



LOCAL GOVERNMENT (EARLY TERMINATION OF EMPLOYMENT) (DISCRETIONARY PAYMENTS) REGULATIONS 2006

RECOMMENDATION

- 1.1 To apply the Council's current policy as set out in paragraph 16 under the 2000 regulations to employees who were in employment with the Council commenced before 1 October 2006 and whose termination date is after 30 September 2006 but before 1 April 2007.
- 1.2 Subject to the provisions of the new regulations on added years, to adopt a general policy of 'no change' in respect of the 2006 regulations.
- 1.3 To review the policy every two years with any changes being published in a statement of the amended policy, which shall not come into effect until at least one month after its publication.
- 1.4 To calculate the statutory redundancy payment on the employee's actual week's pay in accordance with regulation 5 of the 2006 regulations.
- 1.5 Not to exercise any discretion to award compensation under regulation 6 of the 2006 regulations.
- 1.6 Where an employee's employment is terminated on the cessation of a joint appointment, to calculate the statutory redundancy payment (if applicable) on the employee's actual week's pay.
- 1.7 Not to exercise the power the Council has under Redundancy Payments Pension Regulations 1965 to offset the statutory redundancy payment against pensions or lump sums which are paid from the Local Government Pension Scheme immediately on redundancy, or within a short time thereafter.
- 1.8 To adopt the draft policy statement for implementing the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006 as set out in **Appendix 3** from 1 April 2007

SUPPORTING INFORMATION

- 2.1 New regulations, which came into force on 1 October 2006 and replace regulations made in 2000, require the Council to adopt a policy on how it intends to exercise discretion over the payment of compensation to

employees whose contract is terminated early on the grounds of redundancy or in the interest of the efficient exercise of the Council's function.

- 2.2 The Options Report at Appendix 2 provided the basis for a workshop attended by the Cabinet Member with responsibility for HR and officers, held on 15 December 2006. The policy statement at Appendix 3 reflects the outcome of the workshop.
- 2.3 The Council's current policy on the 2000 compensation regulations is:
- to calculate the statutory redundancy payment on the employee's actual week's pay
 - to award an eligible employee up to 6 2/3 compensatory added years where the employee volunteers for severance as part of the Council's Voluntary Early Retirement (VER) scheme
 - not to make any compensation payments under the provision which allows the award of up to 66 weeks' pay.
- 2.4 In summary, the new regulations:
- retain the discretionary power to calculate redundancy payments on pay up to the actual week's pay
 - provide a discretionary power to award a one-off lump sum payment of up to 104 weeks' pay, inclusive of any statutory redundancy payment
 - remove the power to award compensatory added years - although additional membership can still be awarded through the augmentation provisions of the LGPS.
- 2.5 The principle adopted in the policy statement is one of no change where the regulations allow this. It is therefore proposed that:
- the Council continues to use its discretion to calculate statutory redundancy payments based on an employee's actual weekly pay
 - the Council will not exercise any discretion to pay a compensatory lump sum of up to 104 weeks' pay either in cases of redundancy or terminations in the interests of the efficient exercise of the Council's functions.
- 2.6 The Council can no longer award up to 6 2/3 added years in cases of voluntary early retirement. This will need to be reflected in amendments to the Council's Voluntary Early Retirement policy.
- 2.7 Regulation 52 of the Local Government Pension Scheme allows the Council to award additional membership under the augmentation provisions. It is proposed that the flexibility to use these provisions is retained but, because of

the high cost of augmentation, to use them only in very exceptional circumstances.

- 2.8 The policy will come into effect one month after the Council gives its approval.
- 2.9 The policy will normally be reviewed every two years.

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List of appendices:	Appendix 1 – Implications
	Appendix 2 – Options report
	Appendix 3 – Policy statement on discretionary payments

IMPLICATIONS

Financial

1. The cost of calculating redundancy pay on an employee's actual weeks pay will be greater than if the statutory maximum of £310 a week was used.

