Appendix 1

POLICY ON APPLYING PENSION DISCRETIONARY PROVISIONS

Approved by PP&R Cttee 24 June 1998
Revised & Approved PP&R Cttee 20 March 2007
Revised & Approved Council Executive 23 June 2009
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POLICY ON APPLYING PENSION DISCRETIONARY PROVISIONS

POLICY STATEMENT
Regulation 61 of the Local Government Pension Scheme (Administration)(Scotland) Regulations 2008 requires the council to publish a policy relating to the exercise of certain discretionary powers within the regulations. In determining its policy, the council has taken account of the need to maintain public confidence in the manner it exercises the discretionary powers available to it.

SCOPE
The general discretionary powers stipulated within Part 1 of this policy statement apply to employees who are members of the Local Government Pension Scheme. The specific discretionary powers stipulated in Part 2, apply to employees who are eligible to be members of the Local Government Pension Scheme and the Scottish Teachers Superannuation Scheme.

PART 1: DISCRETIONARY POWERS – GENERAL

1. Voluntary Early Retirement Between Ages of 55 and 60

Statutory Provision
Under Regulation 30 of the Local Government Pension Scheme (Benefits, Membership and Contributions)(Scotland) Regulations 2008, scheme members aged 55 or over can ask for early payment of pension benefits providing they have left employment. Where a member is under age 60, payment is at the employer’s discretion. This discretion may also apply to former employees with deferred pension rights where they attain age 55.

Policy Statement
Applications for early release of pension benefits will be considered on an individual basis. Consent may be given where it can be shown to be in the council’s financial and/or operational interests.

Where the council consents to early release of benefits, it may further determine on compassionate grounds that the member’s benefits should not be reduced. This further discretion will only be exercised in exceptional cases of hardship.
2. **Augmentation (Increasing total scheme membership)**

Statutory Provision

Under Regulation 12 of the Local Government Pension Scheme (Benefits, Membership and Contributions)(Scotland) Regulations 2008, employers can award additional membership at any time (e.g. as an alternative to compensation when considering early retirement). Where this provision is applied, the amount of additional membership must not exceed 10 years. The employer must also make an appropriate payment into the pension fund within one month of making a resolution to apply this discretion.

**Policy Statement**

The council will not have a general policy of ‘augmentation’ (awarding additional membership) but will consider cases on an individual basis. The council may exercise this discretion by written resolution where financial and/or operational advantages can be demonstrated subject to additional membership awarded not exceeding a maximum of 6 years 243 days.

3. **Award of Additional Pension**

Statutory Provision

Under Regulation 13 of the Local Government Pension Scheme (Benefits, Membership and Contributions)(Scotland) Regulations 2008, an employer may award a scheme member additional pension of not more than £5000 a year, payable from the same date as the member’s normal pension. The employer must make an appropriate payment into the pension fund within one month of making a resolution to award this discretion.

**Policy Statement**

The council has resolved not to exercise this discretionary power.

4. **Establishment of Shared Cost AVC Schemes**

Statutory Provision

Under Regulation 22 of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008, employers can set up an additional voluntary contribution (AVC) scheme that requires employers to contribute.

**Policy Statement**

Scheme members already have access to an AVC arrangement that accepts member-only contributions. The council’s policy is not to establish a shared cost AVC scheme on the basis that the low interest in this type of arrangement does not justify the cost to the council.

5. **Late Applications to Pay Optional Contributions**

Statutory Provision

Under Regulation 19 of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008, employees returning from an...
approved period of unpaid absence can choose to pay contributions that
would have been payable had they not been absent. The employer and
employee must pay contributions for the first 30 days of authorised unpaid
leave.

Where the period of leave exceeds 30 days, the employee can elect, within
30 days of return to work, to pay the contributions for that period. An
employer may at their discretion, extend this time limit.

Policy Statement
The council and employee must pay contributions for the first 30 days of
authorised unpaid leave. The council will not generally agree to extend the
time limit of 30 days under regulation 19(1) within which an election to pay
the contributions can be made. Exceptionally however, where an employee
provides evidence of extenuating circumstances, the council may extend that
time limit by a further 30 days.

