

**EXPLANATORY MEMORANDUM TO**  
**THE LOCAL GOVERNMENT (EARLY TERMINATION OF EMPLOYMENT)**  
**(DISCRETIONARY COMPENSATION) (ENGLAND AND WALES) REGULATIONS**  
**2006**

**2006 No. 2914**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Description**

2.1 The Regulations provide local government employers with discretionary powers to award employees a one-off lump sum of up to two years pay where their employment is terminated early.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Background**

4.1. The instrument replaces current powers for local government employers to award discretionary payments where employment is terminated early. They replace current regulations containing provisions that could be seen as age discriminatory and simplify existing provisions by providing employers with a discretionary power to make a straightforward one off lump sum payment.

**5. Extent**

5.1 This instrument applies to England and Wales.

**6. European Convention on Human Rights**

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**7. Policy background**

7.1 These Regulations help further the Government's objective of ending employment discrimination on grounds of age by revoking the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 which provide discretionary awards, some of which are restricted to those aged 50 or over. The replacement Regulations provide local government employers with discretionary powers to award employees a one-off lump

sum payment where employment is terminated early. Those eligible to be considered for such an award must be eligible to be a member of the Local Government Pension Scheme whether or not they are a member.

The Regulations should be seen in the context of the broader policy and regulatory changes for the Local Government Pensions Scheme designed to lead to the introduction of a new look scheme in April 2008 which started with the consultation “Facing the Future” from October 2004 to March 2005. The results of this consultation concluded that 93%, who offered an opinion on the compensatory aspect of the issues being discussed, were in favour of revoking the existing discretionary compensation. 83% of respondents offering an opinion on the replacement of the maximum level of award were in favour of it being set at two years pay.

Stakeholders were consulted on the proposed draft 2006 discretionary compensation regulations starting on 8 May and ending on 31 July 2006. The representations were carefully considered and a second consultation from 4 to 31 August 2006 was undertaken to establish the extent to which some transitional protections would be deemed appropriate. An analysis is contained in the final Regulatory Impact Assessment (this will also be available at [www.xoq83.dial.pipex.com](http://www.xoq83.dial.pipex.com)).

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is limited to staff eligible for the Local Government Pension Scheme and their employers.

## **9. Contact**

Philip Perry, Department for Communities and Local Government, can answer any queries regarding the instrument. Contact details are: tel: 020 7944 4137, or e-mail [Philip.perry@communities.gsi.gov.uk](mailto:Philip.perry@communities.gsi.gov.uk)

# **The Chief Executive of: County Councils (England) FINAL REGULATORY IMPACT ASSESSMENT (RIA)**

## **Title of Proposal**

1. IMPLEMENTATION OF REGULATIONS IN RESPECT OF DISCRETIONARY COMPENSATION FOR EARLY TERMINATION OF LOCAL GOVERNMENT EMPLOYMENT

## **Purpose and Intended Effect of Measure**

### Objectives

2. (i) To help further the Government's objective of ending employment discrimination on grounds of age and (ii) to provide local government employers (primarily) in England and Wales with discretionary powers to award local government employees a one-off lump sum payment where employment is terminated early.

### Background

3. The current system is governed by the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000. These Regulations set out precise formulae governing the type and maximum level of compensation which may be paid in different sets of circumstances. They also provide for the award of credited periods, commonly known as "added years". Any awards are made at the discretion of the employer on the basis of their policy determined locally by Councillors.
4. The main types of compensation payable under the 2000 Regulations are set out in Parts II, III and IV. Part II provides a discretionary power to waive the pay ceiling on statutory redundancy payments. Part III provides discretionary power to award a one-off lump sum payment of up to 66 weeks' pay. The maximum number of weeks pay which can be given to an employee is governed by age and length of service. Part IV provides employers with discretionary powers to award a credited period. This is made up of a one-off lump sum payment paid at the time employment ceases, followed by annual payments until the death of the person, with ongoing compensation to eligible surviving spouses or civil partners and children. Such awards are only open to individuals between the ages of 50 and 65.

### Rationale for government intervention

5. The new regulations follow on from proposals in 2004 to review the overall discretionary compensation provisions that currently apply to local authority employers in England and Wales. The regulations provide a simpler structure for local government and are accordingly consistent with the Government's Better Regulation Agenda. Also, the age discrimination provisions of the EU Directive on equal treatment in employment mean that any public service scheme which may discriminate on the grounds of age may be challenged in the courts as contrary to European law. The 2000 Regulations provide different provisions for awards based on age and length of service, and therefore could be regarded as age discriminatory and open to challenge.

