

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

9th FEBRUARY 2009

1. **THE LOCAL GOVERNMENT (EARLY TERMINATION OF EMPLOYMENT) (DISCRETIONARY COMPENSATION) (ENGLAND AND WALES) REGULATIONS 2006**

Joint report of the A/Chief Fire Officer and Treasurer.

RECOMMENDED

- 1.1 THAT the Authority adopt the amendments to the Compensation for Redundancy Scheme as detailed in Appendices 1 and 2.
- 1.2 THAT authority be delegated to the Chief Fire Officer in conjunction with the Treasurer to make a determination in respect of individual cases in relation to Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 and Regulation 66 of the Local Government Pension Scheme (LGPS) (Administration) Regulations 2007 (as amended) in accordance with the terms of the Authority's policy statement.

2. **PURPOSE OF REPORT**

This report is submitted to update the Authority on the amendments to the Compensation for Redundancy Scheme as required by provisions made within the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006.

3. **BACKGROUND**

- 3.1 On 29th November 2006 the new Discretionary Payments Regulations came into effect which caused changes to the Local Government Pension Scheme (LPGS) with effect from 1st October 2006, arising from the Employment Equality (Age) Regulations. These changes affect pensionable and non-pensionable employees (excluding Firefighters) dismissed on the grounds of redundancy or in the interest of the efficiency of the Service.

- 3.2 Each Authority is required, as a result of these changes, to review its current policies and to publish a revised policy statement with regard to discretionary payments relating to early retirements and redundancies.
- 3.3 The new regulations allow authorities to pay up to 104 weeks pay as a one off lump sum payment (inclusive of statutory redundancy payment) and removes the power to award added years pension on termination of the employee's employment if they are over 50 years of age.
- 3.4 The new LGPS came into effect on 1st April 2008. A major aim and purpose of the changes it introduced is to encourage employees to remain in employment to or beyond the normal retirement age of 65.
- 3.5 Powers under the Augmentation Regulation 52 of the LGPS 1992 have been replaced in the New LGPS by powers to increase a member's service and/or pension.
- 3.6 The Authority adopted its current redundancy policy on 24th April 1995. This allowed for the payment of up to 66 weeks pay as a one off lump sum payment (inclusive of statutory redundancy payment) determined by age and length of service, to employees (excluding firefighters) dismissed on the grounds of redundancy or in the interests of the efficiency of the Service. The scheme is available to employees aged 18 and over but not yet 50, or 50 and over with less than 2 years service, and as such compensates employees who leave but are unable to take early retirement. The Authority also resolved to use employees' actual pay rather than the statutory maximum pay. To date this Authority has not exercised these powers to extend redundancy payments beyond the statutory maximum of 30 weeks.
- 3.7 In view of the changes made within the New LGPS it would seem inappropriate and unnecessary to extend benefits awarded for redundancy cases and it is recommended that such benefits are now limited to those given under the Employment Rights Act 1996, Appendix 1, Statement of Policy relating to regulation 7 and Appendix 2, Statement of Policy relating to regulation 66 and applied to all eligible staff irrespective of age.

- 3.8 For cases of dismissal in the interest of the efficiency of the service, which are less frequent and where no exemption under the Age Regulation applies, following advice issued by the Local Government Employers it is recommended that each case is judged equally and fairly on its own merits.
- 3.9 Following guidance issued by the Wolverhampton Pension Fund it is recommended that the amount of service and or additional pension that can be awarded under Rules 12 and 13 of the LGPS (Benefit, Membership and Contribution) Regulations 2007, will be judged equally and fairly in each case on its own merits.

4. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment is not required, as the report itself does not affect employees. However, dependant on the decisions of the Authority, it is recommended that a full Equality Impact Assessment is carried out before the policy is implemented.

5. **LEGAL IMPLICATIONS**

The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 replaces current powers for employers to award discretionary payments where employment is terminated early, thereby eliminating any potential age discrimination claim.

6. **TRADE UNION CONSULTATION**

Trade Unions will be informed of the amendments.