Legal

2. The regulations require local authorities to develop and publish their policy on the award of discretionary payments.

Personnel

- 3.1 The inability to award added years removes an incentive for employees to volunteer for redundancy or early retirement which may lead to greater difficulties in the management of staffing reductions and avoiding compulsory redundancies.
- 3.2 The Council's policy on Voluntary Early Retirement will need to be amended to reflect this change.

Equalities

4. The new policy is fully compliant with the Employment Equality (Age) Regulations 2006.

Corporate Themes and Priorities

5. The policy contributes to the Council's priority to deliver excellent services, performance and value for money.

LOCAL GOVERNMENT (EARLY TERMINATION OF EMPLOYMENT) (DISCRETIONARY COMPENSATION) REGULATIONS 2006

OPTIONS REPORT

Introduction

1. Parliament has now approved the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006 ('the 2006 regulations'). The regulations came into force on 1 October 2006. They replace the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2000 (as amended) (the '2000 regulations').
2. This report sets out issues for consideration by the Council in the light of the changes and proposes a policy statement for the Council to adopt, as required under the regulations.

Transitional arrangements

3. Under regulation 11, there are transitional arrangements which apply to employees whose employment with the Council commenced before 1 October 2006 and whose termination date is after 30 September 2006 but before 1 April 2007. In such cases, the Council may either continue to pay compensation under the 2000 regulations or the 2006 regulations. In the interests of good employee relations, it is **recommended** that the Council should continue to apply its current policy (see paragraph 16) under the 2000 regulations to employees who were in employment with the Council before 1 October 2006 and whose termination date is after 30 September 2006 but before 1 April 2007.

Statutory redundancy payments scheme

4. The implementation of the compensation regulations coincides with changes to the statutory redundancy payments scheme made under the Employment Rights Act 1996, consequent upon the coming into force of the Employment Equality (Age) Regulations 2006.
5. From 1 October 2006, the upper and lower age limits for the right to statutory redundancy pay are removed, along with the final year 'taper'. However, the different multipliers which apply for different age groups will continue.
6. For redundancies on or after 1 October 2006, **the amounts under the statutory redundancy payments scheme** will be calculated as follows:
 - Up to the age of 21: 0.5 week's pay for each completed year of service

- 22 – 40 years of age: 1 week's pay for each completed year of service
 - 41+ years of age: 1.5 weeks' pay for each completed year of service.
7. As under the scheme before 1 October, the maximum length of service that may be taken into account is **20 years**, and the maximum payment is **30 weeks' pay**.
8. The maximum week's pay that an employee is entitled to under the statutory scheme is **£310** from 1 February 2007. The limit changes annually in line with the Retail Prices Index.

Local government compensation regulations

9. Up until 1 October 2006, local authorities have had powers under the 2000 regulations 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 the cessation of a joint appointment.
10. In summary, local authorities have been able to
- a. Calculate a compensation payment (including a statutory redundancy payment) on a figure up to the employee's actual week's pay.
 - b. Pay lump sum compensation (depending on the employee's age and service) of up to 66 weeks' pay (where 'added years' are not awarded).
 - c. Award 'added years' to employees age 50 or over (up to a maximum of ten, depending on length of service).
 - d. Under the Redundancy Payments Pension Regulations 1965, offset against the statutory redundancy payment pensions or lump sums which are paid from the Local Government Pension Scheme immediately on redundancy, or within a short time thereafter. [Note: In calculating the statutory redundancy payment, the Council must take into account all continuous service (up to a maximum of 20 years) with bodies listed in the Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999 (as amended) – the Modification Order. In calculating compensation payments under the '66 weeks pay' formula, Councils may take into account continuous or actual service (ignoring breaks in service) with bodies listed in the Modification Order; LGPS employers not listed in the Modification Order; service covered by the Teachers' and NHS pension schemes. The Modification Order is not affected by the 2006 regulations and remains unchanged.]
11. The Government now considers it necessary to revoke the 2000 regulations and replace them with new regulations to comply with the new law on age

discrimination. With the prospect of a revised Local Government Pension Scheme coming into force in 2008, the Government is taking the opportunity to revise the powers available to local authorities to make discretionary one-off lump sum payments or to award 'added years'.

