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NATURAL RESOURCES WALES

Local Government Pension Scheme - Statement of Policy on Exercise of Discretionary Functions

This policy confirms Natural Resources Wales decisions in relation to the exercise of its discretionary powers under the regulations of the Local Government Pension Scheme (LGPS), namely:

- Regulation 60 of the LGPS (Regulations) 2013;
- Paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014;
- Regulation 66 of the LGPS (Administration) Regulations 2008 - in respect of leavers between 1 April 2008 and 31 March 2014, and
- Regulation 106 of the LGPS Regulations 1997 – in respect of leavers between 1 April 1998 and 31 March 2008

Under these Regulations each employer within a Local Government Pension Scheme (LGPS) Fund are required to formulate, publish and keep under review a Statement of Policy concerning a number of discretions permitted under the Regulations. In accordance with the Community Admission Agreement between the Environment Agency Pension Fund and Natural Resources Wales, this policy will apply equally to:

- Natural Resources Wales employees who are members of the Environment Agency Pension Fund (EAPF);
- Former Environment Agency Wales staff who retain eligibility to join the Pension Fund and who transferred to Natural Resources Wales on 1 April 2013;
- Where relevant, this policy applies to former Environment Agency Wales deferred and pensioner members' who transferred to Natural Resources Wales on 1 April 2013 and to deferred members who subsequently left pensionable service prior to 1 April 2014 (albeit only in relation to discretions exercised since the date of this policy) and to pension credit members; and
- Active, deferred and pensioner members who transferred to Natural Resources Wales on 1 April 2015 from the Caldicot and Wentlooge Internal Drainage Board.

We have set out the criteria that we will consider when making a decision about the use of employing authority discretions. We will base our decisions relating to these discretionary provisions using the current policy at the time of the relevant event. In the event of a conflict between a discretion as written in this policy and the governing regulations, we will apply the governing regulations.

We retain the right to change the policy at any time and will re-publish it, at least, within one month of when the change(s) we are introducing come(s) into effect.

This policy does not give, nor shall it be deemed to give, any contractual rights to any employee of Natural Resources Wales, or any members of the Pension Fund.

Key Principles

- We will exercise the discretions reasonably and in good faith;
- Where there is a cost associated to agreeing the discretion, we will only exercise a discretion where we are assured there will be an associated business benefit for Natural Resources Wales;
- We will consider discretion that is to be exercised on compassionate grounds as set out in this Statement of Policy;
- We will formally record all decisions taken under this Statement of Policy and report them to the Environment Agency Pension Fund.

Policy Approval and Review

We will review the discretions within this Statement of Policy to take account of legislative changes to the Local Government Pension Scheme, taxation changes, or to reflect organisational and operational needs.

STATEMENT OF POLICY ON EXERCISE OF DISCRETIONARY FUNCTIONS MANDATORY POLICY

Key to regulation references

- The Local Government Pension Scheme Regulations 2013. The requirement to provide a written policy in relation to certain regulations is set out under Regulation 60 – **prefixed ‘LGPS 2013’**;
- The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 – **prefixed LGPS TP2014’**
- Local Government Pension Scheme (Administration) Regulations 2008 – prefixed ‘**LGPS Admin2008’**
- The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 - **prefixed ‘LGPS Ben2007’**
- Local Government Pension Scheme Regulations 1997 – **prefixed ‘LGPS 1997’**
- Local Government Pension Scheme Regulations 1995 – **prefixed ‘LGPS 1995’**

References to:

- **‘ex HMIP’ (Her Majesty’s Inspectorate of Pollution)** refers to former Civil Servants who transferred to the Environment Agency on 1 April 1996 and subsequently to Natural Resources Wales on 1 April 2013 and the protections that apply.
- **Normal Pension Age (NPA)** is referred to throughout this document. Please see Appendix A for details as NPA will depend on when a member ceased to be a contributing member of the LGPS.

LGPS 2013: regulation 16(2)(e) and 16(4)(d) **Additional Pension Contributions (APCs)**

Employers may elect to contribute to, in whole or in part, a ‘Shared Cost Additional Pension Contract’ (SCAPC) taken out by an active scheme member to purchase extra annual pension up to £6,500. This is the maximum amount that can be purchased as at 1 April 2014, but it is subject to increase by the Pensions Increase Order in force on 1 April each year (based on a Pensions Increase ‘commencement date’ of 1 April 2013).

We will not exercise discretion to enter into a Shared Contract Additional Pension Contract arrangement.

Note this does not apply to certain absences where it is a legal requirement for employers to pay two-thirds of the APC, e.g. to cover an unpaid period of child related absence.

