



WOKINGHAM  
BOROUGH COUNCIL

## EMPLOYER DISCRETIONS - STATEMENT OF POLICY LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 2013

The Employing Authority known as Wokingham Borough Council resolved, at a meeting of the Personnel Board on 17 November 2014 that the following regulations, contained in the above Statutory Instrument, and subsequent amendments, should be implemented as set out below. This written statement of policy is in relation to its exercise of certain discretionary functions available under the Local Pension Scheme Regulations 2013. Wokingham Borough Council will keep this statement under review and publish the statement (and any amendments made thereto) in a place that is easily accessible to all of its eligible Scheme employees and that it will provide to the administering authority the most up to date version of the statement at all times.

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### PART A — Formulation of policy in accordance with Regulation 60 of the Local Government Pension Scheme Regulations 2013

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#### Regulation 16 — Additional Pension Contributions

The Regulations provide: that an employer may resolve to fund in whole or in part any arrangement entered into by an active scheme member to pay additional pension contributions by way of regular contributions in accordance with Regulation 16(2)(e), or by way of a lump sum in accordance with Regulation 16(4)(d).

The Scheme employer may enter into an APC contract with a Scheme member who is contributing to the MAIN section of the Scheme in order to purchase additional pension of not more than the additional pension limit (£6,500 from 1<sup>st</sup> April 2014 subject to annual increase in line with the Pensions (Increase) Act 1971).

The amount of additional contribution to be paid is determined by reference to actuarial guidance issued by the Secretary of State.

Consideration needs to be given to the circumstances under which the Scheme employer may wish to use their discretion to fund in whole or in part an employee's Additional Pension Contributions.

#### Wokingham Borough Council Policy

The Council will not use this discretion to fund employees' APCs.

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#### Regulation 30(6) — Flexible Retirement

The Regulations provide: that an active member who has attained the age of 55 or over and who with the agreement of their employer reduces their working hours or grade of employment may, with the further consent of their employer, elect to receive immediate payment of all or part of the retirement pension to which they would be entitled in respect of that employment as if that member were no longer an employee in local government service on the date of the reduction in hours or grade (adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State

As part of the policy making decision the Scheme employer must consider whether, in addition to the benefits the member may have accrued prior to 1 April 2008 (which the member must draw), to permit the member to choose to draw all, part or none of the pension benefits they built up after 31 March 2008 and before 1 April 2014 and all, part or none of the pension benefits they built up after 1 April 2014.

Due consideration must be given to the financial implications of allowing an employee to draw all or part of their pension benefits earlier than their normal retirement age.

#### Wokingham Borough Council Policy

Where the benefits are to be actuarially reduced or there are no additional costs to the Council, approval need only be obtained from the Director of the Service and the Director of Finance and Resources.

Members consent is required where an employee makes a request for the reduction of benefits to be waived. This means that where there is an additional cost to the Council Personnel Board approval must be obtained.

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#### Regulation 30(8) — Waiving of Actuarial Reduction

The Regulations provide: Where a Scheme employer's policy under regulation 30(6) (flexible retirement) is to consent to the immediate release of benefits in respect of an active member who is aged 55 or over, those benefits must be adjusted by an amount shown as appropriate in actuarial guidance issued by the Secretary of State (commonly referred to as actuarial reduction or early payment reduction).

A Scheme employer (or former employer as the case may be) may agree to waive in whole or in part and at their own cost, any actuarial reduction that may be required by the Scheme Regulations.

Due consideration must be given to the financial implications of agreeing to waive in whole or in part any actuarial reduction.

### Wokingham Borough Council Policy

Members may use their discretion to waive the reduction of benefits to e.g. enable the Council to retain key skills in posts that are difficult to recruit to; in the case of an employee with responsibilities for care or for individuals with ill health (other than where ill-health retirement applies) or disability. The Council's policy is that additional benefits will only be released where exceptional circumstances apply.

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### Regulation 31 — Award of Additional Pension

The Regulations provide: that a Scheme employer may resolve to award

- (a) an active member, or
- (b) a member who was an active member but dismissed by reason of redundancy, or business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency,

additional annual pension of, in total (including any additional pension purchased by the Scheme employer under Regulation 16), not more than the additional pension limit (£6,500 from 1<sup>st</sup> April 2014 subject to annual increase in line with the Pensions (Increase) Act 1971).

Any additional pension awarded is payable from the same date as any pension payable under other provisions of the Scheme Regulations from the account to which the additional pension is attached.

