

Meeting:	Licensing and General Purposes Committee
Date:	15 th June 2006
Subject:	Response to the Department for Communities and Local Government (DCLG) consultation draft Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
Responsible Officer:	Myfanwy Barrett - Director of Financial & Business Services
Contact Officer:	Greg Foley – Group Manager – HR Employee Services
Portfolio Holder:	Portfolio Holder Communications, Partnership and Human Resources
Key Decision:	No
Status:	Part 1 – Public

Section 1: Summary

On 8 May 2006 the Department for Communities and Local Government issued consultation draft regulations to replace the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000.

The new regulations set out to ensure that the discretionary powers to award compensation to local authority staff whose employment is terminated early will meet the requirements of the European Employment Directive. The regulations are intended to come into force on 1 October 2006, corresponding with the Employment Equality (Age) Regulations 2006.

Decision Required

That Elected Members consider the content of the report and form a view as to the most appropriate response. (See Appendix 3).

Elected Member response will be forwarded to the Department for Communities and Local Government by 31 July 2006.

That Elected Members instruct officers to submit a report on all Discretionary Payments once new legislation is to hand.

Reason for report

Response to the consultation draft regulations required by 31 July 2006

Benefits

Compliance with Employment Equality (Age) Regulations 2006

Cost of Proposals

Contained within the body of the report.

Risks

None

Implications if recommendations rejected

Non compliance with Employment Equality (Age) Regulations 2006

Section 2: Report

2.1 Brief History

2.2 The Compensation Regulations provide employers with the discretion to award compensation to staff whose employment has been terminated early on grounds of redundancy, in the interests of efficiency or on cessation of a joint appointment.

2.3 Legislation promulgated in April 1998 placed a statutory duty on the employing authority to formulate and publish a policy on application of discretions both in relation to the main scheme regulations (i.e. The Local Government Pension Scheme Regulations 1997) and the associated Compensatory Regulations.

2.4 Following a meeting of the Policy & Resources Committee, 2nd April 1998 Harrow Council formulated and issued their mandatory policy statement relating to discretions under the main scheme and also relating to its discretionary powers under the Discretionary Compensation Regulations. (See **Appendix 1**).

2.5 Rationale for government intervention

2.6 The European Employment Directive on Age Discrimination militates against the use of references to age in official regulations – unless it can be objectively justified.

2.7 Options considered

2.8 Initial consultations on proposed changes to the Discretionary Compensation Regulations were carried out as part of the Office of Deputy Prime Minister's (ODPM) stocktake Discussion Paper 'Facing the future – Principles and propositions for an affordable and sustainable Local Government Pension Scheme in England and Wales'.

- 2.9 Following consultation and after a careful assessment two options were identified as possible ways forward;
- 2.10 **Option A:** Introduce new regulations providing local authority employers with broad discretionary powers to make a one-off lump sum payment of up to two years pay.
- 2.11 **Option B:** Introduce new regulations providing local authority employers with broad discretionary powers to make a one-off lump sum payment of up to five years pay.
- 2.12 It is proposed that the discretion to award compensatory added years under the discretionary regulations is removed.
- 2.13 For both options there is no expectation that employers' staff compensation costs would rise (please refer to **Appendix 2** for examples and comparisons). Like the current Regulations, payment is discretionary and there is no reason to suppose that implementation would lead employers to increase their overall compensation budgets. It would give employers more flexibility to set the most appropriate compensation level for each individual case.
- 2.14 However, the potential maximum compensation costs under "Option B" would be two and a half times higher than those generated under "Option A". It may be questionable whether it would be appropriate to increase the flexibility for compensation payments up to a maximum of five years pay.
- 2.15 At this time the authority is not aware of any suggestion to change the discretionary award of Compensatory Added Years under the Teachers' Pension Scheme.
- 2.16 **Draft Regulations**
- 2.17 As with the current regime the draft regulations require each authority to formulate, publish and keep under review their policies on compensation. In formulating and reviewing their policies, authorities must have regard to the extent to which the exercise of their discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service and ensure that they are workable, affordable and reasonable, having regard to costs.
- 2.18 **Consultation**
- 2.19 A briefing note detailing the draft amendments has been presented to CMT.
- 2.20 **Financial Implications**
- 2.21 Contained within the body of the report
- 2.22 **Legal Implications**
- 2.23 Contained within the body of the report.

2.24 Equalities Impact

2.25 Contained within the body of the report

Section 3: Supporting Information/Background Documents

Appendices

Appendix 1 – Mandatory policy statement relating to discretions under the main scheme and relating to its discretionary powers under the Discretionary Compensation Regulations

Appendix 2 – Example and comparisons

Appendix 3 – Suggested response

Other supporting documents

Background Documents: Consultation draft: The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 and supporting correspondence to Associated Employers. Licensing and General Purposes Committee (papers copied to Pensions Investment Fund Panel): 7 March 2005.

Elected Member response: 7 March 2005