6. Forfeiture of Pension Rights After Conviction for Employment - Related
Offence

Statutory Provision
Under Regulation 66 of the Local Government Pension Scheme
(Administration) (Scotland) Regulations 2008, where a scheme member has
been convicted of a serious offence (which is either ‘gravely injurious to the
State’ or ‘liable to lead to serious loss of confidence in the public service’), the
employer can apply to the Scottish Ministers to forfeit all or part of the
member’s pension benefits.

Policy Statement
The council reserves the right to apply to the Scottish Ministers to forfeit all or
part of a scheme member’s pension benefits in circumstances where that
member has been convicted of a serious offence of the nature described
under the 2008 Regulations.

7. Recovery or Retention where former member has misconduct
obligation

Statutory Provision
Under Regulation 68 of the Local Government Pension Scheme
(Administration) (Scotland) Regulations 2008, an employer may recover
monies from a former employee’s pension benefits, in respect of any loss
arising from a criminal, negligent or fraudulent act committed by that former
employee.

Policy Statement
The council reserves the right to recover monies from a former employee’s
pension benefit in respect of any loss arising from a criminal, negligent or
fraudulent act, provided that all other efforts to recover the loss have been
exhausted.
8. **Inwards Transfers of Pension Rights**

**Statutory Provision**

Under Regulation 78 of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008, scheme members can transfer previous pension rights into the Local Government Pension Scheme subject to making a request to transfer within 12 months of joining the scheme. Employers have discretion to allow transfers to proceed after this time limit has expired.

**Policy Statement**

The council will not have a general policy of allowing late transfers to proceed. Applications will be considered on an individual basis. The council may exercise discretion to allow a late transfer where there is no financial impact on the council or Lothian Pension Fund.

9. **Flexible Retirement**

**Statutory Provision**

Regulation 18 of the Local Government Pension Scheme (Benefits, Membership and Contributions)(Scotland) Regulations 2008, allows scheme members to draw some or all of their scheme benefits while still in employment where the following conditions are met:

- scheme members must apply for early payment in writing and be at least age 55
- scheme members, with the employer’s consent, must reduce their hours of work or grade of employment and,
- the employer must agree to the early payment of benefits.

Benefits are subject to the same level of reduction that would apply had the member retired from employment, but the employer may, at its cost, decide to waive the reduction.

**Policy Statement**

The council will not have a general policy of agreeing to requests for flexible retirement. Applications will be considered on an individual basis and may be granted where it can be demonstrated to be to the council’s advantage or in its operational interests. In considering requests for flexible retirement, the council will normally expect at least a 20% reduction in the employee’s contractual weekly hours or alternatively, a minimum reduction of at least one full salary grade.

The council will also not have a general policy of waiving any reduction, which would normally be applied to benefits.
1. General

Decisions to award discretionary added years or enhanced lump sum compensation are delegated to the Chief Executive, in consultation with the Leader of the Council, and will be informed by the:

- demonstrable benefit(s) to the council, both in terms of total cost and service implications, based on a full assessment of these implications in each case;
- quality and relevance of the business case made, taking all relevant service and cost implications into account;
- interests of the employee(s) concerned, balanced with the interests of the council.

2. Award of Added Years/Purchase of Additional Pension

Statutory Provision – Local Government Pension Scheme

Under the Local Government (Discretionary Payments and Injury Benefits)(Scotland) Amendment Regulations 1998, members of the Local Government Pension Scheme have immediate payment of pension if they are:

- aged 55* or over
- have two or more years membership; and
- their employer certifies that they are no longer in local government employment due to redundancy or in the interests of business efficiency.

Additionally, the employer has discretion to enhance such pensions for employees with at least five years scheme membership, by up to 10 ‘added years’.

* Employees who were active members of the scheme before 6 April 2006 and have been in continuous membership since that date retain a minimum pension age of 50.

Spouses are entitled to survivor benefits in respect of credited ‘added years’ (benefits based on membership accrued after 5 April 1988). The Local Government Pension etc (Civil Partnership) (Scotland) Amendment Regulations 2005 similarly provide for the payment of survivor benefits to civil partners where the former employee ceased employment after 5 April 1988.

Statutory Provision – Scottish Teachers Superannuation Scheme

Under the Teachers Superannuation (Scotland) Regulations 2005 (as amended), an employer may apply two early retirement options.