In the case of a member falling within sub-paragraph (b) above, the resolution to award additional pension must be made within 6 months of the date that the member's employment ended.

## Wokingham Borough Council Policy

The Council will not apply this Regulation 31 discretion to award additional pension.

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### Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2014

#### Schedule 2 — paragraphs 2 and 3

The Regulations provide: that where a scheme member retires or leaves employment and elects to draw their benefits at or after the age of 55 and before the age of 60 those benefits will be actuarially reduced unless their Scheme employer agrees to meet the full or part cost of those reductions as a result of the member otherwise being protected under the 85 year rule as set out in previous Regulations.

So as to avoid the member suffering the full reduction to their benefits the Scheme employer can 'switch on' the 85 year rule protections thereby allowing the member to receive fully or partly unreduced benefits but subject to the Scheme employer paying a strain (capital) cost to the Pension Fund

## Wokingham Borough Council Policy

The discretion to "switch on" the 85 year rule will only be used where there will be a financial or other benefit to the employer or in exceptional circumstances judging each case on its merits.

Members will need to consider the financial and other reasons for using this discretion and a strong business case must be stated in a report to members. The Personnel Board must approve any recommendation for any additional payment.

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### PART B — Formulation of RECOMMENDED policy in accordance with the Local Government Pension Scheme Regulations 2013

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#### Regulation 9(1) & (3) — Contributions

The Regulations provide: that where an active member changes employment or there is a material change which affects the member's pensionable pay during the course of a financial year, the Scheme employer may determine that a contribution rate from a different band (as set out in Regulation 9(2)) should be applied.

Where the Scheme employer makes such a determination it shall inform the member of the revised contribution rate and the date from which it is to be applied.

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Wokingham Borough Council Policy concerning the re-determination of active members' contribution bandings at any date other than 1<sup>st</sup> April

The Council provides that (except in exceptional circumstances or where the employee requests a review as a result of a change in employment or material change in pensionable pay) employee contributions will be calculated on pensionable pay as at the 1<sup>st</sup> April each year.

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**Regulation 17(1) — Additional Voluntary Contributions**

The Regulations provide: that an active member may enter into arrangements to pay additional voluntary contributions (AVCs) or to contribute to a shared cost additional voluntary contribution arrangement (SCAVCs) in respect of an employment. The arrangement must be a scheme established between the appropriate administering authority and a body approved for the purposes of the Finance Act 2004, registered in accordance with that Act and administered in accordance with the Pensions Act 2004.

The Scheme employer needs to determine whether or not it will make contributions to such an arrangement on behalf of its active members.

Wokingham Borough Council Policy

No SC~~A~~VAC scheme should be ~~instituted~~ implemented unless this is a notional cost to enable a SCAVC arrangement which benefits both the individual and the Council to be in place.

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**Regulation 22 — Merging of Deferred Member Pension Accounts with Active Member Pension Accounts**

The Regulations provide: that a deferred member's pension account is automatically aggregated with their active member's pension account unless the member elects within the first 12 months of the new active member's pension account being opened to retain their deferred member's pension account.

A Scheme employer can, at their discretion, extend the 12 month election period.

## Wokingham Borough Council Policy concerning merging of Deferred Member Pension Accounts with Active Member Pension Accounts

An election must be made by an active member within 12 months from the date that the member re-joins the Local Government Pension Scheme.

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Regulation 100(6) — Inward Transfers of Pension Rights (see guidance note 10 in employer's guide)

The Regulations provide: that a request from an active member to transfer former pension rights from a previous arrangement into the Local Government Pension Scheme as a result of their employment with a Scheme employer must be made in writing to the administering authority and the Scheme employer before the expiry of the period of 12 months beginning with the date on which the employee first became an active member in an employment (or such longer period as the Scheme employer and administering authority may allow).

## Wokingham Borough Council Policy

The Council provides that an active scheme member may request to transfer into the Local Government Pension Scheme relevant pension rights held elsewhere. The member must request the transfer rights within 12 months of becoming a member of the Local Government Pension Scheme (or in exceptional circumstances such longer period at Members' discretion where there is no financial risk to the Council subject to the administering authority's agreement). It is recognised that all the process should be initiated within 12 months, however in some circumstances it may take longer to complete the process.

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Regulation 21 (5) — Assumed Pensionable Pay (see guidance 11 in employer's guide)

The Regulations provide: that a Scheme employer needs to determine whether or not to include in the calculation of assumed pensionable pay, any 'regular lump sum payment' received by a Scheme member in the 12 months preceding the date that gave rise to the need for an assumed pensionable pay figure to be calculated.

