

2006 No. 2914

PENSIONS, ENGLAND AND WALES

**The Local Government (Early Termination of Employment)
(Discretionary Compensation) (England and Wales) Regulations
2006**

<i>Made</i> - - - -	<i>6th November 2006</i>
<i>Laid before Parliament</i>	<i>7th November 2006</i>
<i>Coming into force</i> - -	<i>29th November 2006</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 24 of the Superannuation Act 1972(a).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006.

(2) They shall come into force on 29th November 2006 but shall have effect from 1st October 2006(b) and extend to England and Wales(c).

Interpretation

2.—(1) In these Regulations—

“the 1996 Act” means the Employment Rights Act 1996(d);

“the 2000 Regulations” means the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000(e)

“employing authority”, in relation to a person, means—

- (a) a body listed in Schedule 2 (Scheme employers) to the Pension Regulations by whom he is employed immediately before the termination date;
- (b) a body listed in regulation 4(6) (resolution bodies) of those Regulations—
 - (i) by whom he is employed immediately before the termination date; and
 - (ii) which has passed a relevant resolution, within the meaning of regulation 4(5) of those Regulations, which covers him; or

(a) 1972 c.11.

(b) Section 24(3) of the Superannuation Act 1972 permits regulations to be framed so as to have effect from a date earlier than the making of the regulations.

(c) The Secretary of State’s functions under section 24 of the Superannuation Act 1972 so far as exercisable in relation to Scotland are transferred to Scottish Ministers; see section 63 of the Scotland Act 1998 (c.46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

(d) 1996 c.18, to which there are amendments not relevant to these Regulations.

(e) S.I.2000/1410, amended by S.I. 2001/3649, 2002/769, 2003/1022, 2005/3069.

- (c) in the case of a person who is eligible to be a Scheme member under regulation 127(1)(a) or (aa) of the Pension Regulations^(a), the local education authority by whom he is deemed to be employed under regulation 128 of the Pension Regulations.

“employment” includes office but does not include a period as—

- (a) the Mayor of London,
- (b) a member of the London Assembly, or
- (c) a councillor member;

“Pension Regulations” means the Local Government Pension Scheme Regulations 1997^(b);

“Scheme member” means a member of the Local Government Pension Scheme constituted by the Pension Regulations;

“termination date” in relation to a person means the final day of his employment.

(2) Expressions not defined in paragraph (1) but used in these Regulations and in the Pension Regulations have the same meaning as in those Regulations.

Application to the Isles of Scilly

3. These Regulations apply to the Isles of Scilly as if they were a district in the county of Cornwall and the Council of the Isles of Scilly were a council of that district.

Application of the Regulations

4.—(1) Subject to regulation 11(2), these Regulations apply in relation to a person—

- (a) whose employment is terminated—
 - (i) by reason of redundancy,
 - (ii) in the interests of the efficient exercise of the employing authority’s functions, or
 - (iii) in the case of a joint appointment, because the other holder of the appointment has left it;
- (b) who, on the termination date, is—
 - (i) employed by an employing authority, and
 - (ii) eligible to be a Scheme member (whether or not he is such a member) or would be so eligible but for the giving of a notification under regulation 8 of the Pension Regulations; and
- (c) whose termination date is on or after 1st October 2006,

and in the following provisions of these Regulations, “person” shall be construed accordingly, unless the context indicates that it has a different meaning.

(2) Where an additional requirement is specified in any provision of regulations 5 and 6 in relation to a person, that provision does not apply in relation to him unless he satisfies that additional requirement.

Power to increase statutory redundancy payments

5.—(1) Compensation may be paid in accordance with this regulation to a person who is entitled to a redundancy payment under the 1996 Act on the termination of his employment.

(2) The amount which may be paid must not be more than the difference between—

- (a) the redundancy payment to which he is entitled under Part 11 of the 1996 Act; and

(a) Regulation 127 was amended by S.I. 1992/1212.

(b) S.I. 1997/1612; relevant amending instruments are 1998/1238, 1999/1212, 2000/1164, 2001/1481, 2002/206, 2003/3004, 2004/573, 2005/2004.

- (b) the payment to which he would have been entitled if there had been no limit on the amount of a week's pay used in the calculation of his redundancy payment.
- (3) The power to pay compensation is exercisable by the employing authority.

