

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

13 FEBRUARY 2023

1. DISCRETIONS POLICY – 2015 FIREFIGHTERS’ AND LOCAL GOVERNMENT PENSION SCHEMES

Report of the Chief Fire Officer

RECOMMENDED

- 1.1 THAT the Authority approves the changes to the Discretions Policy for the 2015 Firefighters’ and Local Government Pension Schemes.

2. PURPOSE OF REPORT

- 2.1 To request approval for changes to the Discretions Policy for the 2015 Firefighters’ and Local Government Pension Schemes.

3. BACKGROUND

- 3.1 Under the rules of the 2015 Firefighters’ and Local Government Pension Schemes, the Authority has a requirement to publish and maintain a policy on their use of various discretions available to them under the Scheme rules. This is done annually as part of the Authority’s pay policy statement.
- 3.2 As part of their recent decision in a case, brought against Warwickshire FRS, the Pensions Ombudsman has indicated that policies must not make a simple blanket statement about how specific discretions will be applied.
- 3.3 West Midlands Fire Service has several such specific discretions currently in place. This report highlights the affected discretions and recommends appropriate replacements.
- 3.4 In addition to bringing these discretions in line with current guidance, the opportunity to update several other discretions has also been taken.
- 3.5 The updated discretions and the changed wording being proposed are attached at Appendices 1 and 2.

4. **EQUALITY IMPACT ASSESSMENT**

- 4.1 In preparing this report an initial Equality Impact Assessment has been carried out and no employees will be adversely impacted by this change in policy.

5. **LEGAL IMPLICATIONS**

- 5.1 There is a statutory requirement for West Midlands Fire and Rescue Authority to comply with the rules of the 2015 Firefighters and Local Government Pension Schemes.

6. **FINANCIAL IMPLICATIONS**

- 6.1 The Discretions policy does not result in any additional costs being incurred by the Authority.

7. **BACKGROUND PAPERS**

Pay Policy Statement Report 2022/2023 – Fire Authority 27th June 2022

The Local Government Pension Scheme Regulations 2013
2015 Firefighters' Pension Scheme Regulations

The contact name for this report is Assistant Chief Fire Officer (Enabling Services) Karen Gowreesunker - telephone number 0121 380 6914.

WAYNE BROWN
CHIEF FIRE OFFICER

Under Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, operative from 29 November 2006, each employer must formulate, keep under review and publish their policies on certain discretions contained within the Regulations.

This statement is applicable to all employees of the West Midlands Fire and Rescue Authority who are eligible to be members of the Local Government Pension Scheme (LGPS).

Regulation 5 - Power to increase statutory redundancy payments

Explanation

Employers have the discretion to resolve to use the employee's actual pay instead of the statutory maximum pay permitted under the Employments Rights Act 1996, in the calculation of redundancy payments.

Policy

~~The Fire Authority will always use the employees' actual pay when calculating redundancy payments.~~

The Chief Fire Officer or his/her nominated Officer will confirm on a case-by-case basis if actual or statutory maximum pay are to be used.

Regulation 6 – Discretionary Compensation

Explanation

The Authority has the discretion to resolve to increase the lump sum compensation payable under the Employments Rights Act 1996 to an employee who loses their employment with the Authority, up to a maximum of 104 weeks' pay.

Policy

~~The Fire Authority will not exercise this discretion and therefore will not increase the maximum payable beyond the statutory limit of 30 weeks' pay.~~

On a case-by-case basis the Chief Fire Officer or his/her nominated Officer will confirm whether the maximum payable is to be increased and if so by how many weeks.

STATEMENT OF POLICY

1 April 2014

Under Regulation 60 (1) of the Local Government Pension Scheme (LGPS) Regulations 2013, each employer must formulate, keep under review and publish their policies on certain discretions contained within the LGPS Regulations.

This statement is applicable to all employees of the West Midlands Fire and Rescue Authority who are eligible to be members of the LGPS.

1. Regulation 30 (8) – Waiving of actuarial reduction

Explanation

From age 55, members who have left local government employment receive early payment of their retirement benefits and do not need their employer's consent. The pension benefits must be reduced in accordance with guidance provided by the Government actuary. Employers may determine on compassionate grounds that the benefits are not reduced.

