

CABINET – 3RD OCTOBER 2006

SUBJECT: LOCAL GOVERNMENT PENSION SCHEME - RETIREMENT POLICY

REPORT BY: CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 To advise Members on the changes to the current Voluntary Early Retirement Policy as a result of the Employment Equality (Age) Regulations (*"Age Regulations"*).
- 1.2. To consider the discretionary powers available to the Council, as a result of the changes to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales Regulations) 2006 (*"Discretionary Compensation Regulations"*) (DCR) and propose a new Scheme.

2. SUMMARY

- 2.1 The Department for Communities and Local Government (DCLG) has found it necessary to revoke the Discretionary Compensation Regulations and replace them with new regulations to comply with the age-related provisions of the Age Regulations due to come into force from 1 October 2006.
- 2.2 The final regulations will not be published until after the Summer recess of parliament (consultation on the draft Regulations ended on 31 July 2006). The Local Government Employers have advised that a draft based on the regulations currently being consulted on should be formulated and agreed by Cabinet with a proviso that a further report will be sent to Cabinet if the final regulations are materially different from the draft regulations.
- 2.3 It is the Government's position that the age and length of service related formula that governs the amount of compensatory added years or up to 66 weeks' compensation that may be eligible to employees upon termination would be discriminatory under the Age Regulations and it does not believe it is appropriate to seek to objectively justify the potential discrimination.
- 2.4 Additionally, a New Look Pension Scheme is also being consulted upon which will take effect from April 2008.

3. LINKS TO STRATEGY

- 3.1 This report has clear links to the budget strategy and also impacts on core Personnel policies and procedures.

4. THE REPORT

4.1 BACKGROUND

- 4.1.1 Since 1976, there have been special provisions available to local government employers to

make discretionary payments to employees whose employment has been terminated early in certain circumstances. One of the most sensitive areas relates to the granting of added years for pension purposes which this Council (as did most others) used their powers under the Discretionary Compensation Regulations to award those added years.

- 4.1.2 As well as the DCR, Authorities are also able to use the power in Regulation 52 of the Local Government Pension Scheme Regulations 1997 to increase the length of membership of an employee (augmentation) i.e. added years. Most Authorities did not use the 'augmentation' provision for reasons which will be explained later in the report.
- 4.1.3 The DCLG intends to replace the current compensation formula that provides for a maximum payment of 66 weeks based on age and service. This Council uses this formula (only) to compensate employees who are under 50 and have no immediate access to their pension benefits. The DCLG intend to replace this with a general power to award compensation **up to** a maximum of two years' pay (104 weeks).
- 4.1.4 The discretionary power to remove the weekly pay ceiling in relation to statutory redundancy payments under the Employment Rights Act and to calculate or pay up to the actual week's pay remains intact.
- 4.1.5 Further changes were introduced to the Local Government Pension Scheme as a consequence of the Finance Act 2004 which became effective from April 2006 and it is now appropriate to fully review the discretion provided by the DCR and LGPS from an employer perspective (and in partnership with the Administering Authority) and publishing policies where stipulated.
- 4.1.6 Additionally, a New Look Pension Scheme is presently being consulted upon which will take effect from April 2008. There are four options on offer to Authorities and consultation is presently taking place in relation to the options and associated costs.
- 4.1.7 Whilst this report offers a number of issues to be considered in developing such policies, other matters for consideration are not time bound to 1 October 2006 and further reports will be submitted to Cabinet in due course.

4.2 **Current Principles**

- 4.2.1 This Council has used the DCR in relation to a person whose employment is terminated by:-
- Reason of redundancy;
 - In the interests of the efficiency of the service;
 - Voluntary early retirement in relation to restructuring.
- 4.2.1 Procedures are in place to ensure that all applications for early retirement are supported by a robust business case.
- 4.2.3 The present arrangements in accordance with the Council's constitution are as follows:-
- Decisions on early retirements are taken by the Early Retirement Sub-Committee, which comprises of seven members to determine such applications and to approve any related staffing/structural amendments.
 - Where early retirements are a direct result of significant restructuring and/or compulsory redundancy, then the principles of that restructuring are progressed via the scrutiny/cabinet process.
- 4.2.4 The Regulations provide that when Authorities are formulating and reviewing their policies, regard must be had to the extent of their discretionary powers and unless properly limited,

would lead to serious loss of confidence in the public service. Hence, the above procedures ensure that the current policy is workable, affordable and reasonable, having regard to cost. This process must also be sustained when formulating any new Policy.

