation to certain Employers' Discretions provided in the Regulations.
- 2.2 The Council and Strathclyde Pension Fund, as Administering Authority, have a particular responsibility to ensure that, when exercising these discretions, they act with prudence and propriety. The discretions offer an opportunity for more flexibility but a careful and considered approach is required with due regard being paid to the potential implications for funding and employers' contribution levels together with fairness and consistency of application.
- 2.3 The Council's current Statement of Policy was approved by Cabinet at its meeting on 21 November 2007. Previous Statements of Policy were formulated and submitted to the Strathclyde Pension Fund as Administering Authority in 1998, 2000, 2004 and 2007 outlining the discretions adopted by the Council at that time.
- 2.4 A review of the Employers' Discretions has been necessary to ensure that the Council continues to take account of new legislation and reflect leading practice.
- 2.5 The Statement of Policy of Employers' Discretions is applicable to Local Government Employees, Craft Operatives and Chief Officers. **They do not apply to Teaching Staff who have their own Pension Scheme.**
- 2.6 Further revisions will require to be made to the Council's Employers' Discretions Statement of Policy when the publication of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2008 are issued.

These Regulations are expected shortly and will cover the awarding of added years, redundancy and related matters. A further report will be submitted to Cabinet at that time.

- 2.7 Copies of the revised Employers' Discretions are available in the Members' Information Point and Members' Portal.

### 3. PROPOSED CHANGES

- 3.1 The Statement of Policy has been updated to take account of the Local Government Pension Scheme (Scotland) Regulations 2008. The Discretions are contained within the following Regulations -

- The Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (**Discretions prefixed with the letter "A"**)
- The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (**Discretions prefixed with the letter "B"**)
- The Local Government Pension Scheme (Scotland) Regulations 1998 as amended (**Discretions have no prefix**)

- 3.2 The main changes to the existing Employers' Discretions are summarised below:

- The Policy Statement confers no contractual rights and the Council retains the right to change the Policy at any time. Only the version of the Policy at the time a discretion is exercised will be applied to the employee(s) concerned (paragraph 1.5).

- **EMPLOYEES' CONTRIBUTION RATE** **Regulation B 4(4)**

*(This allows the Council to change an employee's contribution rate where there has been a permanent material change to their terms and conditions which affects their pensionable pay in the course of a financial year)*

#### Council Position

The Council will apply this discretion by delegated authority, by the Head of Human Resources, in appropriate circumstances i.e. where the criteria for permanent material change has been met.

#### Reason For Change

New discretion under the new LGPS as employees' contribution rates is now based on their pensionable pay.

- **AUGMENTATION OF MEMBERSHIP**

**Regulation B 12**

*(This allows the Council to augment the membership of an active member at any time by up to 10 years or up to the member's 65th birthday, if shorter)*

Council Position

The Council will only exercise this discretion in exceptional circumstance where it is deemed to be of benefit to the Council.

Reason For Change

Existing discretion has been increased from maximum of 6 years 243 days to 10 years.

- **AWARD OF ADDITIONAL PENSION**

**Regulation B 13**

*(This allows the Council to award an employee additional pension of up to £5,000 per annum payable on same date as employee's pension)*

Council Position

The Council will only exercise this discretion in exceptional circumstances where it is deemed to be of benefit to the Council.

Reason For Change

New discretion.

- **OPTIONAL CONTRIBUTIONS**

**Regulation A 19(2)**

*(This allows the Council to extend the period that an employee returning from child-related, strike or unpaid leave of absence beyond 30 days has to exercise their right to pay optional contributions in respect of the break)*

Council Position

The Council will extend this period in appropriate circumstances by delegated authority of the Head of Human Resources and taking account of the financial implications in each case.

Reason For Change

Existing discretion has now been incorporated into the Statement of Policy.

- **TRANSFER IN OF PENSION BENEFITS**

**Regulation A 78**

*(This allows the Council to extend the time limit for a further 12 months for accepting from new employees who wish to transfer into the Local Government Pension Scheme any pension benefits they have with other public sector transfer club schemes, thus increasing their pensionable service in the Pension Scheme)*

Council Position

The Council will extend this period in appropriate circumstances by delegated authority, by the Head of Human Resources and taking account of the financial implications in each case.

Reason For Change

Existing discretion has now been incorporated into the Statement of Policy following a change in the time limit to transfer in pensionable service.