Discretionary compensation

- 6.—(1) This regulation applies where a person—
- (a) ceases to hold his employment with an employing authority, and
 - (b) in respect of that cessation may not count an additional period of membership under regulation 52 (power of employing authority to increase total membership of members) of the Pension Regulations^(a).
- (2) Where this regulation applies, the employing authority may, not later than six months after the termination date, decide to pay compensation under this regulation and in that event shall, as soon as reasonably practicable after the decision, notify the person in whose favour it has been made, giving details of the amount of the compensation.
- (3) The amount of compensation must not exceed 104 weeks' pay.
- (4) Chapter 2 (a week's pay) of Part 14 (Interpretation) of the 1996 Act shall apply for the purpose of calculating a person's week's pay as it applies for the purpose of calculating redundancy payments but—
- (a) with the substitution for references to the calculation date of references to the termination date; and
 - (b) without the limit on a week's pay imposed by section 227 of that Act.
- (5) If the person in whose favour a decision under paragraph (2) has been made receives a redundancy payment under Part 11 of the 1996 Act or compensation under regulation 5 of these Regulations, the equivalent amount shall be deducted from the compensation otherwise payable to him under this regulation.
- (6) Compensation under this regulation shall be paid by the employing authority as soon as practicable after the decision under paragraph (2).
- (7) The compensation shall be payable in the form of a lump sum.

Policy Statements

- 7.—(1) Each employing authority must formulate, publish and keep under review the policy that they apply in the exercise of their discretionary powers under regulations 5 and 6.
- (2) If the authority decide to change their policy, they must publish a statement of the amended policy and may not give effect to any policy change until one month after the date of publication.
- (3) In formulating and reviewing their policy the authority must—
- (a) 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) be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.

Payments and repayments

- 8.—(1) Any compensation payable under these Regulations is payable to or in trust for the person entitled to receive it.
- (2) Where any compensation is paid in error to any person—
- (a) the employing authority must, as soon as possible after the discovery of the error—

(a) Regulation 52 was amended by S.I. 2004/573.

- (i) inform the person concerned, by notice in writing, giving details of the relevant calculation,
 - (ii) where there has been an underpayment, make a further payment,
 - (iii) where there has been an overpayment, specify a reasonable period for repayment;
- (b) a person who has received a notice under sub-paragraph (a) must repay any overpayment within the specified period; and
- (c) the employing authority may take such steps as they consider appropriate to recover from the person to whom it was paid any overpayment which has not been repaid within the specified period.

(3) The employing authority shall take into account the person's circumstances (so far as known or reasonably ascertainable) before taking steps under paragraph (2) (c).

Finance

9. The cost of any payment to be made under these Regulations must not be met out of any pension fund maintained under the Pension Regulations.

Consequential amendments

10. Schedule 1 shall have effect for the purpose of making amendments which are consequential on the making of these Regulations.

Revocation of Regulations, transitional provisions and savings

11.—(1) The following are revoked but subject to the transitional provision in paragraph (2) and the savings in Schedule 2 —

- (a) the 2000 Regulations,
- (b) regulation 598 of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001(a),
- (c) the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) (Miscellaneous) Regulations 2002(b),
- (d) regulation 9(2) of the Local Government Pension Scheme and Discretionary Compensation (Local Authority Members in England) Regulations 2003(c), and
- (e) regulation 5 of the Local Government Pension Scheme (Civil Partnership) (Amendment) (England and Wales) Regulations 2005 (d)

(2) An employing authority may decide to pay compensation under the 2000 Regulations to a person whose employment with them commenced before 1st October 2006 and whose termination date is after 30th September 2006 and before 1st April 2007.

(3) An employing authority may decide to pay compensation under regulation 6 of these Regulations to a person—

- (a) whose employment with them terminated after 30th September 2006 and before the date on which these Regulations come into force, and
- (b) in respect of whom a decision to pay lump sum compensation has been made and notified under Part 3 of the 2000 Regulations before the date on which these Regulations come into force (“the 2000 lump sum”).

(4) The amount that an employing authority may decide to pay under paragraph (3) may not exceed the difference between—

(a) S.I. 2001/3649.
 (b) S.I. 2002/769.
 (c) S.I. 2003/1022.
 (d) S.I. 2005/3069.

- (a) 104 weeks' pay, and
- (b) the 2000 lump sum

but if the person in whose favour a decision under paragraph (3) has been made receives a redundancy payment under Part 11 of the 1996 Act or compensation under regulation 5 of the 2000 Regulations or regulation 5 of these Regulations, the equivalent amount shall be deducted from the compensation otherwise payable to him under paragraph (3) if no such adjustment has already been made.

(5) Nothing in these Regulations shall place any individual who is eligible to participate in the benefits for which the 2000 Regulations provide in a worse position than he would have been in if all the provisions of these Regulations had been framed so as to have effect only from the date of their making.

