STATUTORY RULES OF NORTHERN IRELAND

2007 No. 93

LOCAL GOVERNMENT

The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2007

Made - - - - 16th February 2007

Coming into operation 12th March 2007

The Department of the Environment, in exercise of the powers conferred by Article 19 of the Superannuation (Northern Ireland) Order 1972(**1**) and now vested in it(**2**).

Citation, commencement and retrospection

1.—(1) These Regulations may be cited as The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2007.

(2) These Regulations shall come into operation on 12th March 2007 but shall have effect from 1st October 2006.

General interpretation

2.—(1) In these Regulations—

"the 1996 Order" means the Employment Rights (Northern Ireland) Order 1996(**3**);

"the 2003 Regulations" means The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations (Northern Ireland) 2003(**4**);

"employment" includes office but does not include a period as a councillor(**5**);

"Pension Regulations" mean the Local Government Pension Scheme Regulations (Northern Ireland) 2002(**6**);

(**1**) 1972/1073 (N.I. 10)..
(**2**) S.R. & O (N.I.) 1973 No. 504 Article 7 (1); S.I. 1976/424 (N.I. 6).
(**3**) S.I. 1996/1919 (N.I. 16).
(**4**) S.R. 2003 No. 61 as amended by S.R. 2004 No. 455 and S.R. 2006 No. 6.
(**5**) *See* section 1(3) of the Local Government Act (Northern Ireland) 1972 (1972 c. 9).
(**6**) S.R. 2002 No. 352 as amended by S.R. 2004 No. 139, S.R. 2005 No. 206, S.R. 2005 No. 274, S.R. 2006 No. 6 and S.R. 2006 No. 112.

"Scheme employer" means an employing authority and, in relation to any person who is a community or transferee admission agreement employee, his community or transferee admission body(**7**);

"Scheme member" means a person who is a member of the Local Government Pension Scheme constituted by the Pension Regulations;

"termination date" means the date on the final day of a person's employment terminated in one of the circumstances set out in regulation 3(1)(a).

(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 of the Regulations

3.—(1) Subject to regulation 9(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 Scheme employer'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 a Scheme employer; 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 7 (leaving the scheme) of the Pension Regulations; and

(c) whose termination date is on or after the 1st October 2006;

and in the following provisions, "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 4 and 5 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

4.—(1) Compensation may be paid in accordance with this regulation to a person who is entitled to a redundancy payment under the 1996 Order 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 XII of the 1996 Order(**8**); and

(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(**9**).

(3) The power to pay compensation is exercisable by the Scheme employer by which he is employed immediately before the termination date.

(**7**) *See* regulations 4 and 4A, respectively, of the Local Government Pension Scheme Regulations (Northern Ireland) 2002 (S.R. 2002 No. 352) as amended by S.R. 2005 No. 206.

(**8**) Part XII of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)) as amended by S.I. 1998 No. 1265 (N.I. 8), S.R. 1999 No. 409, S.I. 1999 No. 2790 (N.I. 9), S.R. 2002 No. 298 and S.R. 2004 No. 307.

(**9**) *See* Article 23(1)(c) of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)).

Discretionary compensation

5.—(1) This regulation applies where a person—

(a) ceases to hold his employment with a Scheme employer; and

(b) in respect of that cessation may not count an additional period of membership under regulation 54 (power of employing authority to increase total membership) of the Pension Regulations(**10**).

(2) Where this regulation applies, the Scheme employer 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 compensation.

(3) The amount of compensation must not exceed 104 weeks' pay.

(4) Chapter IV (a week's pay) of Part I (introductory and interpretation) of the 1996 Order 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 same 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 Article 23(1) of that Order.

(5) In calculating compensation under this regulation the Scheme employer shall exclude any years of qualifying employment which that Scheme employer or any Scheme employer has taken into account when calculating compensation already paid under these Regulations or any other regulations made under Article 19 of the Superannuation (Northern Ireland) Order 1972, other than years of concurrent qualifying employment.

(6) If the person in whose favour a determination under paragraph (2) has been made receives a redundancy payment under Part XII of the 1996 Order or compensation under regulation 4, the equivalent amount shall be deducted from the compensation otherwise payable to him under this regulation.

(7) Compensation payable under this regulation shall be paid by the Scheme employer, as soon as practicable after the decision under paragraph (2), in the form of a lump sum.

Policy statements

6.—(1) Each Scheme employer must formulate, publish and keep under review the policy that it applies in the exercise of its discretionary powers under regulations 4 and 5.

(2) If the Scheme employer decides to change its policy, it 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 its policy the Scheme employer must—

(a) have regard to the extent to which the exercise of its 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

7.—(1) Any compensation payable is payable to or in trust for the person entitled to receive it.

(**10**) Regulation 54 was amended by S.R. 2003 No. 61 and S.R. 2005 No. 274.