EXEMPT/NON EXEMPT

EAST HAMPSHIRE DISTRICT COUNCIL/HAVANT BOROUGH COUNCIL

JOINT HUMAN RESOURCES COMMITTEE 10 June 2014

LOCAL GOVERNMENT PENSION SCHEME 2014 DISCRETIONARY POWERS

Report by the HR Business Partner

FOR DECISION - Yes

Key Decision: N/A

1.0 Purpose of Report

1.1 The introduction of the new Local Government Pension Scheme 2014 (LGPS) on 1st April 2014 requires all scheme employers to review their existing discretionary pension policy statements and publish new policy statements before 1st July 2014.

This report provides the committee with detail relating to proposed changes within the councils to the:

- Pension Scheme discretionary policies
- Flexible Retirement procedures

2.0 Recommendation

It is recommended that

(1) the report be noted;

(2) the discretionary policies be approved and adopted for use across both EHDC and HBC; and

(3) the new Flexible Retirement Procedure for HBC and updated Flexible Retirement Procedure for EHDC be approved and adopted for use across both EHDC and HBC.

3.0 Summary

3.1 The Local Government Pension Scheme (LGPS) changed from 1st April 2014 and the regulations that apply to this scheme have also changed.

3.2 The Local Government Pension Scheme Regulations 2013 (regulation 60) requires all scheme employers to publish and keep under review a written policy statement on how they will apply their discretionary powers in relation to certain provisions of the LGPS.

3.3 This report sets out those discretions and makes recommendations on new policy. Policy must be set and notified to the Hampshire Pension Service as the administering authority before 1st July 2014

4.0 Subject of Report

4.1 The LGPS regulations, issued by the Department of Communities and Local Government (DCLG), require employers to produce their own policies on 'discretions'.

4.2 The new six main compulsory discretionary powers on which to set a policy are:

- Voluntary funding of additional pension - shared cost additional pension contributions
- Flexible retirement
- Waiving of actuarial reductions
- Awarding additional pension

And for those who stopped contributing to the LGPS between 1 April 2008 and 31 March 2014

- Switching on the 85 year rule
- Post - 31 March 2008 / pre - 1 April 2014 leavers early payment of pension

Further detail on these six main compulsory discretionary powers are set out in paragraphs a – f below.

a. Local Government Pension Scheme Regulations 2013 Regulation 16(2e) (4d) - Shared cost additional pension contributions

Additional pension contributions (APC) can be made by the employee. Under the 2008 scheme the employee's APC are limited to £5,000. Currently the council cannot choose to contribute.

Under the new scheme the APC limit has increased to £6,500. As an employer the Council can agree to meet some or all of the cost when an active scheme member wishes to increase their pension by up to £6,500 per annum:

- if the Council or the employee are already contributing towards additional pension, this will need to be taken into consideration
- the amount will be increased each April by Pensions Increase

The employer can make a one off or regular additional regular pension contribution at any proportion agreed.

It is proposed that the Council will only contribute to the cost of a member's additional pension contributions where required to do so under the LGPS Regulations. Where a member is voluntarily making additional pension contributions, the Council will not consider meeting any part of that cost.

Note:

An employee cannot commence an APC if they are in the 50/50 section (50/50 is a new provision where a scheme member elects to pay 50% reduced contributions for a given period in return for receiving reduced benefits for that period)

For unpaid leave absences this is not discretionary - there are different conditions (e.g. any additional pension contributions must continue to be paid whilst on child related leave, reserve forces leave or whilst in the 50/50 section).

APC should not be confused with Additional Voluntary Contributions (AVCs) which are a separate arrangement built up in another fund that sits alongside the main scheme.

b. Regulation 30 (6) - Power to allow flexible retirement

This provision enables an employer to grant permission for an employee who is aged 55 or over to receive payment of the pension benefits they have built up (in full or part) and continue working for the Council on less pay. This is providing the employer agrees to the member either reducing their hours or moving to a position on a lower grade.

In such cases, pension benefits will be reduced in accordance with actuarial tables unless the employer waives the reduction (see para C below), either fully or in part, or a member has protected rights.