Signed by authority of the Secretary of State

Phil Woolas
Minister of State

6th November 2006

Department for Communities and Local Government

SCHEDULE 1

Regulation 10

CONSEQUENTIAL AMENDMENTS

1. In regulations 4(1)(c) and 8(2)(a) of the Local Government Reorganisation (Compensation for Loss of Remuneration) Regulations 1995(**a**), for “or Part IV of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000” substitute “or regulation 5 or 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006”.

2. In regulation 12(3) (b) (claims etc. in connection with contracts of employment) of the Local Government Changes for England (Miscellaneous Provision) Regulations 1996(**b**) for “Part III of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000” substitute “or regulation 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006”.

3. In regulation 4(d) of the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003(**c**) at the end add “or the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006”.

4. In regulation 7A(2)(b) of the Accounts and Audit Regulations 2003(**d**) at the end add “or the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006”.

(a) S.I. 1995/2837, amended by S.I. 1996/1680 and S.I. 2000/1410.
(b) S.I. 1996/330, amended by S.I. 1996/1680 and S.I. 2000/1410.
(c) S.I. 2003/3239, to which there are amendments not relevant to these Regulations.
(d) S.I. 2003/533; regulation 7A was inserted by S.I. 2006/564, regulation 8.

SAVINGS

1. The revocation of the 2000 Regulations does not affect—

- (a) any person whose termination date is before 1st October 2006 and who is eligible for compensation under the provisions of those Regulations,
- (b) any person to whom an employing authority have decided that compensation shall be paid under those Regulations in accordance with regulation 11(2) of these Regulations, or
- (c) the rights of any person who is entitled to benefits under those Regulations in consequence of the death of such a person

and in relation to such persons those Regulations shall continue to apply.

2. Where—

- (a) any provision continues to have effect in relation to any person by virtue of paragraph 1, and
- (b) immediately before 1st October 2006 it has effect in relation to him subject to any saving, transitional provision or modification

nothing in these Regulations affects the operation of that saving, transitional provision or modification.

3. The revocation by these Regulations of any provision which previously revoked any provision subject to savings does not affect the continued operation of those savings, in so far as they remain capable of having effect.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide a new, simplified framework for the payment of discretionary compensation to persons whose local government employment is terminated on or after 1st October 2006 by reason of redundancy or in the interests of the service or where a joint appointment comes to an end because one of the holders leaves. They revoke the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 (“the 2000 Regulations”) but the revocation does not affect any person whose termination date is before 1st October 2006 or the rights of any person who is entitled to benefits under those Regulations in consequence of the death of such a person. In relation to such persons the 2000 Regulations continue to apply.

Regulation 4 states to whom the Regulations apply.

Regulation 5 gives a power to increase a redundancy payment made under the Employment Rights Act 1996.

Regulation 6 allows an employer to award compensation in the form of a lump sum of an amount that must not exceed 104 weeks’ pay. The regulation sets out the basis for calculating a week’s pay for an individual. Any redundancy payment under the 1996 Act or compensation paid under regulation 5 of these Regulations must be offset against compensation paid under regulation 6.

Regulation 7 requires each employing authority to have and publish a policy that they apply in the exercise of their discretionary powers under regulations 5 and 6.

Regulation 8 deals with how payments are made and any errors dealt with.

Regulation 9 provides that payments made under these Regulations must not be met out of any Local Government Pension Scheme funds.

Regulation 11 contains transitional provisions and revocations, subject to savings. A transitional provision is that an employing authority may decide to pay compensation under the 2000 Regulations in respect of a person whose employment commenced before 1st October 2006 and whose termination date is between 30th September 2006 and 1st April 2007. An employing authority may also pay additional compensation under these Regulations to a person whose termination date is between 30th September 2006 and the date on which these Regulations came into force and who has been awarded a lump sum under Part 3 of the 2000 Regulations, as long as the total amount paid does not exceed the maximum payable under these Regulations.

The Regulations take effect from 1st October 2006. Section 24 of the Superannuation Act 1972 provides that regulations made under that section may have retrospective effect. Regulation 11(5) of these Regulations provides that nothing in these Regulations shall place any individual in a worse position than he would have been if these Regulations had not had retrospective effect.

Schedules 1 and 2 make consequential amendments and savings.

A regulatory impact assessment of the effect that this instrument will have on the costs of local government employing authorities was published on 6th November 2006 and is available on the internet at www.xoq83.dial.pipex.com. Copies can be obtained by post from the Department for Communities and Local Government, Zone 2/F6, Ashdown House, London SW1E 6DE, or by phoning 0207 944 4137. The assessment anticipated that this instrument will not increase employers’ compensation costs.

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