For a member who joined the scheme prior to 1 October 2006 where the member's age and membership (in whole years) satisfies the "rule of 85" then the benefits would be reduced, unless the employer chooses to exercise the discretion within the regulations. For a member who joined the Scheme on or after 1 October 2006, then reduced benefits would be payable if taken before age 65.

Policy

Each specific case will be judged equally and fairly on its own merits and would need to be funded by a lump sum contribution into the Pensions Fund by the Fire Authority. This discretion will only be exercised by the Fire Authority in cases where it can be demonstrated that the Fire Authority can fund the cost of the release within a three year period.

This discretion will be exercised by the Strategic Enabler (People Support Services) as delegated by Chief Fire Officer in conjunction with the Treasurer and Chairman to approve existing severance packages and members will be notified where discretion is exercised.

2. **Regulation 31 - Power of the Employing Authority to award Additional Pension**

Explanation

An employer may resolve to award a member additional pension of not more than £6,500 a year, payable from the same date as their pension is payable under any other provision of these regulations. An additional pension may be paid in addition to any increase to total membership resolved under Regulation 16 so long as the overall total does not breach the limits laid down within these regulations.

Policy

Each specific case will be judged equally and fairly on its own merits, having fully considered service delivery and financial costs.

3. **Regulation 30 (6) - Flexible Retirement**

Explanation

A member who is aged 55 or over and with their employer's consent reduces their hours or grade can then, but only with the agreement of the employer, make an election to the administering authority for payment of their accrued benefits without having retired from that employment.

Policy

Each specific case will be judged equally and fairly on its own merits having fully considered service delivery and financial costs. This discretion will only be exercised by the Fire Authority in cases where it can be demonstrated that the Fire Authority can fund the cost of the release within a three-year period.

4. **Regulations 16(2)(e) and 16(4)(d) - Funding of Additional Pension**

Explanation

Where an active member opts to make Additional Pension Contributions (APC) under Rule 16(2)(e) these may be funded in whole or in part by the Employer. Under Rule 16(4)(d) the employee may opt to pay APC as a Lump Sum and this may also be funded in full or part by the employer.

Policy

The Fire Authority will fund in whole or in part any APC operated by themselves under a salary sacrifice arrangement.

The Fire Authority will, however, not fund in whole or in part any other APC purchased either by periodical payments or Lump Sum direct from a members Net Pay.

The Fire Authority is not obliged by the Regulations to publish a statement on the following discretions contained within the LGPS 2013 Regulations but has chosen to do so.

5. **Regulation 22(8)(b) - Re-employed and Rejoining Deferred Members**

Explanation

Where a deferred member becomes an active member again before becoming entitled to the immediate payment of retirement benefits in respect of their former membership, their former membership will be aggregated with their current active membership unless within 12 months from the date of the active member's pension account being opened they make an election in writing to the member's appropriate administering authority. The period of 12 months may be extended at the discretion of the employing authority.

Policy

The Fire Authority will extend the period of 12 months beginning with the date that the active member's pension account is opened again to allow a member to choose not to aggregate his/her former membership in exceptional circumstances or where it was beyond the member's control.

6. **Regulation 100 (6) – Inward Transfer of Pension Rights**

Explanation

A person who becomes an active member who has relevant pension rights may request his fund authority to accept a transfer value for some, or all, of his former rights. An election must be made in writing before the expiry of the period of 12 months beginning with the date that he became an active member or any such longer period as his employer may allow.

Policy

The Fire Authority will extend the period of 12 months beginning with the date that he/she became an active member – thereby, allowing a member to transfer some or all of his/her rights from the relevant transferor in exceptional circumstances or in circumstances beyond the member's control.

7. **Choice of early payment of Deferred Pension**

Explanation

Where a member became a deferred member between 31 March 2008 and 1 April 2014, they can apply for early release of benefits, and the Fire Authority can fund the costs of the release.

Policy

Each specific case will be judged equally and fairly on its own merits and would need to be funded by a lump sum contribution into the Pensions Fund by the Fire Authority. This discretion will only be exercised by the Fire Authority in cases where it can be demonstrated that the Fire Authority can fund the cost of the release within a three year period.

