

WIRRAL COUNCIL

EMPLOYMENT AND APPOINTMENTS COMMITTEE- 30 MARCH 2010

REPORT OF DIRECTOR OF LAW, HR AND ASSET MANAGEMENT

EXERCISE OF DISCRETIONARY FUNCTIONS AMENDMENT TO POLICY STATEMENT

EXECUTIVE SUMMARY

This report seeks approval to amend the policy statement for the exercise of discretionary functions to meet the changes to the pension scheme in relation to the increase in age from 50 to 55 years of age with effect from 1 April 2010. The opportunity has also been taken to update the discretionary functions statement in terms of other aspects including; deleting the reference to the 'cash value' as part of the section on weekly pay for redundancy, and update the reference to the Head of Human Resources and Organisational Development.

1. Background

- 1.1 The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 required a statement of policy to be formulated and published indicating how the council intended to exercise its discretions under the powers available within the regulations.
- 1.2 The discretions were reviewed at the Cabinet meeting on 15 March 2007 and the Employment and Appointment Committee on 19 March 2007.
- 1.3 It is proposed that to bring the policy statement in line with the new pension Local Government Pension scheme reforms,
- 1.4 The earliest non ill-health retirement age for those members who joined the Scheme prior to 1 October 2006 increases from age 50 to 55 with effect from 1 April 2010. Members who first joined the Scheme from 1 October 2006 have been subject to a minimum retirement age of 55 since they started.
- 1.5 This change will apply to staff under age 55 being made redundant or seeking voluntary or flexible retirement and to those seeking early payment of deferred benefits on compassionate grounds before age 55 where the award was made since 1 April 2008.

2. Changes required

- 2.1 It is proposed that the policy statement –exercise of discretionary functions statement is amended to increase the early retirement age in line with legislation (50 amended to 55) and update the reference to Head of Human Resources and Organisational Development. It is also proposed to delete reference to the 'cash value' attached to weekly pay for redundancy which currently states the value of £290 per week. It is proposed to delete this 'cash value' part of the paragraph. The amended policy is attached as Appendix A.

3. Financial implications

3.1 There are no specific implications arising out of this report

4. Staffing implications

4.1 There are no specific implications arising out of this report

5. Equal Opportunities Implications/Health Impact Assessment

5.1 There are no specific implications arising out of this report

6 Community Safety, Local Agenda 21,Planning, Anti-poverty, Social inclusion Implications

6.1 There are no specific implications arising out of this report

7. Local Member Support implications

7.1 There are no specific implications arising out of this report

8. Background Papers

8.1 There are no background papers

RECOMMENDATIONS

That members agree to the proposed amendments to the policy statement –exercise of discretionary functions- including the rise of retirement age from 50 to 55 years in line with legislation with effect from 1 April 2010.

**BILL NORMAN
DIRECTOR OF LAW, HR AND ASSET MANAGEMENT**



POLICY STATEMENT

EXERCISE OF DISCRETIONARY FUNCTIONS

**LOCAL GOVERNMENT PENSION SCHEME
REGULATIONS 1997**
As amended 2006
As amended 2010

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

**FEBRUARY 2007
APRIL 2010**

**Local Government Pension Scheme
Regulations 1997 as amended**

The Local Government (Early Termination Of Employment)(Discretionary Compensation) (England And Wales) Regulations 2006

The above Regulations require a Statement of Policy to be formulated and published indicating how the Council intends to exercise its discretions under the powers available within the Regulations.

Subject to any cases considered under the transitional provisions regulations in respect of cessations of employment prior to 1 April 2007 or relevant savings set out in these regulations, this Policy statement replaces all previous statements.

The discretions were reviewed at the meeting of Cabinet on 15 March 2007 and the Employment and Appointment Committee on 19 March 2007. Further amended Employment and Appointment Committee 30 March 2010.

The application of these discretions applies only to those staff who are members of, or entitled to be members of, the Local Government Pension Scheme.

IAN COLEMAN
DIRECTOR OF FINANCE

CHRIS HYAMS
HEAD OF HUMAN RESOURCES
AND ORGANISATIONAL DEVELOPMENT

**LOCAL GOVERNMENT PENSION SCHEME
REGULATIONS 1997 as amended by the 2006 regulations.**

REGULATION 31 – ELECTION FOR EARLY PAYMENT OF PENSION (MEMBERS UNDER AGE 60)

An election by a member aged 55 or over, and not yet aged 60, to receive early payment of benefits requires the consent of the employer or former employer.

Where consent is granted by the employer this Regulation permits those employees who satisfy “the rule of 85” (i.e. where age plus service is 85 or greater) to receive immediate payment of benefits without any actuarial reduction for early payment.

Para (5) of Regulation 31 permits an employer’s discretion to decide on compassionate grounds not to apply the actuarial reduction (where the rule of 85 is not satisfied) in exceptional circumstances e.g. a compelling domestic situation.

Decision of the Council

Chief Officers must be satisfied that having regard to all the circumstances including the financial implications and impact on the service, that it is in the best interest of the Council and demonstrate to the Director of Finance and Head of Human Resources and Organisational Development that any additional pension costs to the Council can be contained within existing budgets, before allowing an employee to access pension rights early.

That subject to the above, that:-

- (i) ***Employees be permitted to retire voluntarily from the age of 55 with the immediate payment of benefits, subject to any actuarial reduction applicable and to the consent of the Director of Finance and Head of Human Resources and Organisational Development***
- (ii) ***In exceptional and compelling compassionate circumstances agreed by both the Directors of Finance and Head of Human Resources and Organisational Development that the actuarial reduction will not be applied, and any such concessions will be subsequently included in the annual report on early retirements submitted to the Cabinet.***

Regulation 32 - Re-employed and rejoining deferred members option to aggregate LGPS Scheme membership

Where a deferred member becomes an active member again before becoming entitled to the immediate payment of retirement benefits in respect of his former membership, he may elect to have his former membership aggregated with his membership on or after the date he becomes an active member again.

