SUBJECT: Teachers’ Premature Retirement Compensation Scheme

AUDIENCE:
- Principals and Boards of Governors of all Grant-Aided schools;
- Education and Library Boards;
- Council for Catholic Maintained Schools;
- Governing Bodies and Principals of Further Education Colleges; and
- Other Interested Bodies.

SUMMARY OF CONTENTS:
This Circular provides guidance on changes to the Teachers’ Premature Retirement Compensation Scheme ("the Scheme") in Northern Ireland.

ENQUIRIES:
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STATUS OF CONTENTS:
Advice – This circular is guidance. It should not be treated as a complete and authoritative statement of the law.

RELATED DOCUMENTS:
The Teachers’ (Compensation for Premature Retirement and Redundancy) Regulations (Northern Ireland) 2010 (SR 2010 No 138)
The Teachers’ Pensions (Amendment) Regulations (Northern Ireland) 2010 (SR 2010 No 137)

SUPERSEDED DOCUMENTS:
Circular 1999/30
Circular 2006/23

EXPIRY DATE:
Not applicable

DE WEBSITE:
This Circular is available on http://www.deni.gov.uk

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Contents

Introduction 1 - 3
Regulations 4
Consultation 5 - 7
Equality Impact Assessment 8 - 9

Premature Retirement
The Need for Change 10 - 14
Considerations in Granting Premature Retirement 15 - 19
Mandatory Compensation 20 - 23
Discretionary Compensation – Enhancement 24 - 28
Deciding and Compensating Authorities 29 - 30
Arrangements for Paying Compensation 31 - 32
Compensation on Death 33 - 34

Redundancy and Severance Payments
Discretionary Compensation for Redundancy 35
Continuity of Employment 36 - 37
Discretionary Compensation for Termination 38 - 42
Further Information 43
Introduction

1 Following consultation under the Superannuation (Northern Ireland) Order 1972, the Department of Education has made changes to the early retirement arrangements for teachers.

2 The most significant changes which came into effect from 30 April 2010 are:
   • to make employers directly responsible for the extra cost of premature retirement;
   • to create a new provision which allows employers to make Discretionary Compensation Payments for Termination of employment of up to 104 weeks’ pay; and
   • to designate the relevant governing body as the compensating authority for each Further Education College.

3 This circular offers guidance to interested bodies on the arrangements. It covers:
   • the redundancy and severance payments that can be made to teachers;
   • the new arrangements for premature retirements.

Regulations

4 The Regulations implementing the changes to the early retirement regulations are as follows:
   • The Teachers’ (Compensation for Premature Retirement and Redundancy) Regulations (Northern Ireland) 2010 (SR 2010 No. 136), which will be referred to in this circular as the Compensation Regulations; and
   • The Teachers’ Pensions (Amendment) Regulations (Northern Ireland) 2010 (SR 2010 No. 137), which will be referred to in this circular as the Amendment Regulations.

Consultation

5 A single consultation exercise commenced on 19 March 2009 for both the draft regulations and the equality screening of the regulations. The consultation closed on 15 May 2009.

6 A total of 77 responses were received to the consultation. A summary of the responses to consultation was published on the Department’s website on 22 July 2009.

7 Following careful consideration of all of the responses to the consultation and equality screening, the Department decided that a full Equality Impact Assessment (EQIA) should be carried out. In addition, the following changes were made to the draft regulations:
   • the inclusion of a provision to afford compensating authorities the flexibility to meet compensation costs in up to five annual instalments; and
   • the designation of the relevant governing body as the compensating authority for each college of further education.
Equality Impact Assessment (EQIA)

A full EQIA was carried out between 25 November 2009 and 29 January 2010. The consultation sought views on the Department's assessment of the equality impacts of the draft regulations; and any further information which could be useful in assessing those equality impacts. The consultation followed the Equality Commission's guiding principles to consultation contained in their Practical Guidance on Equality Impact Assessment.

During the consultation on the EQIA, responses were received from 18 organisations/individuals. The final EQIA, which included a summary of the key issues from the responses received during the consultation process and the Department's response to them, was published on 24 March 2010.

Premature Retirement

The Need for Change

The changes to the premature retirement arrangements stem from the need to secure the future sustainability of the NI Teachers Pension Scheme (NITPS) and ensure that NITPS member contributions and benefits remain equivalent to those of the comparable schemes in England and Wales and in Scotland.

Reports by both the NI Audit Office (NIAO) and the Westminster Committee of Public Accounts (PAC) have been critical of the use of the Premature Retirement Compensation Scheme, both in terms of the numbers of employees prematurely retired and the amount of the compensation routinely awarded.