## Wokingham Borough Council Policy concerning inclusion of 'regular lump sum payments' in assumed pensionable pay calculations

Regular lump sum payments will be included in the calculation of assumed pensionable pay, as regular lump sum payments are currently deemed to be pensionable.

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### Regulation 74 — Applications for Adjudication of Disagreements

The Regulations provide: that each Scheme employer must appoint a person ("the adjudicator") to consider applications from any person whose rights or liabilities under the Scheme are affected by:

- (a) a decision under regulation 72 (first instance decisions); or
- (b) any other act or omission by a Scheme employer or administering authority, and to make a decision on such applications.

Responsibility for determinations under this first stage of the Internal Disputes Resolution Procedure (IDRP) rests with "the adjudicator" as named below by the Scheme employer: Local Government (Early Termination of employment) (Discretionary Compensation) (England and Wales) Regulations 2006. SI no 2914.

The Regulations apply in relation to a person (a) whose employment is terminated —

- (i) by reason of redundancy,
  - (ii) in the interests of the efficient exercise of the Council's functions,
  - (iii) in the case of a joint appointment because the other holder of the appointment has left it<sup>i</sup>
- (b) who, on the termination date, is
  - (i) employed by the Council, and
  - (ii) eligible to be a I-GPS member (whether or not he is such a member)
  - (iii) whose termination date is on or after 1<sup>st</sup> October 2006.

### Regulation 5

The Regulation provides: the Council with the discretionary power to waive the weekly pay ceiling placed on statutory redundancy payments and to calculate, instead, on pay up to the actual week's pay.

## Wokingham Borough Council Policy

That all redundancy payments will be calculated on the basis of actual week's pay.

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### Regulation 6

The Regulation provides: a discretionary power to award a one-off lump sum payment of up to, but not exceeding, two years' pay (104 weeks), inclusive of any redundancy payment made, in the circumstances described above.

## Wokingham Borough Council Policy

The Council retains its discretion to pay an additional lump sum payment. No discretionary payment will be made to an employee with less than 2 years qualifying service.

In the case of redundancy this would be in addition to, but inclusive of, a redundancy payment. It is Council Policy that no additional lump sum severance pay under

This refers to the old practice of jointly appointing two people under a single contract (e.g. a husband and wife team to run a children's home). It does not relate to job shares i.e. where one or more people have separate contracts to share some or all of the duties of the post.

Regulation 6 Discretionary Payments Regulations will be payable where the reason for redundancy is the need to make savings, due to the costs to the revenue account.

Members will need to consider the financial and other reasons for using this discretion and a strong business case must be stated in a report to members. The Personnel Board must approve any recommendation for any additional payment.

The Teachers' Pensions Regulations 1997

and

The Teachers' (Compensation for Redundancy and Premature Retirement) Regulations 1997 and The Teachers' (Compensation for Redundancy and Premature Retirement) (Amendment) Regulations 2006

## EMPLOYER DISCRETIONS SCHOOL BASED STAFF

For support staff the discretions referred to in the earlier part of this policy document apply, but note the detail below regarding deciding and compensating authorities. The information below relates to teaching staff.

### (a) Deciding and Compensating Authorities

For Local Authority (LA) maintained schools with a delegated budget the governing body is the deciding authority and the LA is the compensating authority. This covers all staff in all schools with a delegated budget, regardless of the status of the school.

LAS have the power to deduct the costs from the school budget where they have not agreed to the compensation being made

### (b) Premature Retirement

Premature retirement is retirement before normal pension age (60 or 65 for those new to teaching after 1<sup>st</sup> January 2007) by reason of redundancy or in the interests of the efficient exercise of the employer's functions. Premature retirement is not permitted before the age of 50 (new teachers and some returning to teaching after 1<sup>st</sup> January 2007 must be 55 before they are eligible and 55 will be the minimum age for all teachers after April 2010).

Premature retirement is a discretionary matter; it is not an automatic right.

A teacher may be entitled to benefits from two sources as described below.

#### The Teachers' Pensions Regulations 1997

In this case T PS pay the actuarially reduced benefits based on length of pensionable service and final salary. The employer pays an amount equal to the amount by which the pension is actuarially reduced - mandatory compensation.

