

EARLY TERMINATION COMPENSATION REGULATIONS

PORTFOLIO RESPONSIBILITY: CORPORATE AND CUSTOMER SERVICES AND HUMAN RESOURCES

CABINET

7TH SEPTEMBER, 2006

Wards Affected

None

Purpose

To note the Council's approach to the forthcoming changes to the Early Termination Compensation Regulations and approve the draft Early Termination Compensation Policy.

Key Decision

This is not a Key Decision.

Recommendation

THAT the approach and policy be approved.

Reasons

To ensure compliance with legislative requirements, whilst seeking to retain maximum flexibility for fair workforce management.

Considerations

1. Since 1976 there have been special provisions available to local government employers to make discretionary payments to employees whose employment has been terminated early, either on the grounds of redundancy, in the interests of the efficient exercise of the employer's functions or upon the cessation of a joint appointment. At present, the discretionary powers are consolidated into The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 – known as the DCR.
2. As well as the DCR, authorities are also able to use the power in reg. 52 of the Local Government Pension Scheme Regulations 1997 to increase the length of membership of an employee (augmentation).
3. The Government now plans to revoke the DCR and replace them with new regulations to comply with the age-related provisions of the Employment Equality (Age) Regulations, coming into force from 1 October 2006. In particular, the age and length of service-related formula that governs the amount of the lump sum compensation payment that may be made to eligible employees upon the early termination of their

Further information on the subject of this report is available from
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employment would be discriminatory.

4. Currently, the discretionary powers are:

- to remove the weekly pay ceiling placed on statutory redundancy payments under the Employment Rights Act and to calculate, instead, on pay up to the actual week's pay

and either

- to award a one-off lump sum payment of up to 66 weeks' pay, based on a service and age-related formula

or

- to award added years on top of the benefits payable under the Local Government Pension Scheme (LGPS) for eligible employees aged 50 or over and under 65.

5. Current Council policy is:

- To use actual week's pay when calculating statutory redundancy payments.
- To award *either* a one-off lump sum payment of up to 45 weeks pay, based on a service and age-related formula *or* added years.

6. In summary, the new Regulations will:

- Retain 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
- Provide 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
- Remove the power to award added years (although additional membership can still be awarded through the augmentation provisions in the LGPS).

7. The final regulations will not be forthcoming until Parliament returns from its summer recess. However we are required to have a revised policy in place by 1st October 2006.

8. The Council's proposed approach (see Appendix 1 for draft policy) is

- To calculate redundancy payment based on actual week's pay
- To pay an enhanced lump-sum redundancy payment calculated by applying a multiplier to the number of week's statutory redundancy pay that would apply to the employee.
- To enable an employee who is a member of the LGPS to opt to have their service augmented. If this option is taken he/she would receive statutory redundancy pay.

Risk Management

1. There is an underlying risk that the lump sum payment is based on the redundancy formula, which in turn is based on age and length of service. This is understood to be acceptable under Age Discrimination legislation, but could be open to challenge.
2. As with any new piece of employment legislation, clarification of interpretation occurs through case law once it is implemented. Therefore, the policy will be reviewed over the next year, with a view to introducing a more sustainable longer-term solution.

Alternative Options

There are no Alternative Options.

Consultees

Trade Unions

Appendices

Appendix 1 Draft Early Termination Regulations Policy

Background Papers

None identified.



EARLY TERMINATION COMPENSATION POLICY

Local Government employers have powers to make discretionary payments to employees whose employment has been terminated early, either on the grounds of redundancy, or in the interests of the efficient exercise of the employer's functions or upon cessation of a joint appointment. A scheme must have regard to budgetary constraints and Audit Commission guidelines.

This document contains the policy that applies to Council employees.

The policy regarding compensation for Council employees who are made redundant is

- to calculate payment based on actual week's pay.
- To pay an enhanced lump-sum redundancy payment. This enhanced payment will be calculated by multiplying by 1.5 the number of weeks statutory redundancy that would apply to the employee taking into account relevant service. (NB Statutory redundancy pay is therefore included in the enhanced payment.)
- In exceptional circumstances, at the Director's discretion and confirmed by the Compensation (Enhanced Payments) Panel, the multiplier may be 1.75 or 2.
- Where the employee is a member of the Local Government Pension Scheme (LGPS), he/ she can opt to have his / her service augmented. The maximum being by up to 4 years. If this option is taken he / she will receive statutory redundancy pay, i.e. without the enhancement above.

For employees whose employment is terminated in the interest of efficiency, normal rules apply regarding access to pension, i.e. immediate payment of pension and retirement grant (lump sum) if

- he / she is aged 50 or over
- he/she has 3 or more months membership of LGPS or less than 3 months but has transfer of pension rights (of any length) into the LGPS from another scheme
- his / her reason for retirement is certified as being 'redundancy' under regulation 26 of the LGPS regulations 1997.