This discretion will be exercised by the Strategic Enabler (People Support Services) as delegated by Chief Fire Officer in conjunction with the Treasurer and Chairman to approve existing severance packages and members will be notified where discretion is exercised.

From 1 June 2004, an amended Internal disputes resolution procedure applies to active members of the LGPS and to others such as deferred and pensioner members, whose position may be affected by decisions taken by their former employer or LGPS administering authority.

8. The Internal Dispute Resolution Procedure

Explanation

Responsibility for determinations under the first stage of the procedure now rests with a 'specified person' appointed by your (former) employer. The Fire Authority must specify the job title and address of the person to whom applications should be directed.

Policy

The specified person for the West Midlands Fire and Rescue Authority is:-

~~Mr P Hales~~
~~Deputy Chief Fire Officer~~
Chief Fire Officer
West Midlands Fire Service HQ
99 Vauxhall Road
Birmingham, B7 4HW

STATEMENT OF POLICY

APPENDIX 2

Under Rule B7 of the 1992 Firefighters' Pension Scheme Paragraph 5 (A) a fire and rescue authority may, having regard to—

- (a) the economical, effective and efficient management of their functions, and
- (b) the costs likely to be incurred in the particular case

- pay a lump sum in excess of two and a quarter times the full amount of the pension.

West Midlands Fire Service will formulate, keep under review and publish their policy on the discretion contained within this rule.

Due to the rate of the commutation factors laid down within the 1992 Firefighters' Pension Scheme it is possible for an unauthorised payment to occur if a member commutes the maximum allowable portion of their gross pension. In cases where this happens the Fire Authority will become liable to a further charge. When using this discretion, the amount to which the lump sum will be increased will be limited to the maximum authorised payment allowed by HMRC regulations.

This statement is applicable to all employees of the West Midlands Fire and Rescue Authority who are eligible to be members of the 1992 Firefighters' Pension Scheme.

Policy

Each specific case will be judged equally and fairly on its own merits and would need to be funded by a lump sum contribution into the Pensions Fund by the Fire Authority. It is the Line Manager's responsibility to ensure that the recommendation is made and submitted to their SET managers for consideration. The value of the Lump Sum payment into the Pension account will be provided by the Pensions section on request and the remaining cost figures should be obtained from the Finance Liaison Officer.

This discretion will only be exercised by the Fire Authority in cases where it can be demonstrated that the Fire Authority can fund the cost of the release within a 3-year period.

This discretion will be exercised by the Strategic Enabler of People Support Services and Strategic Enabler of Finance & Resources.

STATEMENT OF POLICY

Under Rule K4 of the 1992 Firefighters' Pension Scheme:

A fire and rescue authority may, in their discretion, withdraw the whole or any part of the pension, except a pension under Part C (awards on death—spouses and civil partners), for any period during which the person entitled to it is employed by any fire and rescue authority in whatever capacity.

Part LA Section 9 of the scheme rules states that:

Where an authority exercises its discretion not to withdraw the payment in whole or in part of any pension under rule K4 (withdrawal of pension whilst employed by a fire and rescue authority), the authority shall in the financial year in which payment is not withdrawn, transfer into the Firefighters' Pension Fund an amount equal to the amount of pension paid during that financial year to that person which could have been abated or withdrawn.

West Midlands Fire Service will formulate, keep under review and publish their policy on the discretion contained within this rule.

This statement is applicable to all employees of the West Midlands Fire and Rescue Authority who are eligible to be members of the 1992 Firefighters' Pension Scheme.

Policy

West Midlands Fire Service will **on a case-by-case basis consider whether it is appropriate to** withdraw the whole or part of the pension, except a pension under Part C (awards on death—spouses and civil partners), for any period during which the person entitled to it is employed by any fire and rescue authority in whatever capacity.

The decision on whether to withdraw part or all of the pension will be made by the Chief Fire Officer or his/her nominated Officer.