7. **FINANCIAL IMPLICATIONS**

- 7.1 In terms of the proposals for redundancy pay it is not likely that there will be any financial implications compared to the current arrangements given that the Authority has not exercised its powers to extend redundancy payments beyond the statutory maximum of 30 weeks. However, given that the policy itself is limiting the maximum payment, it is possible that as a result there may be some future savings, but these cannot be quantified at this stage because circumstances will depend upon individual cases.

7.2 In terms of the proposals for pension related issues it is not possible to indicate what the financial implications would be, as costs would vary dependent upon each specific case.

BACKGROUND PAPERS

Regulations 7 and 66 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006.

VIJ RANDENIYA
A/CHIEF FIRE OFFICER

L. BATEMAN
TREASURER

STATEMENT OF POLICY

Under Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, operative from 29th November 2006, each employer must formulate, keep under review and publish their policies on certain discretions contained within the Regulations.

This statement is applicable to all employees of the West Midlands Fire and Rescue Authority who are eligible to be members of the Local Government Pension Scheme (LGPS).

Regulation 5 - Power to increase statutory redundancy payments

Explanation

Employers have the discretion to resolve to use the employees' actual pay instead of the statutory maximum pay permitted under the Employments Rights Act 1996, in the calculation of redundancy payments.

Policy

The Fire Authority will always use the employees' actual pay when calculating redundancy payments.

Regulation 6 –Discretionary Compensation

Explanation

The Authority has the discretion to resolve to increase the lump sum compensation payable under the Employments Rights Act 1996, to an employee who loses their employment with the Authority, up to a maximum of 104 weeks' pay.

Policy

The Fire Authority will not exercise this discretion and therefore will not increase the maximum payable beyond the statutory limit of 30 weeks pay.

STATEMENT OF POLICY

Under Regulation 66 of the Local Government Pension Scheme (LGPS) (Administration) Regulations 2007 (as amended), each employer must formulate, keep under review and publish their policies on certain discretions contained within the LGPS Regulations. Where references are made, AReg refers to the “Administration” Regulations and BReg to the “Benefit” Regulations.

This statement is applicable to all employees of the West Midlands Fire and Rescue Authority who are eligible to be members of the LGPS.

1. Regulation 30 BReg - Choice of Early Payment of Benefits

Explanation

From age 55, members who have left local government employment may choose to receive early payment of their retirement benefits subject to the consent of their employer. However members aged 60 and over do not need their employer's consent. The pension benefits must be reduced in accordance with guidance provided by the Government actuary. Employers may determine on compassionate grounds that the benefits are not reduced.

Where a person was an active member on 31st March 2008 and makes an election before 31st March 2010, benefits can be paid if aged 50 or over. For a member who joined the scheme prior to 1 October 2006 where the member's age and membership (in whole years) satisfies the “rule of 85”, then the benefits would not be reduced. For a member who joined the Scheme on or after 1 October 2006, then reduced benefits would be payable if taken before age 65.

Policy

Each specific case will be judged equally and fairly on its own merits and would need to be funded by a lump sum contribution into the Pensions Fund by the Fire Authority. This discretion will only be exercised by the Fire Authority in cases where it can be demonstrated that the Fire Authority can fund the cost of the release within a three year period.

This discretion will be exercised by the Chief Fire Officer in conjunction with the Treasurer to approve existing severance packages and members will be notified where discretion is exercised.

2. Regulation 12 BReg – Power of the Employing Authority To Increase Total Membership of Active Members

Explanation

An employer may resolve to increase the total membership of an active member. A member's total membership, including additional membership in respect of different employments, must not exceed 10 years.

Policy

Each specific case will be judged equally and fairly on its own merits, having fully considered service delivery and financial costs.

3. Regulation 13 BReg – Power of the Employing Authority to award Additional Pension

Explanation

An employer may resolve to award a member additional pension of not more than £5000 a year, payable from the same date as their pension is payable under any other provision of these regulations. An additional pension may be paid in addition to any increase to total membership resolved under Regulation 12.

