

Report to: Functions Committee
Date of Meeting: 26th September, 2006
Report of: Head of Human Resources
Title: Draft Discretionary Compensation Regulations 2006

1. SUMMARY

The attached report considers how the council should deal with the draft Discretionary Compensation Regulations 2006 which are due to become law on 1st October unless the government defers them. The government expects local authorities to act on these draft regulations now while discussions continue at a senior government level, because of the coming into force of the separate age discrimination regulations from 1st October 2006.,

2. RECOMMENDATIONS

- 2.1** That the provisions of the Council's current early retirement scheme, which would not meet the requirements of the new age discrimination regulations, be suspended with effect from 1st October, 2006 until the final regulations and transitional arrangements have been received. .
- 2.2** That consultations with Unison on the Council's future policy in this area, commence immediately
- 2.3** That a further report be made to the Functions Committee when the details of these new regulations are clearer along with proposals for a revised scheme.
- 2.4** The two staff who are currently facing redundancy and are affected by the situation regarding the regulations be given the opportunity to terminate their employment by 30th September under the current provisions

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Report approved by Tricia Taylor, Corporate Director

3.0 DETAILED PROPOSAL

3.1 Introduction

3.1.1 Since 1976, special provisions have been available to local government employers to make discretionary payments to employees whose employment has been terminated early on the grounds of redundancy, interests of the efficiency of the service or upon the cessation of a joint appointment. As a consequence of the age regulations due to be introduced on 1st October, 2006 the government has prepared new draft Discretionary Compensation Regulations which would not breach the age regulations.

3.1.2 In summary, the current provisions are:-

- To calculate redundancy payments on actual weekly pay instead of the statutory limit (currently £290)
- The discretionary power to award a one off lump sum of up to 66 week's pay, based on a service age-related formula
- The discretionary power to award added years on top of the benefits payable under the Local Government Pension Scheme for eligible employees aged 50 or over and under 65

3.1.3 The new regulations, in essence, will:-

- Retain the ability to calculate redundancy based on actual weekly pay
- Provide a discretionary power to award a one off lump sum payment of up to, but not exceeding, 104 week's pay, inclusive of any redundancy payment made
- Remove the power to award added years(although authorities can chose to award added years under the augmentation provisions of the Local Government Superannuation Scheme if they wish)

3.1.4 What are the relevant augmentation provisions of the LGPS?

Regulation 52 of the LGPS gives the employing authority the power to increase the membership of members leaving employment at or after 50. The Council's policy since November 2003 has been to apply this provision to employees at or over 55 years.

It will not be possible to get a lump sum under the Discretionary Payments Regulations and added years under this provision.

The additional period of membership must not exceed:-

- a) the member's total membership on the date he leaves his employment
- b) the period by which that falls short of 40 years
- c) the period by which that period would have been increased if he had continued as an active member until he was 65
- d) $6 \frac{243}{365}$ years

whichever is the shortest.

3.1.5 In a circular distributed to local authorities recently the government deferred the pension aspects of the age regulations until 1st December. However, although it is still considering the results of consultations with local authority organisations on the Draft Discretionary Compensation Regulations and requests from the union movement for transitional arrangements for staff affected by these changes, it appears that the proposed regulations are currently still likely to come in on 1st October 2006.

3.1.6 They recommend that local authorities determine their policies on the new regulations and administering pension authorities are ceasing to pay added years under the existing regulations after 1st October 2006. However, as long as it is specified in the new policy authorities can augment membership under Regulation 52 if they wish.

3.1.7 There remains uncertainty in view of the lateness of the issuing of the final regulations and agreement of transitional arrangements as to whether the new regulations may be deferred or not. The East of England Employers Organisation are hosting a briefing event on 4th October 2006 to receive national level advice on how local authorities should respond to the legislation and on timescales etc. .

3.1.8 There are a number of potential options councils can consider in determining their policies and approach to these regulations and an initial discussion on the Council's

possible approach has been held with the Corporate Management Board, for consultation with the union.

3.1.9 After agreeing a new early retirement policy, the government has stipulated that it cannot be implemented until one month after it is published. In addition the new policy may need to be revised in the light of the final regulations or in response to any pension changes which flow from the deferral of the pension aspects of the age regulations and any cases which successfully challenge any of the options which councils develop.

3.1.10 All in all, a far from satisfactory state of affairs. The Council does, however, need to adopt a position now to avoid challenge under the separate age discrimination regulations coming into force in 1st October 2006.

3.1.11 The issue was considered by CMB on 22nd September 2006 and it was recommended that the wisest course of action was to suspend the elements of the early retirement scheme which would breach the age discrimination regulations (i.e primarily the potential for employees over 55 to receive added years) and to assess the financial impact of different options which would comply with the new regulations and to begin consultation with Unison. It is proposed that there is a further report to this Committee once the government has given greater clarification on the details. It is also recommended that the provisions of the new early retirement scheme are backdated to 1st October, 2006.

3.2 Transitional Arrangements

There are two staff who are facing compulsory redundancy who would be entitled to early retirement because of their age and would receive added years but for the timing of the age legislation and the draft compensation regulations. As yet the government has also not published its transitional arrangements leaving all employees in local government in this position in “limbo land”. The advice from the Local Government Employers organisation is either to allow such staff to go by 30th September or that they would have to receive whatever the new policy determined. The advice of the Corporate Management Board is that both staff are being given the option of leaving by 30th September under the current provisions. If they choose not to, they would receive the provisions of the new policy determined at Functions Committee or be protected by transitional arrangements.

4. IMPLICATIONS

4.1 Financial

Capital Implications	2004/05 £	2005/06 £	2006/07 £	Future Years £
Scheme Description	N/A	N/A	N/A	
Less: Budget				
Growth / Savings				

Revenue Implications	2003/04 £	2004/05 £	2005/06 £	Future Years £
Cost Centre Description	N/A	N/A	N/A	
Employees				
Supplies				
Etc				
Less: Budget				
Growth / Savings				

The Director of Finance comments that the financial implications can only be properly assessed once the work on the options available to the council has been complete and presented to Functions

4.2 Legal Issues (Monitoring Officer)

The Head of Legal services comments that the legal issues are contained in the body of the report

4.3 Staffing

Staff in the process of being redundant due to the implementation of re-structuring exercises are impacted by this draft regulations.

4.4 Accommodation

There are no implications in this report

4.5 Equalities

The purpose of this report is to ensure that we comply with the Age Discrimination Act on 1st October 2006.

4.6 Community Safety

There are no implications in the report

4.7 Sustainability

There are no implications in this report

Appendices

None

Background papers:

“The following background papers were used in the preparation of this report (list). If you wish to inspect or take copies of background papers please contact the officer named on the front page of the report”

- LGE Advisory Bulletin No 515

File reference:

None.