



## **AGENDA ITEM: 10**

### **NORTH WALES FIRE AND RESCUE AUTHORITY**

**18<sup>th</sup> June 2007**

#### **The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006**

**Report by Ken Finch, Treasurer  
And Dawn Docx, Assistant Chief Officer (Finance & Procurement)**

#### **Purpose of Report**

- 1.** To seek approval of proposed revised policy statements on the exercise of discretionary powers in respect of compensation for early termination of employment. This policy is applicable to members of the Local Government Pension Scheme and those eligible to join the LGPS, as defined in the regulations.

#### **Introduction**

- 2.** The Discretionary Compensation Regulations 2000 and 2002 provided, in qualifying circumstances, discretionary powers to local authorities to enhance pensionable service for staff aged 50 or over. This discretionary power could not be exercised for staff aged under 50 and, as such, the Regulations from which they derived may now be considered discriminatory on the basis of age, under new Regulations introduced from 1 October 2006.



## **Introduction** *(continued)*

3. The 2006 Regulations revoke the previous Regulations and introduce provisions for new discretionary compensation packages for early termination of employment whether employees are aged under or over 50. The discretionary power to enhance pensionable service for staff over 50 is removed completely by the new Regulations. The power to award a single compensatory lump sum is retained and the basis of the maximum amount payable is raised from up to 66 weeks pay to up to 104 weeks (2 years) pay.
4. As a consequence it is necessary for revised policy statements to be adopted. In addition, the existence of such discretionary powers has been and will continue to be a valuable management tool where issues such as adjustments to the workforce, cost savings and efficiencies have to be considered.

## **Background**

5. In the past the Authority:
  - calculated redundancy payments by reference to actual weekly pay where this exceeded the permitted statutory maximum (i.e. waiving the weekly pay ceiling)
  - where termination was in the interests of the efficiency of the Service, had the discretion to award an additional period of pensionable service (added years) of up to 5 added years if the employee is 50 or over (by law the amount that could have been awarded was 10 years)
  - where termination was by means of redundancy, had the discretion to:



## **Background** *(continued)*

- (a) pay statutory redundancy and award an additional period or pensionable service of up to 5 added years if the employee is 50 or over
- (b) pay a one-off compensatory payment of up to a maximum of 66 weeks pay where an employee is under 50, or over 50 as an alternative discretion to (a)

## **6. The Regulations Now**

- retain the discretionary power to waive the weekly pay ceiling based on the statutory maximum and to use actual weekly pay
- remove the power of Authorities to award compensatory added years
- allow the award of a one-off compensatory payment of up to but not exceeding 104 weeks (2 years) pay, including the relevant amount related to statutory redundancy
- apply to a person whose employment is terminated
  - (a) by reason of redundancy, or
  - (b) in the interests of the efficient exercise of the employing authority's functions, or
  - (c) in the case of a joint appointment, because the holder of the appointment has left it (NB: this applies to an old practice of jointly appointing 2 people under a single contract; it does not apply to a job share where separate contracts are issued)



## **6. The Regulations Now** (*continued*)

- do not confer a contractual right to a discretionary compensation payment
- 7.** Each employing authority must formulate, publish and keep under review the policy it applies in the exercise of its discretionary powers. In formulating and reviewing its policy the Authority must:
- have regard to the extent to which the exercise of its discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service; and
  - be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs
- 8.** It will be readily appreciated that there will be instances where the Authority will need to manage change, seek cost savings and efficiencies. The policies will assist in those processes.

### **Redundancy**

- 9.** Provided that the revised policy statements have regard to the Regulations and comply with Equality (Age) Regulations, there is flexibility as to how any lump sum compensation payment of up to 104 weeks pay may be determined. One approach could be to have a policy of setting the most appropriate level of compensation for each individual case. However, from a practical point of view, this would mean having a policy covering each and every circumstance which would have to be published and kept under review before the merits of a particular case could be considered and compensation determined. This would not be a feasible way of proceeding.