## **Consultation**

6. Initial, informal consultations on proposed policy and regulatory changes to the discretionary compensation were carried out as part of "Facing the future – Principles and propositions for an affordable and sustainable Local Government Pension Scheme in England and Wales". The consultation began on 4 October 2004 and concluded on 31 March 2005. Those consulted were essentially those listed in paragraph 8 below.
7. Consultation for the proposed 2006 regulations which took into account responses to "Facing the future", began on 8 May 2006 and ended on 31 July 2006. There was a further period of consultation from 4 August to 28 August, to assess the need for transitional provisions in order to provide for situations where termination terms had been discussed with employees who were being made redundant after 1 October.
8. Copies of the regulations were sent for comment to:

### Within government

Government Actuary's Department  
Department of the Environment (Northern Ireland)  
Scottish Public Pensions Agency

### Public consultation

District Councils (England)  
 Metropolitan Borough Councils (England)  
 Unitary Councils (England)  
 County and County Borough Councils in Wales  
 London Borough Councils  
 South Yorkshire Pension Authority  
 Tameside Metropolitan Borough Council  
 Wirral Metropolitan Borough Council  
 Bradford Metropolitan Borough Council  
 South Tyneside Metropolitan Borough Council  
 Wolverhampton Metropolitan Borough Council  
 London Pension Fund Authority  
 Environment Agency  
 National Probation Service for England and Wales  
 Town Clerk, City of London Corporation  
 Clerk, South Yorkshire Passenger Transport Authority  
 Clerk, West Midlands Passenger Transport Authority  
 Police Authorities in England and Wales  
 Fire and Rescue Authorities in England and Wales

The Secretaries of :

Local Government Association  
 Local Government Pensions Committee  
 Employers' Organisation  
 Society of Chief Personnel Officers  
 Society Of Local Authority Chief Executives  
 Association of Local Authority Chief Executives  
 Chartered Institute of Public Finance and Accountancy  
 New Towns Pension Fund  
 Association of Local Authority Medical Advisors  
 Audit Commission  
 Universities and Colleges Employers' Association  
  
 Trades Union Congress  
 UNISON  
 Transport and General Workers Union (TGWU)  
 GMB  
 Union of Construction, Allied Trades and Technicians (UCATT)  
 National Association of Education Inspectors, Advisors and Consultants (NAEIAC)  
 National Association of Probation Officers (NAPO)  
 Amicus

9. 69 representations on the consultation paper were received in time, comprising 37 local authorities, 3 pension authorities, 2 professional bodies, 5 trade unions, 3 trade union branches, campaign correspondence by 11 West Yorkshire Unison members, 1 police authority, 3 employers' organisations and 4 others.
10. The majority of substantive respondents made no comment about whether they saw the proposals as positive or negative overall. However, 22 (32%) thought that they were generally positive while 10 (14%) were generally opposed. The ability to award up to 2 years pay as a lump sum was specifically welcomed by 19 respondents (28%), while 3 unions considered that it should be 5 years and one respondent considered it should be less. 3 further respondents suggested that the circumstances in which payments could be made could be widened. 13 respondents (19%) considered that the loss of the ability to grant added years would make change management more difficult, some pointing to the different funding of augmentation as causing difficulties. 14 respondents (20%) sought further guidance for employers, suggesting the form of a model policy statement. The Local Government Employers have addressed this point and published, at the end of June, an Advisory Bulletin for Local Authorities.<sup>12</sup> (17%) highlighted problems with redundancy arrangements already made, some suggesting that transitional protections should be introduced. Finally, 9 (13%) suggested that introduction of the measures should be delayed, 3 until at least 1 April 2007 and 6 until 2008.

11. In making their response, the Local Government Employers referred back to the response they had made to the “Facing the Future” consultation in April 2005 which they drew up after extensive consultation with employers participating in the LGPS in England and Wales. At that time 213 organisations responded to the statement : “We are in favour of revoking the current Compensation Regulations and replacing them with a general power for employers to make a one off payment of up to 2 years pay”. 178 of these organisations expressed support for this statement, with 34 against. In 2006, the Employers also commented favourably on the possibility of widening the circumstances in which the lump sum payment could be awarded and on the possibility of such payments being used for the purposes of augmentation under regulation 52 of the LGPS. These were both matters for future consideration. The Employers were also in favour of the possibility of a transitional provision being introduced.

48 replies were received in response to the second consultation and all except one were in favour of some form of transitional protection. 4 preferred a date of 31 December 2006, 12 preferred a date of 31 March 2007, 5 preferred a time beyond March 2007 and 26 did not specify a time (although circumstances they describe would mostly tend to suggest March 2007). GMB indicated in discussions that they supported transitional protections for a period of 6 months. Unison indicated in a previous response that they had concern for both employers and their members that the changes to the regulations would cause difficulties where offers had been or were about to be made. In the light of the results of the further consultation, it was concluded that employers should have the choice of using the provisions in the 2000 or the 2006 Regulations until 31 March 2007 in respect of staff who are employed on or before 30 September 2006. Employers will also have the power, in relation to staff to whom they have granted awards under Part 3 of the 2000 Compensation Regulations on or after 1 October 2006, to increase such awards up to the limit permitted by the 2006 Compensation Regulations.