LGPS 2013: regulation 30(6), 30(8)
LGPS TP2014: regulation 11(2) & 11(3), 3(5)
LGPS Ben2007: regulation 18(3)

Flexible Retirement – referred to as ‘Partial Retirement’ at the request of the EAPF

- 30(6) **Active members who are aged 55 or over and with the agreement of their employer reduce their hours, or move to a lower grade post may elect to receive immediate payment of all, or part, of their retirement benefits with the consent of their employer.**
- 11(2) **Where an employer agrees to partial retirement, the employee will**
 11(3) **have to draw all of their pre 1 April 2008 benefits. In addition, the employee may draw all, part or none of the pension benefits accrued between 1 April 2008 and 31 March 2014 and/or all part, or none of the pension benefits accrued after 31 March 2014.**

We will consider all applications for partial retirement by completion of a business case and in line with delegated approvals and provided there is a minimum 20% reduction in pay.

Details are set out in the ‘Partial Retirement’ policy and will be considered against business and operational needs.

- 30(6) **Waiving of actuarial reduction. In addition to granting the request for**
 30(8) **partial retirement, employers have discretion to waive in whole, or**
 3(5) **part, at their own cost any actuarial reduction that would otherwise**
 18(3) **apply to the benefits taken on partial retirement before normal pension age (NPA, this being the later of State Pension Age or age 65)**

We will not normally exercise this discretion unless there is a business or operational benefit and it is financially viable for us to do so. We will provide information to applicants on any actuarial reductions that may apply as the result of the pension being taken before NPA. We have set out details in our ‘Partial Retirement’ policy.

LGPS 2013: regulation 31
Award of Additional Pension

- 31 **Employers have discretion to grant extra annual pension up to £6,500 to an active member, or a former member, dismissed by reason of redundancy or business efficiency grounds, within six months of the termination. This is the maximum amount that can be awarded as at 1 April 2014, but it is subject to increase by the Pensions Increase Order in force on 1 April each year (based on a Pensions Increase ‘commencement date’ of 1 April 2013).**

We will not normally exercise this discretion unless there are exceptional circumstances to do so and business benefit results.

**LGPS TP2014: Schedule 2, para 1(1)(c)
LGPS TP2014 Schedule 2, para 1(2) and (4)
Voluntary Retirement – ‘85 Year Rule’**

Employers can choose to ‘switch on’ the ‘85 year rule’ where an active member or deferred member voluntarily chooses to draw their benefits between the ages of 55 and 60 on or after 1 April 2014 (providing the member was a contributing member on or after 1 April 2014 and the ‘85 year rule’ is met). The switching on of the ‘85 year rule’ will not automatically apply unless the member (aged between 55 and 60) is taking partial retirement.

We will not normally exercise this discretion, unless there are exceptional reasons on compassionate grounds to consider doing so. Details are set out in our ‘Voluntary Early Retirement and Waiving Actuarial Reductions’ policy.

If the application is not one of compassion, a member electing to voluntarily retire from age 55 and before age 60 will be expected to meet any actuarial reductions applying to their pension as a result of taking it before NPA (this is calculated by reference to the number of years it is taken before NPA). Where the member (within this age group) has benefits that have:

- **‘85 year rule’ protection** – protected benefits will be reduced to take into account that they are being paid before age 60; if you meet the 85 year rule after age 60, the reduction will be greater to account for this.
- **‘Tapered ’85 year rule’ protection** – a lesser reduction will apply to all benefits accrued before 1 April 2020.
- **Age 65 protection (pre 1 April 2014 benefits that are not protected by the 85 year rule)** – benefits will be reduced to take into account that they are being paid before age 65.
- **No protection (benefits linked to NPA)** - benefits will be reduced to take into account that they are being paid before NPA.

Further detail on the ‘85 year rule’ and how you may be affected from reductions, or whether partial reductions may apply, are set out in our ‘Voluntary Early Retirement and Waiving Actuarial Reductions’ policy.

LGPS 2013: regulation 30(5), 30(8)

LGPS TP2014: R3(1) & 3(5), Schedule 2, para 3(1) & 2(1), 3(2), 9

LGPS Ben 2007: R30(5), 30A(5)

Voluntary Early Retirement- waiving actuarial reductions

An employer may choose to waive on **compassionate grounds** any actuarial reduction that may be applied to benefits protected under the 2008 Scheme (i.e. benefits built up to 31 March 2014, or any benefits protected by the '85 year rule'), or waive in whole or in part, **on any grounds**, any actuarial reduction that may be applied to 'non-protected benefits' (i.e. benefits built up from 1 April 2014 that are not protected by the 85 year rule) accrued by an active, deferred, or suspended tier 3 ill-health member voluntarily retiring on or after age 55, or from age 50 if the member is ex HMIP.