Policy

Each specific case will be judged equally and fairly on its own merits, having fully considered service delivery and financial costs.

4. Regulation 18 BReg - Flexible Retirement

Explanation

A member who is aged 55 or over and with their employer's consent reduces their hours and/or grade, can then, but only with the agreement of the employer, make an election to the administering authority for payment of their accrued benefits without having retired from that employment. If payment of benefits occurs before age 65, the benefits are actuarially reduced in accordance with guidance issued by the government actuary.

Where a person was a member on 31st March 2008 and makes an election before 31st March 2010 benefits can be paid if aged 50 or over.

The employer may choose to waive the reduction in whole or in part. If the employer chooses to do so, then the cost of waiving the reduction in whole or in part has to be paid to the Fund.

Policy

Each specific case will be judged equally and fairly on its own merits having fully considered service delivery and financial costs.

Your employer is not obliged by the Regulations to publish a statement on the following discretions contained within the LGPS (Administration) Regulations 2007, but has chosen to do so:

1. Regulation 3 BReg – Contributions Payable By Active Members

Explanation

Employers will determine the contribution rate payable based on whole-time pensionable pay for existing members at April each year or at the commencement of employment. Where there has been a material change to a member's pensionable pay in the course of a financial year, his employing authority may re-determine the contribution rate to be applied.

Policy

The Fire Authority will re-determine the contribution band each pay period in order to account for any material change to a member's pensionable pay which would have a direct affect on the employer's liabilities.

2. Regulation 16 AReg – Re-employed and Rejoining Deferred Members

Explanation

Where a deferred member becomes an active member again before becoming entitled to the immediate payment of retirement benefits in respect of their former membership they may elect to have their former membership aggregated with their current active membership. An election must be made in writing to the member's appropriate administering authority before the expiry of the period of 12 months beginning with the date that they became an active member (or any such longer period as their employing authority may allow).

Policy

The Fire Authority will extend the period of 12 months beginning with the date that they became an active member again to allow a member to aggregate his/her former membership in exceptional circumstances or where it was beyond the member's control.

3. Regulation 22 AReg – Application To Make Absence Contributions

Explanation

Employing authorities have the discretion to extend the period beyond 30 days for a person to apply in writing to make contributions.

Policy

The Fire Authority will extend the period of 30 days in circumstances beyond the member's control or in exceptional circumstances.

4. Regulation 67 – (Shared Cost AVC)

Explanation

Employers may resolve to establish and maintain a Share-Cost Additional Voluntary Contribution Scheme (SCAVC). Who can join, how much the employer and employee will jointly contribute and the type of benefits provided must be considered.

Policy

The Fire Authority does not propose to introduce a SCAVCS.

5. Regulation 83 – Inward Transfer of Pension Rights

Explanation

A person who becomes an active member who has relevant pension rights may request his fund authority to accept a transfer value for some, or all, of his former rights. An election must be made in writing before the expiry of the period of 12 months beginning with the date that he became an active member (or any such longer period as his employer may allow).

Policy

The Fire Authority will extend the period of 12 months beginning with the date that he/she became an active member – thereby, allowing a member to transfer some or all of his/her rights from the relevant transferor in exceptional circumstances or in circumstances beyond the member's control.

From 1 June 2004, an amended Internal disputes resolution procedure applies to active members of the LGPS and to others such as deferred and pensioner members, whose position may be affected by decisions taken by their former employer or LGPS administering authority.

1. Regulation 57(5)(c) – The Internal Dispute Resolution Procedure

Explanation

Responsibility for determinations under the first stage of the procedure now rests with a 'specified person' appointed by your (former) employer. The Fire Authority must specify the job title and address of the person to whom applications should be directed.

Policy

For the West Midlands Fire and Rescue Authority the specified person is:

Mr D Johnson
Head of Human Resources
West Midlands Fire Service HQ
99 Vauxhall Road
Birmingham
B4 7HW