In broad terms, all pension schemes operate on the basis that contributions paid by members and their employers should be sufficient to cover the cost of future benefits. To allow the NITPS to continue to bear the costs of historical levels of premature retirement would mean that the Scheme's liabilities would continue to increase by upwards of £60m per year. This would have to be balanced by a significant increase in contributions to the Scheme: an increase in the employer contribution rate would divert resources away from the classroom, while an increase in the employee contribution rate would reduce the take-home pay of all teachers.

Under the old arrangements, the costs of premature retirement to the NITPS were pooled among all employers of teachers (the term "teachers" should be taken to include both school teachers and lecturers in further education). Thus an employer might make no premature retirements or very many, but would pay the same contribution rate in either case. Also, the cost of employers’ decisions on premature retirement was not reflected in their contributions until the Government Actuary Department's next valuation of the NITPS, which might not be for several years. This system did not encourage employers to behave prudently. Under the old Teachers’ (Compensation for Redundancy and Premature Retirement) Regulations, employing authorities are required to pay any added years compensation which they decide to approve. Prior to April 2008 this requirement was not observed and these costs were also borne by the NITPS. (For Further Education Colleges these costs were met by the Department for Employment and Learning (DEL).)

Under the new arrangements, teachers’ employers will pay for the cost of each premature retirement as and when it takes place. They should, therefore, be encouraged to make considered, prudent decisions about premature retirement.
Considerations in Granting Premature Retirement

15 Premature retirement is retirement before the Scheme’s normal retirement age by reason of redundancy or in the interests of the efficient discharge of the employer’s functions. Teachers may retire of their own will at the age of 60, but may continue in service beyond age 60, and may be awarded discretionary enhancement by employers up to age 65. Payment of retirement benefits including premature retirement is not permitted before the age of 55. This change, which applies to all members since 6 April 2010, was made by the Teachers’ Superannuation (Miscellaneous Amendments) Regulations (Northern Ireland) 2006 (SR 2006 No 163) to comply with the 2004 Finance Act.

16 Redundancy is where a post is vacated and not refilled (not necessarily the post from which the teacher retires, since there may be a chain of moves in the school or college or between schools/colleges). Consequently, there will normally be savings on salary to set against the costs of premature retirement. Where a retirement is made “in the interests of the efficient discharge of the employer’s functions”, there may not be direct savings as a result of the premature retirement.

17 Employers are likely to need to seek an estimate of pension benefits from Teachers’ Pensions Team in the Department to assess the cost of each premature retirement they are considering. Estimates can be obtained by writing to Teachers Pensions Team, Waterside House, 75 Duke Street, Londonderry, BT47 6FP.

18 Considerations in granting premature retirement which should be borne in mind include:

- the capacity of the individual being considered for premature retirement to make a continuing contribution;
- whether the institution’s strategic, academic and financial objectives can be met in another way;
- whether part-time working would be appropriate;
- efficiency savings, taking into account the costs of the premature retirement;
- how the individual’s retirement would affect the age structure and promotion prospects of staff, and
- if a post is to be abolished, whether there are any other options. For example, it may be possible to arrange redeployment of the teacher by agreement with another school or college.

19 If the teacher is aged under normal pension age and is employed in a capacity which is, or could be, pensionable under the NITPS, the employer has to certify to the Department that the teacher has retired prematurely by reason of redundancy or in the interests of the efficient discharge of the employer’s functions. The employer must also certify under regulation 4 of the Amendment Regulations that they have agreed, with the approval of the compensating authority, that retirement benefits should be paid.

Mandatory Compensation

20 From 30 April 2010, premature retirements are funded from two sources, the NITPS and the teacher’s former employer. This applies to all NITPS employers.

21 The NITPS pays actuarially reduced benefits under regulations 5 and 6 of the Amendment Regulations based on the length of the teacher’s pensionable service, and his or her final salary, multiplied by the appropriate actuarial reduction factor.

22 The teacher’s former employer pays mandatory compensation – in the form of a lump sum and an annual pension – under regulation 7 of the Compensation Regulations, equal to the amount by which the retirement benefits are reduced by the provisions above.
For example, if a teacher aged 55 is entitled to a pension of £15,000 and a lump sum of £45,000, the NITPS would pay an annual pension of £11,595 and a lump sum of £34,785 and the employer would pay the remainder – an annual pension of £3,405 and a lump sum of £10,215. The total lifetime cost to the employer in this case would be approximately £79,000. (Arrangements for paying compensation are set out in paragraphs 31-32).