In accordance with the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996 (as amended), an employer
may at its discretion, credit a member of the Teachers Superannuation Scheme with an additional period of service (discretionary compensation) provided that the member has;

- attained age 55,
- completed qualifying service amounting to not less than 5 years; and
- their employer certifies that they are no longer in local government employment due to redundancy or in the interests of business efficiency

Alternatively, an employer may grant an Actuarially Reduced Pension (ARP) provided that a member is aged 55 to 59 and has completed qualifying service of not less than 2 years.

It is further open to an employer to compensate for an actuarial reduction in pension benefits by opting to purchase additional pension on behalf of a teacher.

Spouses’, civil partners’ and surviving nominated partners’ compensation pensions that are payable in respect of scheme members whose premature retirement benefits commenced on or after 1 April 2007 are payable for the lifetime of the recipient.

Policy Statement

It is the policy of the council to exercise discretion as appropriate under the relevant regulations to award added years or purchase additional pension within the limits of affordability.

3. Payment of Enhanced Lump Sum Compensation

Statutory Provision

Under the Local Government (Discretionary Payments and Injury Benefits)(Scotland) Amendment Regulations 2006 and the Teachers (Compensation for Premature Retirement and Redundancy)(Scotland) Regulations 1997 (as amended), discretionary lump sum compensation can be paid to certain local government employees who cease to hold employment on grounds of redundancy or in the interests of business efficiency.

The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009 and the Teachers’ Superannuation (Scotland) Amendment Regulations 2008 provide for compensation in these circumstances of up to a maximum of 104 week’s pay. This limit is inclusive of any statutory redundancy payment to which the employee is entitled under the Employment Rights Act 1996 and any additional compensation paid in connection with the statutory redundancy payment under Part II of the 1998 Regulations.

Under Regulation 4 of Part II of the 1998 Discretionary Payments Regulations, authorities have discretion to disregard the statutory maximum limit and calculate redundancy payments with reference to an employee’s actual week’s pay.
Policy Statement

The council will consider the award of enhanced lump sum compensation up to a maximum of 40 week's pay to eligible employees who have at least 2 years continuous service and who cease employment with the council on the grounds of voluntary redundancy or in the interests of business efficiency.

The amount of enhanced lump sum compensation payable in any individual case will be determined with reference to the formula for calculating statutory redundancy payments, proportionately enhanced to provide for up to a maximum of 40 weeks pay.

The council will apply discretion to disregard the statutory maximum limit and calculate redundancy payments with reference to an employee’s actual week’s pay.

On request the council will consider a reduction in the enhanced lump sum compensation due to an eligible employee calculated under the terms of the policy, subject to the reduced enhanced lump sum compensation being no less than the appropriate amount of statutory redundancy payment to which an employee is entitled under the Employment Rights Act 1996 calculated at an employee’s actual week’s pay.

Enhanced lump sum compensation will not be payable where additional pension benefits are being awarded under Paragraph 2 of this policy.

The council has further resolved that payment of compensation to a widow/widower or registered civil partner should continue to be paid after remarriage or co-habitation where the original retirement took place before 1 April 1998.

4. Administrative Arrangements

The discretionary award of added years or enhanced lump sum compensation will be implemented through an agreed procedure, which will adhere to the following principles:

- all cases of proposed early retirement and voluntary severance will, in the first instance, be submitted through the appropriate Depute Chief Executive;
- the Depute Chief Executive will ensure that all relevant details, including full costs, net savings and any service implications are provided in each case;
- the Chief Executive, in consultation with the Leader of the Council will consider each case in the context of the requirements of the policy;
- full monitoring information on numbers and costs of early retirements and severance payments will be submitted on a six-monthly basis to the Council Executive.
POLICY REVIEW

In formulating this policy the council has referred to the relevant statutory provisions and to advice from the City of Edinburgh Council as the Pension Scheme administering authority and the Scottish Public Pensions Agency (SPPA).

This policy statement will be kept under review and will be revised as and when necessary to reflect any changes in regulations or policy. Any changes to this policy will be advised to the administering authority and scheme members in writing within one month of the change taking effect.

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<tr>
<th>Authorised signature:</th>
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<tr>
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### Enhanced Severance/Payment Ready Reckoner

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The table starts at age 17, as it is possible for a 17-year-old to have 2 years service. Compulsory school leaving age can be 15½ or 15½ where a child is 16 before 1 September.