The employer will pay any cost for early payment of the benefits, including the additional costs of waiving any early payment reduction. Currently the employer considers all requests for flexible retirement from staff who are aged 55 or over provided that the employee has either :

- a permanent reduction in remuneration of 40% through reduction in grade or hours (EHDC)
- a reduction on contractual hours or grade (HBC)

<u>And</u> there is a clear business case to the Council.

Under the new scheme the Council can continue to give this consent**.** It is proposed that exercising this discretion is more clearly defined through a written procedure. Approval will only be given when it is in the Council's interests to do so and is subject to a business case showing that there will be no adverse impact on Council service as a result of the flexible retirement proposal.

c. Regulation 30 (8) - Waiving of actuarial reductions

Under the 2008 scheme an employer has the discretion to allow an employee to retire voluntarily between the ages of 55-59 and receive immediate payment of their pension benefits. Payment of the pension early would be subject to actuarial reduction however the employer can agree to waive any actuarial reduction on compassionate grounds. To retire early the employee would have had to have the permission of their employer.

Under the new scheme employees aged between 55 and 59 will no longer need the permission of their employer to retire and receive immediate payment of their pension benefits however actuarial reductions will be applied.

Under the new scheme the Council can continue to consider waiving the actuarial reduction for employees and bearing the cost of this. This would apply when:

- An employee voluntary retires from age 55
- Permission is given to allow flexible retirement (reg 30 (6))

It is proposed that generally the Council would not bear the cost of actuarial reductions except in exceptional circumstances and agreed by JEB. Also, that the Council will not consent to ex employees taking deferred benefits unless there is no cost to the council

d. Regulation 31 - Power to award additional pension

The previous scheme enabled an employer to award up to £5,000 per annum of additional pension and/or augment up to a further 10 years worth of pension to an active scheme member.

Under the new scheme, 'augmentation' of up to 10 years no longer applies but an employer can award an additional pension of up to £6,500 a year. This can be awarded to either an active member or previous members (within 6 months of leaving) who were dismissed by reason of redundancy, or business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency.

Currently the Council do not generally award additional pension or augment, this would only be in exceptional circumstances.

It is proposed that as a rule, the Council will not award additional pension or membership. Any exceptional cases supported by a business case are to be determined by JEB.

However, if employees are retired in the interests of efficiency, the Chief Executive or an Executive Director will consider buying additional pension in the LGPS using an amount no greater than the payment that would have been received had an employee been made redundant. There may be tax implications associated with this.

Note:

If the Council or the employee are already contributing towards additional pension, this will need to be taken into consideration.

- the amount will be increased each April by Pensions Increase

An award may also be made within six months of leaving to members who have left on the grounds of redundancy or business efficiency.

e. LGPS (Transitional provisions, savings and amendments) Regulations 2014 - paragraph 2 (2) of schedule 2 - Switching on the 85year rule

This is a new regulation for the 2014 pension scheme. It did not exist in the 2008 scheme.

The new scheme allows the employer to apply the 85 year rule to pre 1 April 2014 accrued benefits (subject to a minimum actuarial reduction to age 60) (there will be no 85 year rule on post 2014 benefits).

The 85 year rule does not automatically apply if the employee decides to voluntarily draw benefits on or after age 55 and before age 60 - but the employer can agree to apply the 85 year rule to the pre 1 April 2014 accrued benefits.

It is proposed that the Council does not switch on the 85 year rule as it is cost prohibitive. Any exceptional circumstances including reference to the note below will be supported by a business case and agreed by JEB.

Note:
The exception to this relates to the entitlement to an enhanced pension under the 85 year rule for employees aged between 55-60. Under the new scheme rules there is no longer an automatic entitlement for employees in this age group to receive an unreduced pension when their service plus age is 85 or more. It is proposed that in exceptional circumstances the council may consider paying the additional cost of an unreduced pension and this should be clearly identified in the business cases.

f. LGPS (Benefits, Membership and Contributions) Regulations 2007 - Regulations 30 (2) (5) & 30A.(3) (5) Post - 31 March 2008 / pre - 1 April 2014 leavers early payment of pension

Under the new scheme an employer can allow the early payment of deferred benefits to those with pre 2014 benefits between ages 55 and 59. They may also allow early payment of pensions to former employees who were in receipt of a tier 3 ill health pension which has since been suspended.

