

Pension Fund Committee

28 April 2008



New-look Local Government Pension Scheme – Administering Authority Discretions

Report of Stuart Crowe, County Treasurer

Purpose of the Report

- 1 The purpose of the report is to ask Members to agree the operation of a number of discretions the Council has as an Administering Authority under the new-look Local Government Pension Scheme (LGPS),

Background

- 2 Members will be aware that the new-look LGPS came into force from 1 April 2008. Communities and Local Government (CLG) had initially announced that it intended to have all the regulations governing the new-look LGPS in place by April last year. Unfortunately this goal was not achieved – only one of the three sets of regulations governing the new scheme was produced in April 2007 (the Local Government Pension Scheme (Benefit, Membership and Contributions Regulations) Regulations 2007. The other two sets of regulations (the LGPS (Transitional Provisions) Regulations 2008 and the LGPS (Administration) Regulations 2008) were laid before Parliament on 14 February 2008.
- 3 Further amendments are still being made to these regulations as errors are recognised or unresolved issues are decided. The LGPS (Amendment) Regulations 2008 were laid before Parliament on 16 April 2008 – these make changes to all three sets of regulations governing the new-look Scheme.
- 4 Now that all three sets of regulations are in place and in force, the Council has a duty to state how it will exercise the various discretions available to it as an Administering Authority under the regulations.

Administering Authority Discretions

- 5 Most of the areas administering authorities have discretion over in the new regulations mirror those under the old regulations. This is because

large parts of the LGPS (Administration) Regulations 2008 are copied verbatim from sections of the LGPS Regulations 1997 (as amended). The significant differences are as follows:

Additional Regular Contributions (ARCs)

- 6 Under the 1997 regulations active members could choose to buy extra service in the pension scheme (added years) by paying extra contributions from their next birthday up until retirement age. This facility is no longer available in the new-look scheme and has been replaced by the option to buy up to £5,000 of additional pension by paying Additional Regular Contributions (ARCs) each month over a set number of years (minimum 1, maximum of the number of whole years up to age 65).
- 7 As with added years, if an individual stops paying ARCs before the end of the period for any reason other than qualifying for an ill-health pension or death in service the benefits they are buying are reduced proportionately. As individual's additional pension is granted in full on death in service or ill-health retirement, administering authorities are allowed to check whether individuals are in reasonable health before starting a contract. So, as with added years, the Council's proposed policy is to require this health check to protect employers against possible additional costs incurred by individuals who are knowingly in poor health taking out ARC contracts.

Abatement

- 8 The Council will continue its policy of not applying abatement of pensions when someone in receipt of a pension from the Fund is re-employed by a Scheme employer (one that offers membership of the LGPS). Abatement can still be required on re-employment where added years have been granted under the Compensation Regulations. The Council is required to publish a statement on its abatement policy by 1 July 2008.
- 9 A full statement of the Council's policy on its discretions as an administering authority in the new-look LGPS is set out at Appendix A. Also included at Appendix B is a copy of the previously agreed policy on discretions under the LGPS Regulations 1997 (as amended). It is worth noting that the LGPS Regulations 1997 (as amended) will still be relevant in some circumstances and for some categories of members (principally those who have left active service prior to 1 April 2008).

Employing Authority Discretions

- 10 The Council also needs to state how it will exercise the discretions available to it as an employing authority. The regulations state that these issues need to be decided by 1 July 2008.

- 11 Employing Authority discretions will be decided by the HR Committee and a report will be provided to Committee Members at the next meeting for noting.