## **Redundancy** (*continued*)

- 10.** Also, the Age Regulations introduce a complication in that any calculation based on age and/or length of service could be deemed to be discriminatory. However, for redundancy cases, the Government takes the view that it has set out an exception through Regulation 33 of the Age Regulations. The Local Government Employers' Advisory Bulletin 515 gives a view that an enhanced scheme could be used if it is based on the statutory redundancy calculator and a consistent factor is applied as the Government believes the differential treatment can be objectively justified. It should be noted, however, there are views that the exception in the Age Regulations may be open to challenge so some residual risk may arise.
- 11.** Examples of enhancing the statutory redundancy calculator (the maximum level of statutory redundancy payment is 30 weeks for an employee aged 61 or over with 20 years or more service) are:
- a multiplier of 2.5 would provide a maximum discretionary compensation level of 75 weeks' pay (recommended)
  - a multiplier of 3.46 would provide a maximum discretionary compensation level of approximately 104 weeks' pay

## **In the Interests of the Efficiency of the Service**

- 12.** LGE Advisory Bulletin 515 advises that the exception in the Age Regulations of having an enhanced scheme based on the statutory redundancy calculator only applies to redundancy cases. It is suggested that if a similar policy was adopted for calculating discretionary compensation on termination in the interests of efficiency, it would be more difficult to objectively



## **In the Interests of the Efficiency of the Service** *(continued)*

justify the situation. The LGE suggests that each case should be judged on its merits and that it would be good practice to set out some criteria in advance by which an objective process could be considered.

- 13.** Criteria that could be considered in determining a compensatory payment under such a policy could be:
  - assistance with the management of change
  - potential difficulties to be faced in obtaining further comparable employment due to the skills they have and employment options locally
  - any other overall benefits deriving to the Authority
  - any direct financial savings that could arise
  - future work arrangements and demands
  
- 14.** Termination of service on the grounds of efficiency is unlikely to give rise to the same level of financial savings as redundancy would but, nevertheless, a power to award discretionary compensation may be reasonable. A suggested means by which a compensation payment could be calculated for efficiency cases could be to apply a factor related to the statutory notice period for terminating a contract of employment – maximum of 12 weeks – as this appears not to discriminate on the basis of age as the notice period is applicable to length of service alone. For example, by applying a multiplier for every year of employment of, say 5, would result in a maximum compensation payment of 60 weeks (12 x 5).



## **Joint Appointment**

- 15.** This occurs where two people have been jointly appointed under one contract of employment and one of the people has their service terminated early. This is a rare occurrence and, although it is believed that there are no such instances within North Wales Fire and Rescue Service's employment, it would be sensible to set a policy. As it is rare, it would seem reasonable to provide for statutory redundancy only.

## **Entitlement to Pension Benefits**

- 16.** In addition to any compensation payment for early termination of employment, an employee who is aged 50 or more, and is a member of the LGPS, who retires from their employment by reason of redundancy, or in the interests of efficiency, is entitled to a pension and retirement grant based on pensionable pay and number of years in membership of the Scheme.

## **Augmentation**

- 17.** Augmentation of pensionable service up to a maximum of 6.66 years is a discretionary power derived from the main LGPS Regulations themselves and is not affected by the new Discretionary Regulations. The current policy is not to augment pensionable service at the termination of employment. The new Regulations stipulate that a lump sum discretionary payment cannot be made if augmentation occurs but it is possible to pay a statutory redundancy payment and augment pensionable service.



## **Augmentation** *(continued)*

- 18.** Issues that Members also need to be aware of are:
- that augmentation is only possible for employees who are members of the LGPS, which contrasts with the new Discretionary Compensation Regulations as they apply to employees who are eligible to join the LGPS but they do not actually have to be members
  - if augmentation were to be approved in the types of qualifying circumstances outlined in this report, it would probably have to be applied regardless of age to avoid the risk of challenge
- 19.** Unfortunately, at the time of writing this report, it is not possible to provide a comparable costing of augmentation because the relevant government statistical data is not available through the Pension Fund. Further information is being sought.

## **Purchase of Additional Pensionable Service**

- 20.** Under other changes to the LGPS, individuals have the choice to elect to purchase additional pensionable service from the excess of any compensatory discretionary payment over and above the amount of any statutory redundancy payment. An individual has to elect to make this choice at least 1 month before they leave the Authority's employment and the Authority then arranges to pay the amount concerned to the Pension Fund. There is, therefore, no additional financial cost to the Authority of allowing this to happen.



## **Financial and Personnel Considerations**

- 21.** The Authority has always taken a view that its policies in respect of discretionary compensation are workable, affordable and reasonable, having regard to the foreseeable costs.

## **Recommendations**

- 22.** (a) That the Authority's Early Retirement Policy be amended to incorporate the policy statements set out in Appendix A, subject to finalisation of consultation with the representative bodies.
- (b) That the Service allows the purchase of additional pensionable service from any discretionary compensation payment over and above any statutory redundancy amount subject to the individual concerned making an election in writing at least one month prior to their leaving date.