#### Wokingham Borough Council policy

That agreement to provide unreduced pension under these regulations will only be given in the most exceptional circumstances either as a result of very difficult domestic circumstances or where a governing body can demonstrate sound financial reasons for proposing agreement. The Personnel Board must approve any recommendations from the governing body for agreement to pay unreduced pension. Officers will comment on any recommendations in the report from the governing body before it is presented to the Personnel Board.

The Teachers' (Compensation for Redundancy and Premature Retirement) Regulations 1997 and The Teachers' (Compensation for Redundancy and Premature Retirement) (Amendment) Regulations 2006

These regulations enable an award of extra benefits to the retiring teacher. This is to compensate for pension benefits the teacher could otherwise have expected to earn up to normal retirement age, subject to certain limits.

The enhancement by way of added years cannot exceed the shortest of the following:

- Ten years
- The total length of the teacher's existing service
  - > Such as would bring the teacher's service up to the age of 65, including any periods of compensation which they may have previously been credited
- The difference between the teacher's service and 40 years

Teachers may be credited with additional service provided:

- They are eligible for participation in TPS (though they may be opted in or out)
- They are aged at least 50 but under 65 when employment is terminated
- They have served at least 5 years as a teacher eligible for participation in
- They are in relevant employment

Wokingham Borough Council policy

That no enhancements will be approved under these Regulations except in cases of very difficult domestic circumstances or where a governing body can demonstrate sound financial reasons for proposing agreement. The Personnel Board must approve any recommendations from the governing body for any additional payment. The LA will comment on any recommendations in the report.

(c) Redundancy payments

All teachers who are dismissed by reason of redundancy are entitled to a payment under the Employment Rights Act 1996 providing they have two years continuous service with organisations included in the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999.

The maximum additional payment in these circumstances is the difference between the redundancy payments to which the teacher is entitled under the 1996 act and the redundancy payments he/she would have received if the upper earnings limit set under the Act had not been applied. This has the effect of calculating a week's pay on actual salary rather than the statutory upper earnings limit.

### Wokingham Borough Council policy

That all redundancy payments will be calculated on the basis of actual week's pay.

#### (d) Severance payments

The regulations introduce a provision to pay severance payments to teachers who leave service under age 50, or to teachers aged between 50 and 60, as an alternative to premature retirement. These payments are not available to teachers who have reached age 60 (and so are automatically entitled to take their retirement benefits) or to those who have been re-employed after taking premature retirement

Severance payments can be paid to teachers leaving the service either on the grounds of redundancy or on the grounds of the 'efficient discharge of the employer's functions'. They may be paid in addition to a redundancy payment or they may replace a redundancy payment. However if the employer pays both, the amount of redundancy payment reduces the maximum sum payable as a severance payment.

The award of a severance payment is discretionary and the maximum employers can choose to pay is up to 104 weeks' salary.

### Wokingham Borough Council policy

That no severance payments will be approved under these Regulations except in cases of very difficult domestic circumstances or where a governing body can demonstrate sound financial reasons for proposing agreement. The Personnel Board must approve any recommendations from the governing body for any additional payment. The LA will comment on any recommendations in the report.

#### Guidance Note:

Making discretionary payments increases the costs to the Council. Members will need to consider the financial and other reasons for using this discretion and a strong business case must be stated in a report to members. The Regulations specify that an employing authority must have regard to the extent to which the exercise of their discretionary powers (in accordance with its policy), unless properly limited, could lead to a serious loss of confidence in the public service and can be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.

## WOKINGHAM BOROUGH COUNCIL CONFIRMATION

It is understood that the discretions contained within this statement of policy are applicable to all eligible members of the Scheme. The Scheme rules allow for a revised statement to be issued at least one month in advance of the date that any new policy takes effect. The revised statement must be sent to the administering authority and the employer must publish its statement as revised in a place that is accessible to all of its eligible scheme members.

The policies made above:

Have regard to the extent to which the exercise of the discretions could lead to a serious loss of confidence in the public service;

Will not be used for any ulterior motive;

Will be exercised reasonably;

Will only be used when there is a real and substantial future benefit to the employer for incurring the extra costs that may arise;

Will be duly recorded when applied.

Signed on behalf of Wokingham Borough Council:

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Adjudicator's Signature: *A.J. Moulton*

Date: RBI 11/14 .

Note: Regulation 17.1 – Additional Voluntary Contributions – amended in MONTH 2020 to enable Shared cost Additional Voluntary Contributions to be implemented when there is a benefit for both the employee and the Council.

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