Discretionary Compensation – Enhancement

The arrangements for crediting teachers with extra years of service – “added years” enhancement – remain unchanged. Part 5 of the Compensation Regulations is concerned with awarding extra benefits to the retiring teacher beyond those to which they are entitled on premature retirement. These benefits are paid by the ‘compensating authority’ under the Compensation Regulations, which may be an ELB, the governing body of a Further Education College or the Department, depending on who is the teacher’s employer on retirement. For such benefits to be payable, the teacher’s employer must certify to the Department that the teacher is retiring prematurely by reason of redundancy or “in the interests of the efficient discharge of the employer’s functions” even if the teacher is aged over 60.

Essentially, the body which is entitled to make decisions under the Compensation Regulations (the ‘deciding authority’) can decide (subject to the approval of the compensating authority, see paras 29 & 30) that a teacher retiring in these circumstances should be credited with extra pensionable service at the time of premature retirement. The credited period cannot exceed the shortest of the following:

- the period that would bring the teacher’s pensionable service up to 40 years;
- the period that would bring the teacher’s pensionable service up to the age of 65, including any period of compensation with which they have previously been credited;
- the total length of the teacher’s existing pensionable service;
- 6 & 2/3 years.

Benefits for extra service are calculated in the same way as normal retirement benefits. They are not subject to actuarial reduction if a teacher retires before Normal Pension Age.

Any extra years’ service should be no more than is necessary to induce a teacher to retire prematurely. While ‘deciding authorities’ may wish to establish guidelines for themselves about what they are prepared to offer, they should not apply such guidelines inflexibly. The guiding principle should be the maximum economy consistent with effectiveness. ‘Deciding authorities’ must take into account any advice or guidance offered by the ‘compensating authority’, where that is a different body. (See ‘Deciding and Compensating Authorities’, paras 29 & 30 below).

When considering the award of extra years’ service for part-time teachers, ‘deciding authorities’ should bear in mind that service has to be credited on a full-time equivalent basis. For example, crediting one year to a teacher who has been working half-time, will provide as much extra pension as the teacher would have earned in two years’ part-time service. But if the part-time service is recent or was agreed in anticipation of premature retirement, it may be appropriate to offer credit as if the teacher had been working full-time.
Deciding and Compensating Authorities

Deciding and Compensating Authorities for the main management types are set out in the table below.

<table>
<thead>
<tr>
<th>Management Type</th>
<th>Deciding Authority</th>
<th>Compensating Authority</th>
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</thead>
<tbody>
<tr>
<td>Controlled</td>
<td>Board of Governors</td>
<td>ELB</td>
</tr>
<tr>
<td>Maintained</td>
<td>CCMS</td>
<td>ELB</td>
</tr>
<tr>
<td>Voluntary Grammar / GMI</td>
<td>Board of Governors</td>
<td>DE</td>
</tr>
<tr>
<td>Further Education Colleges</td>
<td>Governing Body</td>
<td>Governing Body</td>
</tr>
</tbody>
</table>

A full list of deciding and compensating authorities is contained in Schedule 1 Part 1 of the Compensation Regulations.

Under the Compensation Regulations, the deciding authority takes two decisions: to grant premature retirement; and on the level of enhancement – if any – to be awarded. The decision to grant premature retirement requires the approval of the compensating authority. The compensating authority is responsible for paying the resultant mandatory and discretionary compensation. The compensating authority may seek repayment of such compensation by the deciding authority as a condition of approval.

Arrangements for Paying Compensation

Any compensation payments made to a teacher by the NITPS will be recovered from the relevant compensating authority. The compensating authority may repay the cost to the Scheme in one of two ways:

- by a single lump sum, calculated as actuarially equivalent to the total value of the teachers’ benefits: or
- with the agreement of the Department by a single sum, also actuarially calculated, paid in up to five annual instalments.

The compensating authority may require the deciding authority to pay to it a sum equal to the actuarial value of the compensation payable.

Compensation on Death

The annual mandatory compensation paid under regulation 7 of the Compensation Regulations is paid until the death of the teacher, and for the period of any short-term compensation thereafter. Where a widow(er)’s or child’s pension is payable, the whole cost of that pension will be met by the NITPS.