### **Costs and Benefits**

#### Sectors and groups affected

12. All staff eligible for the Local Government Pension Scheme and their employers.

#### *Race equality assessment*

13. There are no such considerations in respect of this proposal.

#### *Health impact assessment*

14. There are no such considerations in respect of this proposal.

#### *Rural considerations*

15. There are no such considerations in respect of this proposal.

#### Breakdown of costs and benefits

16. Economic

It must be stressed that there is no expectation that employers’ staff compensation costs would rise as a result of the new Regulations. Like the current Regulations, the new proposals are discretionary and there is no reason to suppose that implementation would lead employers to change their overall compensation budgets. However, it would give them more flexibility to set the most appropriate compensation level for each individual case.

17. Illustrative examples of potential maximum compensations costs, based on the most recent pay figures available are as follows :

<u>Post</u>	<u>Salary</u>	<u>Maximum compensation</u>
-------------	---------------	-----------------------------

£

£

ASBO officer	25,000	50,000
Childcare assistant 18,000		36,000
Chief executive	115,000	230,000
Driver	16,000	32,000
Economist 30,000		60,000
Highways inspector	19,000	38,000
Library assistant 20,000		40,000
Marketing officer 24,000		48,000
Personal assistant 18,000		36,000
School secretary 15,000		30,000
Senior social worker	35,000	70,000
Tree technician	21,000	42,000
Youth worker	18,000	36,000

These figures show the maximum compensation that the proposed new regulations would permit. It is at the discretion of employers whether to make such awards and at what level to do so, subject to the maximum permitted in the terms of their published policy statement.

There are no figures available either for past rates of local government early termination of employment discretionary payments or projections for the future.

There is no reason to suppose that employers' administrative costs would be increased under the new system. Indeed, there may well be some modest savings, as the new Regulations should be easier to administer than those made in 2000.

Each employing authority is required to prepare and publish a policy that they apply in the exercise of their discretionary powers which is intended to ensure local transparency and accountability.

#### 18. Environmental

There are no environmental costs or benefits to this proposal.

#### 19. Social

There are no social costs or benefits to this proposal.

### **Small Firms' Impact Test (SFIT)**

20. The Small Firms' Impact Test is not required.

21. The proposals will *potentially* have some impact on the private sector, for example, on organisations which employ former local government employees and those which have been admitted to the Local Government Pension Scheme. However, they will not impose a burden on the private sector because the Regulations are discretionary and employers are not obliged to pay any compensation under either the current or proposed Regulations unless they make a decision to do so.

### **Competition Assessment**

22. There are no such considerations in respect of this proposal.

### **Enforcement, Sanctions and Monitoring**

#### Enforcement

23. The compensation provisions would come within the existing arrangements for local government. These include the roles of statutory officers in local authorities (the head of paid service, the monitoring officer, and the chief financial officer) in ensuring compliance with the relevant requirements.

#### Sanctions

24. As paragraph 23.

## Monitoring and review

25. The regulations will 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 they are workable, affordable and reasonable, having regard to costs. Action as regards impropriety and non-compliance with the stated policy on individual cases will lie with local authorities who are responsible for ensuring that they have proper arrangements in place to comply with regulations. As noted above the roles of statutory officers form part of these arrangements. External auditors consider whether local authorities have proper arrangements in place to secure economy, efficiency and effectiveness in the use of resources, and these include the audited body's overall arrangements for ensuring compliance with laws and regulations.
26. Policy responsibility on compensation will continue to rest with DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT who will keep the new regulations and their operation under review by means of regular liaison arrangements involving key national and regional stakeholders. DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT are establishing a monitoring group with local government employers, personnel specialists and trade unions. This group will monitor whether the level of the lump sum amount is set at an appropriate level, how local authorities are formulating their discretionary payment policies and the use of the augmentation provisions in the LGPS regulations.

## **Declaration and Publication**

**I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs**

*Signed Phil Woolas*

**Date 6<sup>th</sup> November 2006**

### **Minister's name, title, department**

Phil Woolas, Minister of State, Department for Communities and Local Government

### **Contact point for enquiries and comments:**

Philip Perry, Local Government and Firefighters' Pensions Scheme Division, DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT 0207 944 4137, Philip.perry@communities.gsi.gov.uk