Under LGPS 2014, active members aged between 55 up to age 60 no longer need their employer's permission to retire and receive the immediate payment of their pension benefits. However, the pension benefits will be subject to an actuarial reduction as the pension is being taken early (age 60 is the earliest age a pension may not be subject to reduction – this will depend on service, age and whether the member has 'rule of 85' protection – our 'Voluntary Early Retirement and Waiving Actuarial Reductions Policy' policy provides detail on how the reductions apply to pre and post 1 April 2014 leavers.

We will not normally exercise discretion, but may consider compassionate reasons from active, deferred and suspended tier 3 ill health retirement members if there are exceptional reasons to do so. Details are set out in our 'Voluntary Early Retirement and Waiving Actuarial Reductions Policy'.

LGP's Admin 2008: R66

LGPS Ben 2007: 30(2), 30(5), 30A(3), 30A(5)

Employers can choose whether to grant applications for the early payment of deferred pension benefits in respect of leavers between 1 April 2008 and 31 March 2014

- 30(2) Employers can choose to grant an application for early payment of deferred benefits on or after age 55, or age 50 if the member is ex HMIP, and before age 60
- 30(5) Employers may waive, on compassionate grounds, any actuarial reductions that may be applied on benefits paid before age 65
- 30A(3) Employers may grant an application for early payment of a suspended tier 3 ill health pension where the member is aged between age 55 and 60, or between age 50 and 60 if the member is ex HMIP
- 30A(5) Employers may waive on compassionate grounds any actuarial reduction that may be applied to any suspended tier 3 ill health pension benefits that are brought back into payment before age 65

We may consent on compassionate grounds to waive any actuarial reduction for deferred members aged between ages 55 (age 50 in certain circumstances if the former member is ex HMIP) and 65 following a written request. We will not normally do this, unless there are exceptional reasons and we are satisfied that the evidence provided is one of genuine compassion. We have set out how we will consider compassionate reasons in our 'Voluntary Early Retirement and Waiving Actuarial Reductions' policy. We may also consider applications from former Tier 3 ill-health members on compassionate grounds if we are satisfied that circumstances have arisen that prevent, or severely limit, the ability of the former employee to earn an income from employment.

LGPS 1997: regulation 106, 31(2) and 31(5)

Applies to scheme members who ceased active membership between 1 April 1998 and 31 March 2008

31(2) We can choose to grant applications for the early payment of deferred pension benefits on or after age 50, and before age 60. If the member is former HMIP, they have protection to take their pension from age 50.

31(5) Whether to waive, on compassionate grounds, any actuarial reduction that would normally be applied to benefits that are paid before age 65.

We may consent on compassionate grounds to waive any actuarial reduction for deferred members aged between ages 50 and 65 following a written request. We will not normally do this, unless there are exceptional reasons and we are satisfied that the evidence provided is one of genuine compassion. We have set out how we will consider compassionate reasons in our 'Voluntary Early Retirement and Waiving Actuarial Reductions' policy.

To note: Deferred benefits paid from age 50 and before age 55 are subject to an unauthorised payments charge under the Finance Act 2004, namely, a tax charge that is payable by both the former member and pension fund. We will therefore only consider such requests in exceptional circumstances

LGPS 1995: regulation D11(2)(c)

Applies to scheme members who ceased active membership before 1 April 1998

As the former employer we may grant the application for early payment of deferred benefits to come in to payment on or after age 50 on compassionate grounds.

We may consent on compassionate grounds to waive any actuarial reduction for deferred members between ages 50 and 65. We have set out how we will consider compassionate reasons in our 'Voluntary Early Retirement and Waiving Actuarial Reductions' policy.

To note: Deferred benefits paid from age 50 and before age 55 are subject to an

unauthorised payments charge under the Finance Act 2004, namely, a tax charge that is payable by both the former member and pension fund. We will therefore only consider such requests in exceptional circumstances.

LGPS 2013: regulation 74(1)

Internal Dispute Resolution Procedure (IDRP). We must appoint a person for dealing with applications under stage one of the ‘Dispute Resolution Procedure’.

Scheme members may make a formal complaint under the IDRP where they feel they have not been treated within the terms of the LGPS regulations and where it concerns a perceived action taken by the employer. Natural Resources Wales has a specified person who will investigate and determine whether the complaint should be upheld.

LGPS 2013: regulation 9(1) and 9(3)

Employee Contributions.

We must determine the appropriate contribution rate subject to the tiered contribution rates applicable to all active members.