4.3 Options Available

4.3.1 Augmentation

- The Local Government Pension Scheme (Regulation 52) provides the ability to award added years and is a separate provision to the current DCR.
- Under Regulation 52, an Employer can award added years at any time from commencement to termination and is not restricted to age or early retirement events as provided under the DCR.
- However, an Employer cannot make a compensation payment where augmented service has been awarded. In other words, an employee has the choice of augmented added years plus statutory redundancy or compensation under the compensation scheme (please see 4.4 below with regard to compensation).
- The cost of augmented service must be paid to the Fund in full (unless agreed that this is handled by way of increased Employer contribution rate). Locally, Torfaen County Borough Council are investigating whether the current arrangement of pay back over five years (up to an employee's 65th birthday) can continue.
- Is more tax efficient to the employee as any LGPS Award is not subject to the ex gratia tax rules.
- Augmented service is capped at a maximum of 6 $\frac{2}{3}$ added years or the period to age 65.
- The Council would be subject to legal challenge if the Council relate the augmented service to age and service and it is therefore recommended that a flat award be granted of 2 added years based on the following:-
 - the employee has a minimum of five years' service.
 - Termination on the grounds of:-
 - Redundancy (Voluntary/Compulsory)
 - Interests of Efficiency of the Service

4.4 Compensation/Redundancy

4.4.1 Currently, the Council grants compensation to those under 50 (who cannot access their pension benefits) based on age and service up to a maximum of 66 weeks. For those over 50, added years for pension purposes are granted based on age and service together with, where appropriate, a statutory redundancy payment up to a maximum of 30 weeks' pay.

4.4.2 The DCLG have taken the view that a formula based on age and length of service will contravene age discrimination legislation from 1 October 2006. However, the statutory redundancy provisions within the Employment Rights Act 1996 (which is also based on age and service) has been retained in statute, having met the objectively justified test.

4.4.3 The draft DCR provide a general power to Authorities to award compensation up to a maximum of two years' pay (104 weeks). While the provision to introduce a wider general

power to award compensation and grant local discretion in its operation may be viewed as a step in the right direction, it brings associated difficulties in ensuring that policies developed would not meet age discrimination challenges on the one hand and provide cost effective tools to manage workforce change on the other.

4.4.4 It is therefore recommended that a compensation scheme be developed which will be based on the statutory redundancy calculator (which provides an age and service based award to a maximum of 30 weeks' redundancy) uplifted by a factor of two which will give a maximum award of 60 weeks.

4.4.5 Where added years have been awarded under the augmentation rule, only the statutory redundancy payment (up to 30 weeks) will be awarded, where this is appropriate and part of the *'business case'*.

4.4.6 Compensation up to 60 weeks will also apply to employees who are under 50 and have no access to pension benefits. The current policy is to base redundancy or compensation payments at actual pay levels as opposed to the Statutory Redundancy limit (presently £290.00 per week). The draft DCR regulations again provide scope to base compensation awards to a level of actual pay.

4.5 **Regulation 31 - 85 Year Rule**

4.5.1 Though this issue has been the subject of a separate consultation exercise under the LGPS Regulations, it is appropriate to consider this matter within the context of the report as it falls as an area of discretion that requires a policy determination and publication.

4.5.2 The *'85 Year Rule'* is simply a test that is applied in a voluntary early retirement situation to determine whether benefits are subject to reduction. Where an employee's age and service equates or exceeds 85 years at age 60 or over, no reduction applies and the employee does not need Employer's consent to retire early. Any employee who attains the *'85 Rule'* and is under 60, Employer's consent is required and a business case has to be made in order to meet the costs of *'early release'* of pension benefits.

4.5.3 Transitional protection proposals under the LGPS (subject to a judicial review granted to the Trade Unions) are outlined below:-

- Extending service protection until 31 March 2008 to **all** members in the LGPS at 30 September 2006. This will *'tie in'* with the New Look Pension Scheme which is intended to take effect from 1 April 2008.
- Extend the transitional protections from 31 March 2013 to 31 March 2016 to those who will be 60 or over by that date and meet the 85-year test. Tapering reductions will apply to 31 March 2020 to *'tie in'* with the increase in the state retirement age for women to 65 in 2020 and avoid the *'cliff edge'* effect.
- Where the *'85 Year Rule'* test cannot be met, an actuarial reduction will apply in normal circumstances.

It is recommended that the present arrangements continue, but taking into account the proposals above.

4.6 **Other Related Issues**

4.6.1. **Flexible Retirement**

Changes have been made to LGPS rules from April 2006 which introduces a option for flexible retirement. This will allow an employee to access immediate reduced pension

benefits where the Employer agrees a reduction in grade or hours. These changes apply to employees who are over 50 years of age but under 65 years of age.

The new discretionary provision requires the Employer to publish a Policy and is recommended that full details be given to Cabinet once the full impact is known should a Scheme be introduced.

4.7 Employment Post Age 65

4.7.1 A *'fair retirement process'* has been introduced as laid down by the Age Regulations and is subject to a separate Cabinet report.

4.8 Redeployment Policy

4.8.1 The Council's Redeployment Policy needs to be reviewed in light of the above changes and other legislative matters e.g. Disability Discrimination Act.

4.9 Ill-health Retirement

4.9.1 There is no change to the current arrangements for ill health retirement i.e. there is no age limit and any award for added years is automatic and paid directly from the Fund.