12. The Government is of the view that the age and length-of-service related formula that governs the amount of the lump sum compensation payment (up to 66 weeks) under the 2000 regulations would be discriminatory under the age regulations, and does not believe it is appropriate to seek to objectively justify the potential discrimination. (It should be noted however that the age and service formula under the statutory redundancy scheme is being retained as the Government considers it complies with the EU Directive on Age as to move to a single multiplier would discriminate unfairly against older workers. This is reflected in regulation 33 of the Age Discrimination Regulations.) The 2006 regulations have therefore replaced the current formula-based payment of up to 66 weeks' pay under the 2000 regulations with a discretionary power to award eligible employees up to a maximum of 104 weeks' pay (essentially 2 years' pay).
13. The 2006 regulations have also removed the power within the 2000 regulations to award compensatory added years to eligible employees age 50 or over. (Authorities will still be able to award up to 6 2/3rds added years in certain circumstances under regulation 52 (the so-called augmentation provisions) of the LGPS regulations – see the note to paragraph 22.)
14. In summary, **the new regulations** will:
 - Retain the discretionary power to waive the weekly pay ceiling placed on statutory redundancy payments and to calculate redundancy payments on pay up to the actual week's pay.
 - Provide a discretionary power to award a one-off lump sum payment of up to 104 weeks' pay, inclusive of any statutory redundancy payment.
 - Remove the power to award added years (although additional membership can still be awarded through the augmentation provisions of the LGPS).
15. Local authorities will continue to be required to develop and publish their policy on the award of discretionary payments under the new regulations, including the criteria to be taken into account. Any such policy will have to comply with the new age legislation, as well as the other laws aimed at eliminating discrimination in employment.

The Council's current policy

16. The Council's current policy on the 2000 compensation regulations is:

- To calculate the statutory redundancy payment on the employee's actual week's pay.
- To award an eligible employee up to 6 2/3 compensatory added years under the 2000 regulations where the employee volunteers for severance, either on grounds of redundancy or in the interests of efficiency, as part of the Council's Voluntary Early Retirement (VER) scheme.
- Not to make any compensation payments under the '66 weeks' provision.

[Note: Under regulation 26 of the LGPS employees aged 50 or over whose employment terminates on grounds of redundancy (including efficiency of the service), or where the member holds a joint appointment which has been ended because the other holder has left it, are entitled to receive the immediate payment of their pension (unenhanced). For the time being, at least until the LGPS is revised, probably in 2008, this provision is unaffected and will continue.]

Options under the new regulations

17. The Council has a range of policy options under the new compensation regulations. In putting these forward for consideration by elected members, a number of factors have been taken into account. These include:

- Scope and effectiveness of current policy
- Ability to implement organisational change
- Cost
- Reasonableness
- The need to protect the Council from legal challenge
- Employee relations implications, including the views of the recognised trade unions.

18. Following discussions between the Cabinet member with responsibility for HR and officers at a workshop, the proposals set out in the following paragraphs are recommended.

Proposals for new policy

'No change'

19. It is considered that the Council's policy under the 2000 regulations has served it well, taking into account the factors set out in paragraph 17, and it therefore **recommended** that, subject to the provisions of the new regulations on added years, a policy of 'no change' should inform the policy to be adopted by the Council in respect of the 20006 regulations.

Review of policy

20. It is **recommended** that the Council's policy should normally be reviewed every two years. If the Council decides to change its policy, it will publish a

statement of the amended policy, the provisions of which shall not come into effect until at least one month after its publication, as required by regulation 7.

A week's pay

21. The Council currently calculates the statutory redundancy payment on the employee's actual week's pay. It is **recommended** that this policy should continue in accordance with regulation 5 of the regulations.

Added years

22. The Council will no longer be able to award added years under the regulations to redundant employees aged 50 or over.

(Note: The Council is able to award up to 6 2/3 added years under regulation 52 of the LGPS regulations (the augmentation provisions), regardless of the age of the employee, to employees who are in membership of the LGPS. Any decision to award added years under the augmentation provisions must be made before the employee's termination date with the Council. Unlike the added years provisions of the 2000 regulations, added years under regulation 52 of the LGPS can only be made to members of the LGPS. The awarding of added years under regulation 52 is for consideration under the discretionary provisions of the LGPS, and not the 2006 regulations.)