Where it is considered appropriate the amount of Pension withdrawn will be calculated by reference to the Aggregate Annual Pensionable Pay received in the twelve months prior to retirement increased on the same basis as the pension in payment. This figure will be known as the reference pay and will be increased annually in line with the annual pension increase order.

The pension will be reduced by an amount equal to the amount required so

that the total income from the pension plus re-employment does not exceed the reference pay calculated above.

Pay in re-employment is the pay receivable under the contract of employment for the hours worked and excludes any payments made for non-contractual overtime. Where the pay in re-employment changes the amount of pension to be withdrawn will be recalculated.

23. Contributions during absence from work due to illness, injury, trade dispute or authorised absence (Regulation 111)

Where an active member is absent from scheme employment because of illness or injury and not entitled to receive pensionable pay, or because of trade dispute or authorised unpaid absence, they may pay member contributions; if they do, the scheme employer may require that they should also pay employer contributions. [Regulation 111(2), (3) and (4)]

Statement of Policy

Where an active member is absent from scheme employment because of illness or injury and not entitled to receive pensionable pay, or because of trade dispute or authorised unpaid absence, they will be allowed to pay contributions. The contribution payable will **normally** be the total of both the member and employer contribution.

In cases where the payment of both member and employer contributions may cause undue financial hardship, a member will have the right to request that payment of the employer contributions be waived. Any such request will be considered by the Chief Fire Officer or his/her nominated Officer.

24. Deduction and payment of contributions (Regulation 114)

Member contributions due under Regulation 110 may be deducted by the scheme employer from each instalment of pensionable pay as it becomes due, unless another method of payment has been agreed between the scheme manager and the member. [Regulation 114(1)]

Contributions due in respect of absence from work on reserve forces service leave may be deducted from any payment made under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951. [Regulations 114(2)]

Contributions which the member is required to pay, or has elected to pay under Regulations 111 and 113, may be paid by a lump sum or by deduction from instalments of pensionable pay as agreed between the member and

the scheme manager. [Regulation 114(3)]

Statement of Policy

Member contributions due under Regulation 110 will be deducted from each instalment of pensionable pay as it becomes due.

Contributions due in respect of absence from work on reserve forces service leave will be deducted from any payment made under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951.

Contributions which the member is required to pay, or has elected to pay under Regulations 111 and 113, may be paid by a lump sum or by deduction from instalments of pensionable pay as agreed between the member and Payroll and Pensions Manager on behalf of the scheme manager.

49. Member's Election to make periodical contributions for added pension (Schedule 1, Part 1, Paragraph 7)

If a scheme member wishes to make periodical payments for added pension, the scheme manager can set a minimum amount which must be paid. [Schedule 1, Part 1, Paragraph 7(3)]

Statement of Policy

The scheme manager will not consider on a case-by-case basis whether to allow a member to make periodic payments for added pension of less than £10 per month.

50. Periodical payments (Schedule 1, Part 2, Paragraph 8)

If a scheme member wants to make periodical payments for added pension, but does not want them to be deducted from pensionable pay, the scheme manager may agree another method of payment. [Schedule 1 Part 2, Paragraph 8 (3)]

Statement of Policy

The scheme manager will not consider on a case-by-case basis whether to allow a member to make periodical payments for added pension except by deduction from pensionable pay.

The following discretion is removed from the policy as it is no longer applicable.

52. ~~Meaning of "tapered protection closing date" (Schedule 2, Part 1, Paragraph 3)~~

~~The tapered protection closing dates for tapered protection members are given in the 1992 scheme tables in Schedule 2 Part 4. In most cases the appropriate closing date can be ascertained by reference to the band of dates in which the firefighter's birthday falls. The tapered protection date for a tapered protection member of FPS 2006 to whom paragraph 9(5) or 21 applies (members returning to pensionable service) is determined by the scheme manager. [Schedule 2 Part 1,~~

~~Paragraph 3(3); Schedule 2 Part 2, Paragraph 9(5); and Schedule 2 Part 3, Paragraph 21]~~

Statement of Policy

~~The tapered protection date for a tapered protection member of FPS 2006 to whom paragraph 9(5) or 21 applies (members returning to pensionable service) is determined by the scheme manager. This determination will be exercised by the Payroll and Pensions Manager.~~