- **EARLY PAYMENT OF PENSION (PRE 1.4.09)  
Regulations 30(2) & 30(5)**

*(This allows the Council to agree early payment of pension benefits upon the request of a former employee who left the Council's service before 1 April 2009, and who attains the age of 50. In addition the Council can, on compassionate grounds, decide that the pension benefits should be paid without being actuarially reduced for early payment)*

Council Position

The Council will consider applications from former employees on an individual basis subject to financial constraints and the employee's circumstances at that time.

Reason For Change

Existing discretions have been revised to retain minimum pension age of 50 years for employees who left the LGPS prior to 1 April 2009.

- **EARLY LEAVERS (PRE 1.4.09)**

**Regulation 30(7A)**

*(This allows the Council to agree to an employee who has opted out of the Local Government Pension Scheme before 1 April 2009 but continues working with the Council receiving payment of their deferred pension benefits, without reduction, from their Normal Retirement Date)*

Council Position

The Council agrees to apply this discretion by delegated authority of the Head of Human Resources, subject to the employee meeting the conditions applicable to

flexible retirement provided under Regulation B18(2) i.e. there must be a reduction in the employee's hours of work by at least 20%, or alternatively by a reduction in their salary grade.

### Reason For Change

Existing discretion has been revised to be applicable only to those employees who left the LGPS prior to 1 April 2009 and who continue working with the Council.

#### • **ELECTION TO JOIN** **Regulation 6(9)(a)**

The discretion to determine how many times an employee may re-join the LGPS is no longer a discretion under the Pension Scheme Regulations and therefore has been removed from the Statement of Policy.

- The Statement of Policy of Employers' Discretions has been updated to include civil partnerships where appropriate in the relevant discretions.
- The Statement of Policy has been changed to reflect that the minimum retirement age in the new LGPS (apart from retirement on ill-health grounds) is 55.

However, there are transitional arrangements which provide the following protections: - employees who were in the Local Government Pension Scheme on 31 March 2009 will retain the minimum retirement age of 50 until 31 March 2010; employees who were in the Pension Scheme on 5 April 2006 will retain the minimum retirement age of 50 in respect of Regulation B19 (Efficiency/Redundancy) only; and employees who were members of the LGPS on 30 November 2006 may have protected rights regarding early payment of benefits up to 31 March 2020 in relation to the Rule of 85.

- 3.2** The updated Statement of Policy of Employers' Discretions will continue to assist the Council to achieve and sustain a corporate and consistent approach to its application of the discretions under the Local Government Pension Scheme, thereby assisting the Council to operate effectively and deliver quality services. It will also contribute to elements of effective workforce planning.

#### **4. COMMUNICATIONS**

- 4.1** The updated Statement of Policy will come into effect within one month of the date of the Cabinet approval and will require to be forwarded to Strathclyde Pension Fund as Administering Authority within the same period.
- 4.2** Employees will be made aware of the amendments to the Statement of Policy of Employers' Discretions via the Council's intranet site, Eastwords and the issue of a relevant PER Circular.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1** There are no additional costs arising from the proposed changes to the Statement of Policy of Employers' Discretions.

## **6. CORPORATE MANAGEMENT TEAM**

**6.1** The Corporate Management Team has considered and approved the content of this report.

## **7. POLICY/LEGAL IMPLICATIONS**

**7.1** The proposed changes will ensure that the Council meets its legislative requirements as an employer in relation to the Local Government Pension Scheme Regulations and the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations. The proposals meet the pursuit of continuous improvement and best value and the guiding principles of the Community Plan.

## **8. TRADE UNIONS**

**8.1** The proposed changes are subject to Trade Union consultation.

## **9. RECOMMENDATIONS**

**9.1** Cabinet is asked to:

- (i) approve the above changes to the Statement of Policy of Employers' Discretions, subject to consultation with Trade Unions;
- (ii) note that further revisions will require to be made to the Employers' Discretions when the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2008 are issued; and
- (iii) otherwise note the contents of the report.

**Elizabeth Morton**

**Depute Chief Executive/Executive Director of Corporate Support**

**29 May 2009**

### **LIST OF BACKGROUND PAPERS**

1. Report on Policy Statement on Employers Discretions by the Depute Chief Executive/Executive Director of Corporate Support to Cabinet of 21 November 2007.
2. The Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.
3. The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008.
4. The Local Government Pension Scheme (Scotland) Regulations 1998 as amended.

5. The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 as amended.

Any person wishing further information should contact Martin Rose, Head of Human Resources (Telephone 01563 576092).