Additional compensation payments

23. The Council currently makes no compensation payments under the '66 weeks' provisions of the 2000 regulations. In accordance with the 'no change' principle (see paragraph 19), it is **recommended** that the Council should not exercise any discretion to award compensation under regulation 6 of the 2006 regulations.

Joint appointments

24. Where an employee's employment is terminated on the cessation of a joint appointment, it is **recommended** that the Council should calculate the statutory redundancy payment (if applicable) on the employee's actual week's pay, in accordance with regulation 5 of the 2006 regulations.
25. The Council has not up to now offset pensions or pension lump sums in this way and it is **recommended** that in accordance with the principle of 'no change', as outlined in paragraph 19, this policy should continue.

RECOMMENDATIONS

1. To apply the Council's current policy as set out paragraph 16 under the 2000 regulations to employees who were in employment with the Council commenced before 1 October 2006 and whose termination date is after 30 September 2006 but before 1 April 2007.

2. Subject to the provisions of the new regulations on added years, to adopt a general policy of 'no change' in respect of the 2006 regulations.
3. To review the policy every two years with any changes being published in a statement of the amended policy, which shall not come into effect until at least one month after its publication.
4. To calculate the statutory redundancy payment on the employee's actual week's pay in accordance with regulation 5 of the 2006 regulations.
5. Not to exercise any discretion to award compensation under regulation 6 of the 2006 regulations.
6. Where an employee's employment is terminated on the cessation of a joint appointment, to calculate the statutory redundancy payment (if applicable) on the employee's actual week's pay.
7. Not to exercise the power the Council has under Redundancy Payments Pension Regulations 1965 to offset the statutory redundancy payment against pensions or lump sums which are paid from the Local Government Pension Scheme immediately on redundancy, or within a short time thereafter.
8. To adopt the draft policy statement for implementing the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006 as set out in **Appendix 3** from 1 April 2007

DERBY CITY COUNCIL

**LOCAL GOVERNMENT (EARLY TERMINATION OF EMPLOYMENT)
(DISCRETIONARY COMPENSATION) REGULATIONS 2006**

POLICY STATEMENT

1. This policy statement is made in accordance with regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006 ('the regulations').
2. In accordance with regulation 11, the Council will continue to apply its current policy under the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2000 to employees whose employment with the Council commenced before 1 October 2006 and whose termination date is after 30 September 2006 but before 1 April 2007. This policy statement will therefore apply to all other cases and in particular where the termination date of the employment is on or after 1 April 2007.
3. This policy will normally be reviewed every two years. If the Council decides to change its policy, it will publish a statement of the amended policy, the provisions of which shall not come into effect until at least one month after its publication, as required by regulation 7.
4. In formulating and reviewing its policy, the Council, in accordance with regulation 7,
 - (a) will have regard to the extent to which the exercise of their discretionary powers (in accordance with the policy), unless properly limited, could lead to a serious loss of confidence in the public service; and
 - (b) will be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.
5. In particular, it will take into account
 - The scope and effectiveness of the policy
 - The ability to implement organisational change
 - Cost
 - Reasonableness
 - The need to protect the Council from legal challenge
 - Employee relations implications, including the views of the recognised trade unions.
6. The Council will calculate the statutory redundancy payment on the employee's actual week's pay, in accordance with regulation 5.

7. The Council will not exercise any discretion under regulation 6 to pay compensation, either in cases of redundancy or terminations in the interest of the efficient exercise of the Council's functions.
8. Where an employee's employment is terminated on the cessation of a joint appointment, the Council will calculate the statutory redundancy payment (if applicable) on the employee's actual week's pay, in accordance with regulation 5.
9. Although not an issue for consideration under the regulations themselves, the Council will continue its current policy and not exercise the power it has under the Redundancy Payments Pension Regulations 1965 to offset the statutory redundancy payment against pensions or lump sums which are paid from the Local Government Pension Scheme immediately on redundancy, or within a short time thereafter.