In such cases, pension benefits will be reduced in accordance with actuarial tables unless the employer waives the reduction on compassionate grounds or a member has protected rights.

It is proposed that the council will not consent to immediate payment of benefits to an employee or ex-employee who requests this and retires voluntarily between age 55 and 60, unless there is no cost to the council.

Notes:
A member with deferred benefits or who previously retired with a tier three ill health pension can apply for their pension on ill health grounds at any age. This is not an employer discretion and the Council must have the member assessed

by an independent medical practitioner and make a decision based on the ill health certificate.

Where a deferred member left the LGPS before 1 April 2008, the employer policy will be subject to any restrictions that applied under the previous regulations. For example, a deferred member who left before 1 April 1998 may only be allowed to draw their benefits at age 60, age 65 or their normal retirement date.

The employer will pay any cost for early payment of the benefits, including the additional costs of waiving any early payment reduction.

g. **Augmentation of redundancy payments** (not a compulsory discretion) Allowing staff who are made redundant to use their redundancy pay above statutory maximum to buy extra years in order to augment pension is a good way of ensuring staff that leave by way of redundancy do so on the best possible terms. There is no cost to the Council to allow this.

It is proposed that the Council has a new policy that allows the part of an employee's redundancy payment that relates to earnings in excess of the statutory maximum to be used to buy additional service in the Local Government Pension Scheme. This option is only open to employees if they request it before employment ceases. Employees should note that there may be tax implications.

4.3 Appendix A & B summarises and outlines the current policy on pension discretions for both councils and how they compare to the proposed policy for the new scheme regulations. It also gives the rationale for the proposed policy.

In reading the proposals, it goes without saying that exercising discretionary powers often comes at a price. As the Employer is required to formulate policies that do not lead to a loss of confidence in the public service, it follows that the policies should be affordable.

When proposing the policy, support has been given from Hampshire Pension Services along with consideration to the recently approved policy position of Hampshire County Council. Further consideration has also been given to ensure that the proposed policies do not unnecessarily restrict the Council's discretionary powers.

With each proposed term "a business case must be made" has been set, this is so that each case can be dealt with on its merits and or the circumstances and due regard, where appropriate, can be made to the 'equality (Disability and Age) regulations'. This is so the Council would be able to defend any claim of discrimination by satisfying a tribunal that our policy is objectively justified.

4.4 Additionally a further procedure document in relation to requests for flexible retirement is attached. Flexible retirement is an option in that rather than continuing in a job to normal retirement age, employees can with the employer's consent, reduce their hours or move to a lower grade and draw some or all of their pension benefits whilst continuing in employment – enabling transition and smoother ease into retirement This new policy document will guide management in how to respond and deal with requests for flexible retirement. Currently EHDC has a written procedure and this has been updated to reflect structural job changes. A new procedure has been drafted for HBC. These can be found at appendix C & D.

5.0 Implications

5.1 **Resources:**

There are no direct financial implications identified within this report at this time. However the financial implications of implementing decisions from any agreed discretionary policy will need to be taken into account and clearly identified in any business case.

5.2 **Legal:**

The Council is required by the regulations to have a written policy on compulsory discretion and inform the pension service of such by 1st July 2014.

The constitution be amended to reflect the changes in this report.

5.3 **Strategy:** *Nil*

5.4 **Risks:**

A lack of acceptable policy on which to make decisions and being issued with a notice of failure to comply by the pension regulator.

5.5 **Communications:**

The policy, once agreed, will be published to employees.

5.6 **For the Community:**

5.7 **The Integrated Impact Assessment (IIA) has been completed and concluded the following: N/A**

6.0 Consultation

JEB agreed these policies on 20 May 2014.
Unison branches were consulted on 12 May 2014.

Appendices:

A. Employer Discretions – HBC
B. Employer Discretions – EHDC
C. Flexible Retirement Procedure – HBC
D. Flexible Retirement Procedure – EHDC
E. FAQs

Background Papers: *(provide evidence of any previous report, government guidance, relevant website etc.)*

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Agreed and signed off by:

Legal Services: 21st May 2014
Executive Head of Governance & Logistics: 23rd May 2014
Relevant Executive Head: 21st May 2014

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