Such an election must be made by notice in writing to the member's appropriate administering authority in the employment in which he becomes an active member again whilst he is an active member in that employment.

The notice must be given before the expiry of the period of 12 months beginning with the date that he became an active member again (or such longer period as his employer may allow).

Decision of the Council

The circumstances of each application will be considered on its merits and a decision taken by the Director of Finance and Head of Human Resources and Organisational Development. .

Applications for extension of the 12 months time limit will only be approved in exceptional circumstances based upon full consideration of the reasons put forward.

REGULATION 35 - REQUIREMENTS AS TO TIME OF PAYMENT (FLEXIBLE RETIREMENT)

After 1 April 2010 a member who has attained the age of 55, and who with the employers consent reduces the hours s/he works, or the grade in which s/he is employed, s/he may elect in writing to the appropriate administering authority and such benefits may, with the employer's consent, be paid notwithstanding that s/he has not retired from that employment.

Decision of the Council

Chief Officers must be satisfied that it is in the best interest of the Council and demonstrate to the Director of Finance and Head of Human Resources and Organisational Development and Organisational Development that any additional costs to the Council can be contained within existing budgets, before allowing an employee to access pension rights.

REGULATION 52 – AUGMENTATION OF LGPS MEMBERSHIP BY EMPLOYING AUTHORITY

This discretion permits an employer to increase an active employee's benefits within the pension scheme. The total additional membership (including additional membership in respect of different employments must not exceed the shorter of -

- (a) 6 years 243 days; or
- (b) the period remaining to age 65

The discretion to augment cannot be used if ill-health enhancement has been granted in respect of the cessation of that employment.

The full cost of any use of the discretion has to be met by an up-front payment at retirement unless other arrangements are agreed with the Pension Fund.

Decision of the Council

The Director of Finance and Head of Human Resources and Organisational Development (on the recommendation of the relevant Chief Officer) shall have

delegated authority to increase an employee's benefits within the Pension Scheme up to the maximum number of years permitted by Regulation 52 of the Local Government Pension Scheme Regulations 1997 where:-

- (1) ***an employee's employment is to be terminated on the ground of redundancy or in the interests of the efficient exercise of the Council's functions;***
- (2) ***exceptionally an award is reasonably necessary to satisfy a compassionate need .***

In all cases the officers referred to above may only award augmentation of pension rights if they are satisfied that having regard to all relevant circumstances, including the financial implications and impact on the service, it is in the best interests of the Council to make the award.”

An annual report be submitted to the Employment and Appointments Committee detailing the use of Regulation 52.

REGULATION 67 – ESTABLISHMENT OF A SHARED COST ADDITIONAL VOLUNTARY CONTRIBUTION SCHEME (SCAVC)

This discretion permits employers to establish a SCAVC arrangement wherein costs are shared on a basis agreed by Council.

Decision of the Council

In view of the cost implications no action be taken to enter into a SCAVC arrangement unless a particular arrangement is considered advantageous and agreed in a further report to Cabinet.

The Local Government (Early Termination Of Employment)(Discretionary Compensation) (England And Wales) Regulations 2006

The Regulations allow discretions in making termination payments. The decisions of the Council on these discretions are as follows.

WEEKLY PAY LIMIT FOR REDUNDANCY

The Employment Rights Act 1996 stipulates a maximum weekly pay amount to be taken into account for calculation of redundancy payments. This is uprated year on year (where the appropriate date falls on or after 1 February 2001).

The Regulations permit actual pay to be used if greater than this sum.

Decision of the Council

The pay limit for the purpose of a redundancy calculation be based on actual weekly pay rather than the statutory limit as approved from time to time.

LUMP SUM SEVERANCE PAYMENTS

A discretion is available to make severance payments of up to 104 weeks pay to those in, or eligible to be in, the Local Government Pension Scheme and who cease employment by reasons of redundancy, or in the interest of the efficient exercise of the employee's functions. Lump sum compensation is not payable if the person is awarded augmentation in respect of the cessation of employment.

The payment has to satisfy the test of reasonableness and affordability, and is subject to the agreement of the employing Director, the Director of Finance and the Head of Human Resources and Organisational Development , in the light of the costs and savings associated with the payment.

Decision of the Council

Chief Officers must be satisfied that having regard to all the circumstances including the financial implications and impact on the service, that it is in the best interest of the Council and demonstrate to the Director of Finance and Head of Human Resources and Organisational Development that any additional costs to the Council can be contained within existing budgets, before agreeing a lump sum severance payment.

COMPENSATORY ADDED YEARS PREVIOUSLY AWARDED AND SUBSEQUENT RE-EMPLOYMENT

The Regulations place a requirement on Local Authorities to formulate, publish and keep under review the policy they apply on the exercise of their duty:-

- (a) to reduce compensation (the enhanced part of the pension) upon a persons' re-employment with another body covered by the Local Government Pension Scheme Regulations and,
- (b) to abate the compensation period (the added years enhancement) granted once the re-employment has ceased.

The minimum reduction required is the same as that laid down by the Local Government (Discretionary Payments) Regulations 1996, which prevents an individual from being better off financially or in terms of membership, by receiving compensation and being re-employed than if they had remained in their terminated employment.

Decision of the Council

The Council agrees that where a person has been awarded Compensatory Added Years and is subsequently re-employed with an employer covered by the Local Government Pension Scheme, the compensation payable and the credited period will be subject to reduction or suspension, in accordance with the prescribed method laid down in the Local Government (Discretionary Payments) Regulations 1996.