We will assess the contribution rate on 1 April each year against actual pay and other permanent pensionable allowances paid. We will carry out a periodic review during the scheme year in accordance with our ‘Contributions’ policy to take account of non-regular, fluctuating pensionable payments paid over the relevant period and adjust the contribution rate if necessary. We will change the contribution rate immediately throughout the year from the effective date of any change in employment or material change to the rate of pensionable pay received. Where employees have more than one job with separate contracts of employment, we will assess each role separately to determine the contribution rate applicable for each role.

LGPS 2013: regulation 21(5)

Assumed Pensionable Pay.

Assumed Pensionable Pay (APP) is calculated when a member:

- enters a period of reduced contractual pay or no pay due to sickness or injury; or
- is absent during a period of paid child related leave, or
- is absent on reserve forces service leave, or
- retires with an entitlement to a Tier 1 or Tier 2 ill health retirement; or
- dies in service.

APP is used to replace pensionable pay ‘lost’ during a period of absence and for calculating enhanced benefits payable following ill health retirement or death. Employers have discretion to include any ‘regular lump sum payment’ received by the member in the 12 months preceding the date relevant to any of the

circumstances listed above.

We will assess each case on an individual basis. We will normally only use permanent, recurring, non-variable payments to increase the APP and will only include where it is considered there is a reasonable expectation that the lump sum would be paid on a regular basis.

LGPS 2013: regulation 22(8)(b) and 22(7)(b)

Extension of 12 month time limit for a scheme member to elect that deferred benefits should not be aggregated:

- **with a new employment – 22(8)(b); or**
- **with an on-going concurrent employment – 22(7)(b)**

We will only extend the 12 month time limit for a scheme member to elect to retain separate deferred pension accounts in respect of former or concurrent periods of LGPS membership in exceptional circumstances where the scheme member can demonstrate the reason for their late request was outside of their control,

LGPS 2013: regulation 100(6), 22(7) and (8)

Late Transfer Requests

We will only extend the 12 month time limit for a scheme member to elect to transfer-in non-local government pension scheme or personal pension plan with the agreement of the Administering Authority, the Environment Agency Pension Fund. We will only consider exceptional circumstances where the scheme member can demonstrate the reason for their late request was outside their control.

LGPS TP2014: regulation 15(1)(b)

LGPS 1997: regulation 66(8) and 66(9)(b)

Extension of time limit for transferring in AVCs into service credit. This discretion applies to scheme members who commenced payment of AVCs before 13

November 2001 and are either:

- **subject to ill-health retirement; or**
- **have stopped paying AVCs whilst continuing to be in the LGPS and are aged over 50**

There is a 30 day time limit (from ceasing to be an active scheme member) for a scheme member to elect to transfer AVCs into service credits within the main LGPS. We will exercise discretion to agree an extension in circumstances where administrative delays has shortened the period available for the scheme member to consider the options available.

LGPS 2013: regulation 19(2), 91(1) (4)&(8), 92(1)&(2), 93(2), 95

LGPS Admin2008: regulation 74(2), 72-76

LGPS 1997: regulation 88(2), 111-115

We may claim monies from a scheme member's pension benefits in cases of fraud, misconduct and other similar situations, or direct those monies to another person.

Where the circumstances covered in these provisions are met, we will determine whether to use this discretion.

Scheme of Delegation - Approval

- Where the request has an associated employer cost, the Line Manager will complete a business case pro-forma. The business case will then be considered for approval by:
 1. BSS (People Services) (to ensure any pension fund costs and reference to regulations are accurately presented).
 2. Executive Director (of the relevant Directorate concerning the request, or subject of the business case).
 3. Executive Director of Finance and Corporate Services

Note

The Executive Director, Organisational Design and People Management, will consider the request, where the business case concerns a member of the Finance and Corporate Services Directorate.

The Chief Executive Officer will consider the business case where the application concerns a Director or member of the Leadership Team.

Differing Normal Pension Ages (NPAs) under the LGPS

Your NPA is dependent on when you ceased to be a contributing member of the LGPS.
If you **ceased** contributing membership:

1. Before 1 April 1998

Your NPA is the point at which you would have built up 25 years qualifying service and would be at least age 60 (max age 65).

2. Before 1 October 2006 and joined before 1 April 1998

Your NPA is the point at which you would have built up 25 years' qualifying service and would be at least age 60 (max age 65).

3. Before 1 April 2014 and joined before 1 October 2006

Your NPA is 65, but you may have protection from early payment reductions under the '85 year rule'. This is explained on the next page in Appendix 2

4. Before 1 April 2014, but you don't meet point 1, 2, or 3 above

Your NPA is 65.

5. On or after 1 April 2014

Your NPA is the later of your state pension age (SPA) or age 65, although benefits built up to 31 March 2014 will retain the 'old' NPA of 65. Please note that your SPA today may not necessarily be your SPA in the future as this is assessed at the point your benefits are first paid.