Recommendation

- 12 Members are asked to agree to the policy statements set out in Appendices A and B

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**Durham County Council as Administering Authority of the Durham
County Council Pension Fund – Exercise of Discretions (New Regs)**

Discretions under the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239)		
<i>Regulation (number and description)</i>	<i>Discretion</i>	<i>Policy</i>
5 Employees of non-Scheme employers: community admission bodies	Subject to the requirements of this regulation and regulation 7, an administering authority may make an admission agreement with any community admission body	Matter to be referred to the Pension Fund Committee. Delegated to the County Treasurer where necessary (e.g. due to timing issues)
19 Contributions during reserve forces service leave	An administering authority may allow a longer period than 12 months after an individual has finished reserve forces service leave for the individual to decide not to pay contributions in respect of that leave.	Not to automatically extend period – any cases to be referred to the Pension Fund Committee
23 Payment of additional regular contributions (ARCs)	Administering authorities can pass a resolution requiring anyone wanting to pay ARCs to demonstrate that s/he is in reasonably good health by producing a report by a registered medical practitioner of the results of a medical examination undertaken at the member's own expense.	Any scheme member choosing to pay ARCs must provide a medical questionnaire completed by a registered medical advisor showing that they are in reasonably good health. Any costs for producing this questionnaire must be met by the scheme member.
32 Admission agreement funds	Administering authorities can establish a separate fund for admitted bodies.	No current intention to set up such a fund. Could only be set up with agreement of Pension Fund Committee
38 Special circumstances where revised actuarial valuations and certificates must be obtained	Administering authorities have the power to ask the actuary to review the employer contribution rates for employers in certain circumstances.	The County Treasurer, under delegated powers, will monitor the requirements of Regulation 38 and consult the Fund Actuary if he sees fit to do so.

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<i>Regulation (number and description)</i>	<i>Discretion</i>	<i>Policy</i>
40 Employer's payment following resolution to increase membership or award additional pension	Administering authorities can agree to allow employers to pay for the purchase of additional membership or additional pension for members over a longer period than one month.	Employers can pay for the purchase of additional membership or additional pension for members either as a one off lump sum or in five yearly instalments (with interest) with the first instalment due immediately.
41 Employer's further payments	Administering authorities can require employers to make any additional payments required to the Fund in respect of any early retirements due to redundancy, efficiency or flexible retirement,	All employers with the exception of the County Council and the District Councils are required to make these payments either as one-off lump sums or in five yearly instalments (with interest) with the first instalment due immediately.
44 Interest	Administering authorities can levy an interest charge on employers where contributions are paid more than a month late.	Interest is only levied when contributions are consistently paid late or where the late payment is clearly due to an error or omission by the employer (such as very late notification of a new entrant). The discretion to levy an interest charge will continue to rest with the County Treasurer under delegated powers.
49 Contributions equivalent premiums	Administering authorities may retain from a refund of contributions the value of any contributions equivalent premium due under the Pension Schemes Act 1993.	All amounts to the value of the contributions equivalent premium to be retained for payment due under the Act. (National practice).

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<i>Regulation (number and description)</i>	<i>Discretion</i>	<i>Policy</i>
52 Payments due in respect of deceased persons	Administering authorities may pay any amount to the beneficiary or legal representative of a deceased person without production of probate if the total amount due under the Scheme does not exceed the small payments amount under law (currently £5,000).	The County Treasurer will make payments under the small payments legislation under delegated powers.
63 Appeals by administering authorities	Administering authorities can appeal to Secretary of State against the decision of an employer or the failure of an employer to make a decision (unless employer is also the administering authority).	The authority will make an appeal to the Secretary of State as laid down by the Regulations if, in his opinion, the County Treasurer believes this to be justified.
70 Statements of policy concerning abatement of retirement pensions in new employment	Administering authorities must formulate and keep under review a policy on abatement (that is, the extent, if any, to which the amount of any retirement pension payable to a member from the Fund should be reduced where the member has entered a new employment with a Scheme employer). Before the expiry of the period of three months beginning with 1st April 2008, each administering authority shall publish a statement as to the policy that it currently applies where a member who is entitled to a retirement pension enters such a new employment on or after that date	Abatement of pensions will not apply with the exception of the abatement of old 'added years' pensions as required under the Compensation Regulations.

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80 Contracting-out requirements affecting transfers out	Where a transfer-out is paid to a scheme that is not contracted-out of the Additional State Pension and an amount is deducted from the transfer value sufficient to meet the liabilities in respect of contracted-out rights, administering authorities can provide benefits from the Fund in respect of the retained amount.	The authority will only retain contracted-out only liabilities in respect members transferring out where this is the only feasible option.
83 Inward transfers of pension rights	Administering authority may accept a transfer into the Fund at their discretion.	Inward transfer values will only be refused if the amount offered would not satisfactorily cover liabilities for any Guaranteed Minimum Pension attached to the transfer and the County Treasurer is hereby authorised to refuse such transfers.