The annual discretionary compensation paid under regulation 12 of the Compensation Regulations is paid until the death of the teacher, for the period of any short-term compensation, and, at the appropriate rate, for the period of any widow(er)’s or child’s pension.
Redundancy and Severance Payments

Discretionary Compensation for Redundancy

35 Redundancy payments are paid under the Employment Rights (Northern Ireland) Order 1996. Part XII of the Order says payments should be calculated subject to a weekly earnings limit. The weekly limit is reviewed periodically and changes are notified by the Department of Employment and Learning through a Statutory Rule made under the Employment Relations (Northern Ireland) Order 1999: it is currently £380. Regulation 5 of the Compensation Regulations maintains the discretion for teachers' employers to disregard the earnings limit and to pay compensation for redundancy on a teacher's full earnings.

Continuity of Employment

36 The Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order (Northern Ireland) 1999 (SR 1999 No. 409) links service in local government and related employment for the purposes of redundancy payments. The effects of the Order are as follows:

- When an employee is made redundant by any employer listed in Schedule 1 to the Order, their service for the purpose of calculating a redundancy payment includes all continuous service with any of these employers or those listed in Schedule 2;

- A redundancy payment is generally excluded if before the end of their employment the employee has received the offer of a suitable comparable job with any employer in Schedule 1, to start immediately or within four weeks of the end of the previous employment.

37 Employers covered by the Modification Order will need to bear its provisions in mind when redundancies are under consideration.

Discretionary Compensation for Termination

38 From 30 April 2010, regulation 6 of the Compensation Regulations enables teachers' employers to make enhanced severance payments to teachers who have not been granted premature retirement.

39 Regulation 6 sets only an upper limit of 104 weeks on the amount of compensation that may be paid. Employers have the discretion to offer any sum up to that amount. Where a redundancy payment is made, the amount of the redundancy payment including any amount paid under regulation 5 of the compensation regulations counts against the limit of discretionary compensation under regulation 6. Severance payments may be made to teachers who are made redundant, and to those whose employment is terminated in the interests of the efficient discharge of an employer's functions.

40 The award of discretionary compensation and the release of pension on grounds of redundancy or efficient discharge are mutually exclusive. However, this does not prohibit, at their own discretion, individual teachers aged over 55 applying for payment of an actuarially reduced pension or those over 60 claiming an age related pension.

41 Employing Authorities should draw up policies in relation to the use of enhanced severance payments and make them known to employees.

42 Costs incurred should be met by the ELB for all controlled and maintained schools and in any other case the person by whom the teacher was formerly employed.
Further Information

43 Updated guidance governing the operation of the Scheme will be issued, in the near future, to replace circulars 1999/30 and 2006/23 which have been revoked.
<table>
<thead>
<tr>
<th>Para</th>
<th>Change</th>
<th>Implementation Date</th>
<th>The Teachers' (Compensation for Premature Retirement and Redundancy) Regulations (Northern Ireland) 2010 (SR 2010 No 136)</th>
<th>The Teachers' Pensions (Amendment) Regulations (Northern Ireland) 2010 (SR 2010 No 137)</th>
<th>The Teachers' Superannuation (Miscellaneous Amendment) Regulations (Northern Ireland) 2006 (SR 2006 No 163)</th>
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<tbody>
<tr>
<td>15</td>
<td>Minimum Retirement Age increased to 55</td>
<td>6 April 2010</td>
<td></td>
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<td>Regulation 16</td>
</tr>
<tr>
<td>19</td>
<td>Employer required to certify the reason for premature retirement and to agree with the approval of the compensating authority that retirement benefits should be paid.</td>
<td>30 April 2010</td>
<td></td>
<td>Regulation 4</td>
<td></td>
</tr>
<tr>
<td>20 - 23</td>
<td>Employers become responsible for the extra cost of premature retirements which take effect on or after the implementation date.</td>
<td>30 April 2010</td>
<td>Regulations 5 and 6</td>
<td>Regulations 7 to 10</td>
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<tr>
<td>21</td>
<td>Teachers' Pension Scheme to pay an actuarially reduced retirement pension in respect of premature retirement granted on, or after 30 April 2010.</td>
<td>30 April 2010</td>
<td></td>
<td>Regulation 5</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Teachers' Pension Scheme to pay an actuarially reduced retirement lump sum in respect of premature retirement granted on, or after 30 April 2010.</td>
<td>30 April 2010</td>
<td></td>
<td>Regulation 6</td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Changes to Deciding and Compensating Authorities.</td>
<td>30 April 2010</td>
<td>Schedule 1 Part 1</td>
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<tr>
<td>38 - 39</td>
<td>Employers given power to make severance payments of up to 104 weeks' salary.</td>
<td>30 April 2010</td>
<td>Regulation 6</td>
<td></td>
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