4.10 Retirement Ages

4.10.1 Apart from permanent ill-health (where no age restriction applies), pension benefits can only be accessed between age 50 (this will increase to 55 from 2010) and under age 60 following Employer consent. The Local Government Pension Scheme's *'normal retirement age'* is still age 65, though individuals can join or remain in the LGPS until two days before their 75th birthday.

4.11 Taxation

4.11.1 Any discretionary award must be evaluated and assessed for a liability under the ex gratia tax provisions. In essence, where the discretionary award exceeds £30,000, the excess is subject to a tax deduction at the individual's marginal rate. The components subject to assessment are the awards of compensation/redundancy and the added year element of the lump sum. This mostly affects senior managers and the recommendation presented to grant redundancy compensation, up-rated by a factor of two in a redundancy situation, as an option will have tax implications for the individual to consider.

4.12 Council Members

4.12.1 Members are excluded from the majority of policy determination as they are deemed to be *'Office Holders'*. One exception covers the provision of early retirement under Regulation 31 of the principal LGPS Regulations, i.e. 85 Year Rule.

4.13 Policy Approval Mechanism

4.13.1 Discretionary policies fall as an Employer policy and full approval needs to be sought therefore from Cabinet and Full Council.

4.14 Consultation Response

4.14.1 A response to the formal consultation exercise was issued by the DCLG by set time-scales. In normal circumstances, consultation would take place in advance of this Cabinet Report. However, given the requirement for Council Policy to be changed, this report is seeking a steer from Cabinet in the first instance. It is intended that Trade Union representatives will be fully consulted on the recommendations contained in this report.

4.15 **Teachers Compensation**

4.15.1 Ideally, any policy development would have equal application across the workforce. The Teachers' Pension Scheme is aware of the proposals under the LGPS and may well follow suit. However, draft amendments are still awaited in this area.

4.16 **Selection Criteria for Redundancy**

A selection criteria for *'last in and first out'* cannot now be allowed as a result of the Age Regulations. This most affects Schools and a new Scheme should be developed which is not based on the above criteria.

5. **FINANCIAL IMPLICATIONS**

5.1 Financial implications are not clear but probable indications are that any costs will be offset by business cases, which will outline the service delivery benefits and address the cost of early retirement to be recovered over a period of no greater than five years. All business cases will be controlled through the robust systems which are already in place.

6. **PERSONNEL IMPLICATIONS**

6.1 Changes to the current policy do have personnel implications. The implications for individuals are clearly outlined in the body of this report as are the implications for the Council.

7. **CONSULTATIONS**

7.1 Consultation has taken place with the Director of Corporate Services, Pensions Manager (Torfaen County Borough Council), HR Strategy Group, Head of People Management & Development, Head of Corporate Finance, Head of Legal Services and the Council's Deputy Monitoring Officer and Corporate Management Team. Further consultation will take place with the Trade Unions, Older Persons' Officer and the Equalities Groups

8. **RECOMMENDATIONS**

8.1 Trade Union Consultation – that the recommendations below be used as a basis for consultation with the Trade Unions:

- *Augmentation*

The augmentation rule is utilised and that a flat rate of 2 years be granted where terminations arise as a consequence of efficiency or redundancy (both voluntary or compulsory) and provided that the individual has at least 5 years' service.

Where added years under the augmentation rule are applied, only the statutory redundancy payment (up to 30 weeks) will be awarded, where this is appropriate and *'part of the business case'*.

- *Compensation/Redundancy*

The Council develop a Compensation Scheme, which will be based on the statutory redundancy calculator (which provides an age and service based award to a maximum of 30 weeks' redundancy) uplifted by a factor of two, which will give a maximum award of 60 weeks and will apply to staff who have made the choice not to be awarded augmented added years.

The current policy of basing redundancy/compensation payments at actual pay levels as opposed to the statutory redundancy limit (present £290.00 per week) will remain.

8.2 *85-Year Rule – Regulation 31*

Each case requiring Employer's consent to be considered on the basis of a robust business case being made and the prevailing regulations in force.

8.3 *Flexible Retirement*

Full details on a possible Policy to be presented to Cabinet at a later date.

8.4 *A New Look Pension Scheme*

Full details on a possible Policy to be presented to Cabinet at a later date.

8.5 *Council Decision*

Once consultation with the Trade Unions has been completed, the report will be a function of full Council to agree.

9. REASONS FOR THE RECOMMENDATIONS

- 9.1 The Council's current scheme on VER needs to be replaced by 1 October 2006 as a result of the Employment Equality (Age) Regulations.

10. STATUTORY POWER

- 10.1 Employment Equality (Age) Regulations, Local Government (Early Termination of Employment), (Discretionary Compensation) (England & Wales) Regulations 2006, Local Government Pension Scheme Regulations, Local Government Act 1972.

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Corporate Management Team

Further consultation with:
Trade Unions
Older Persons' Officer
Equalities Groups

These recommendations are endorsed by Corporate Management Team.