**Durham County Council as Administering Authority of the Durham
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Discretions under the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI 2007/1166)		
<i>Regulation (number and description)</i>	<i>Discretion</i>	<i>Policy</i>
3 Contributions payable by active members	An administering authority can decide the intervals at which contributions are made.	Contributions to be deducted at time of employees being paid.
23 Death grants: active members 32 Death grants: deferred members 35 Death grants: pensioner members	An Administering authority can at its absolute discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time	Discretion to be exercised by the County Treasurer under delegated powers to make payments in accordance with any nominations received or to anyone who would appear to be the beneficiary, unless, in his opinion, the payment is of such a nature that it needs to be referred to this Committee for decision.
26 Meaning of "eligible child"	If an appropriate administering authority wish-- (a) they may treat education or training as continuous despite a break.; and (b) they may suspend payment of any child's pension during such a break.	Discretion to ignore breaks in education to be exercised by the County Treasurer under delegated powers if, in his opinion, the break does not exceed one academic year

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<i>DISCRETIONS UNDER THE LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997</i>		
<i>REGULATION</i>	<i>DISCRETION</i>	<i>CURRENT POLICY</i>
5	Administering authority may make an admission agreement with an admission body to admit their employees into the Scheme.	Matter to be referred to Superannuation Committee for decision after examination of US Withholding Tax position, reference to Actuary and possibility of any underwriting body being identified.
12	Administering authority may decide the interval at which contributions are deducted from pay.	Contributions to be deducted at time of employees being paid.
22	Administering authority may make an election on behalf of a deceased employee to determine which final pay period is best out of last 3 years.	Discretion to use most beneficial period to be exercised by the County Treasurer under delegated powers.
23	Administering authority may make an election on behalf of a deceased employee in respect of the issue of a Certificate of Protection of Pension Benefits where the former employee did not make an election within the relevant time limit.	Discretion to issue a Certificate to be exercised by the County Treasurer under delegated powers.
33	Administering authority must allow an application to surrender a part of pension from an employee if they think he/she is in good health.	Any employee electing to surrender a part of pension must complete a medical questionnaire which will be examined by a registered medical advisor. If, in his opinion, a medical examination is necessary, it will be at the expense of the employee.
38	Administering authority can determine the person to whom any death grant should be payable with complete discretion.	Discretion to be exercised by the County Treasurer under delegated powers to make payments in accordance with any nominations received or to who would appear to be the beneficiary, unless, in his opinion, the payment is of such a

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<i>REGULATION</i>	<i>DISCRETION</i>	<i>CURRENT POLICY</i>
		nature that it needs to be referred to this Committee for decision.
44	Administering authority may treat the education of a child as continuous despite a break for the purposes of paying a child's pension.	Discretion to ignore breaks in education to be exercised by the County Treasurer under delegated powers if, in his opinion, the break does not exceed one academic year.
47	Administering authority may apportion a child's pension if there is more than one eligible child or it may pay a child's/children's pension to a person other than the child to be applied for the benefit of that child/children.	Discretion to both apportion a child's pension or pay it to another person to be exercised by the County Treasurer under delegated powers if, in his opinion, it is to the benefit of the child/children and, where payable to another person, that person is the parent or legal guardian.
49	Administering authority may commute any pension into one lump sum payment representing the capital value of that pension if it does not exceed the specified amounts in the Regulations and, in the case of a former employee, he/she has attained state retirement age.	Discretion to commute pensions to be exercised in all cases in accordance with the Regulations by the County Treasurer under delegated powers.
50	Administering authority may pay a commuted pension to an employee upon retirement if they are satisfied that his/her life expectancy is less than 1 year in accordance with the Regulations.	If the member agrees to the commutation, or the next of kin where the member is unable to do so, the discretion to be exercised by the County Treasurer under delegated powers provided that an independent medical report is received certifying that life expectancy is less than 1 year.
55	Administering authority may pass a resolution requiring a member to pass a medical examination before accepting an election to purchase additional periods of membership.	Any employee electing to purchase an additional period of membership must complete a medical questionnaire which will be examined by a registered medical

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		advisor. If, in his opinion, a medical examination is necessary, it will be at the expense of the employee.
60	Administering authority may specify a minimum contribution to an AVC plan.	The County Treasurer be authorised to implement a minimum contribution if the Council's AVC providers specify such a limit.
75	Administering authority may set up an 'admission agreement fund' in addition to the main fund for admitted bodies.	The County Council do not propose to set up such a fund at the present time.
78	Administering authority has power to set a revised contributions rate for any employer where costs to the Fund exceed the assumptions stated in the rates and adjustments certificate set by the Actuary.	The County Treasurer, under delegated powers, will monitor the requirements of Regulation 78 and consult the Fund Actuary if he sees fit to do so.
81	Administering authority can determine the frequency that contributions are paid into Fund by employers and the information required to accompany them.	This is mainly governed by the Pensions Act 1995 and normal contributions and additional contributions must be received within 19 days of the end of the month in which deductions are made. Late payment is classed as a criminal offence by the appropriate Regulatory Body under the Pensions Act 1995. Contributions due in respect of absences should be paid upon return to duty but within 12 months of the end of the absence. Employees' further payments as a result of awarding added years or converting existing added years to funded benefits should be paid to the Fund within 19 days of the employer's resolution.
82	Administering authority can levy an	Interest is only levied when

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	interest charge on employers where contributions are paid more than a month late.	contributions are consistently paid late. The discretion to levy an interest charge will continue to rest with the County Treasurer under delegated powers.
83	Administering authority may extend the time limit for an election to make a lump sum payment upon discontinuing to pay additional contributions at the time of redundancy.	The time limit for this election under the Regulations is 3 months and all employees are normally given the opportunity to make such an election. This period will only be extended at the discretion of the County Treasurer under delegated powers if the employee had not been given such an opportunity.
86	Administering authority can deduct the cost of completing a transfer value to estimate Scheme membership credit from an AVC/Shared Cost AVC Plan if no subsequent election to proceed is received within 3 months.	One request for a transfer value will be allowed free of charge. Thereafter for any further requests, a charge will be made if no election is received with the 3 month period.
87	Administering authority must deduct income tax from any refund paid to an employee. However, the tax is a charge on the Fund and not the employee. Technically the administrator can disapply the deduction from the refund of any employee who did not receive tax relief on the contributions when paid and charge the deduction directly to the Fund.	Currently tax is always deducted from the employee's refund and this is national practice. Such deductions will continue to be made.
91	Administering authority can determine the period that pension increase charges must be paid to the Fund in respect of employers not contributing to the Fund.	All pension increase charges to be requested within 1 month of the end of the period to which it relates (governed by the Discretionary Payments Regulations).
92	Administering authority may retain from a refund of contributions the	All amounts to the value of the contributions equivalent premium to

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	value of any contributions equivalent premium due under the Pension Schemes Act 1993.	be retained for payment due under the Act. (National practice).
95	Administering authority may pay any amount to the beneficiary or legal representative of a deceased person without production of probate if the amount does not exceed the small payments amount under law (currently £5,000).	The County Treasurer will make payments under the small payments legislation under delegated powers.
105	Administering authority has right to appeal to Secretary of State against the decision of an employer or the failure of an employer to make a decision (unless employer is also the administering authority).	The authority will make an appeal to the Secretary of State as laid down by the Regulations if, in his opinion, the County Treasurer believes this to be justified.
118	Administering authority may retain any contribution equivalent premium deducted from a transfer out of the Fund and provide contracted-out rights in the Scheme.	The authority does not intend to preserve contracted-out rights under these circumstances and will pay the amount under the Pensions Schemes Act 1993.
121	Administering authority may accept a transfer into the Fund at their discretion.	Inward transfer values will only be refused if the amount offered would not satisfactorily cover liabilities for any Guaranteed Minimum Pension attached to the transfer and the County Treasurer is hereby authorised to refuse such transfers.