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**Nottingham
City Council**

Nottingham City Council Appointments and Conditions of Service Committee

Date: Tuesday, 5 January 2021

Time: 2.00 pm

Place: Remote - To be held remotely via Zoom -
<https://www.youtube.com/user/NottCityCouncil>

Councillors are requested to attend the above meeting to transact the following business

Director for Legal and Governance

Governance Officer: Mark Leavesley

Direct Dial: 0115 876 4302

- 1 Apologies for absence**
- 2 Declarations of interests**
- 3 Minutes** 3 - 4
Last meeting held on 29 September 2020 (for confirmation)
- 4 Revisions to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 - Policy Statement** 5 - 20
Report of Director of HR and Customer

If you need any advice on declaring an interest in any item on the agenda, please contact the Governance Officer shown above, if possible before the day of the meeting

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Nottingham City Council

Appointments and Conditions of Service Committee

Minutes of the meeting held remotely via Zoom on 29 September 2020 from 1.30 pm - 4.01 pm

Membership

Present

Councillor Dave Liversidge (Chair)
Councillor Eunice Campbell-Clark
Councillor Sam Webster
Councillor Hassan Ahmed (Vice Chair)
Councillor Kevin Clarke
Councillor Rebecca Langton
Councillor Sally Longford
Councillor David Mellen

Absent

Colleagues, partners and others in attendance:

Nancy Barnard - Governance and Electoral Services Manager
Richard Henderson - Director of HR and Customer

15 Apologies for Absence

None.

16 Declarations of Interests

None.

17 Minutes

The minutes of the meeting held on 14 September 2020 were confirmed as an accurate record and signed by the Chair.

18 Exclusion of the public

Resolved to exclude the public from the meeting during consideration of the remaining agenda item in accordance with Section 100A(4) of the Local Government Act 1972 on the basis that, having regard to all the circumstances, the public interest in maintaining the exemption outweighed the public interest in disclosing the information, as defined in Paragraphs 1 and 2 of Part 1 of Schedule 12A to the Act.

19 Interim Strategic Director for Finance and Section 151 Officer Appointment (Section 151 of the Local Government & Housing Act 1989)

The Committee considered the exempt report, as set out in the agenda. The Committee interviewed for the role of Interim Strategic Director for Finance and Section 151 Officer and recommended an appointment to the position. Material or well-founded objections will be sought from the Executive as per the Council's constitution.

Appointments and Conditions of Service Committee - 05 January 2021

Title of paper:	Revisions to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 – Policy Statement	
Director:	Richard Henderson Director, HR and Customer	Wards affected: All
Report author and contact details:	Jo Hill, Employee Relations Specialist Email: jo.hill@nottinghamcity.gov.uk	
Date of consultation with Portfolio Holder:	Councillor Eunice Campbell-Clark, Portfolio Holder for Health, HR and Equalities consulted on 17 December 2020	
Other colleagues who have provided input:	Arnold Gardner, Pensions Team Leader Daljit Singh Nijran, Organisational HR Manager Aman Patel, Solicitor Jo Worster, Finance Team Leader	
Relevant Council Plan Strategic Priority:		
Nottingham People		
Living in Nottingham		
Growing Nottingham		
Respect for Nottingham		
Serving Nottingham Better		x
Summary of issues (including benefits to citizens/service users):		
<p>A revised Discretionary Compensation Regulations (DCR) policy statement was agreed in June 2020 which introduced enhanced benefits for voluntary redundancy. The primary aim of the revisions was to facilitate a council wide voluntary redundancy programme which would result in savings to contribute to financial pressures.</p> <p>The voluntary redundancy programme, delivered over the summer, enabled the Council to progress 234 redundancy dismissals and contribute towards both in-year and longer term savings targets.</p> <p>The Restriction of Public Sector Exit Payments Regulations 2020 came into force in November 2020 and place a limit of £95,000, inclusive of pensions strain, on the total exit payment an employer can make to an employee. Further reforms to exit payments are proposed by MHCLG and will potentially have a wider detrimental impact on pension entitlement and redundancy compensation payments for many employees over 55 years of age.</p> <p>With ongoing budgetary pressures, proposals to reduce our operating costs will be necessary and this is likely to result in further reductions in our workforce.</p> <p>Furthermore, learning from the voluntary redundancy programme and legislative</p>		

changes has prompted a review to consider whether the Council's current DCR policy statement, in respect of the discretions available under regulations 5 and 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (DCR), is still fit for purpose going forward.

This report seeks approval to amend the Council's DCR Policy statement to accommodate the new regulations and help facilitate and incentivise further voluntary redundancy applications.

It is proposed, that for voluntary redundancy exits, linked to approved corporate budget proposals, the Council's DCR Policy Statement be amended to allow for an enhancement to be made to applicants on the following basis:-

For employees under age 55

- It is proposed that the calculation for redundancy payments for SLMG employees is aligned with that for employees on grades A-K. With a two (2x) multiplier to the statutory redundancy payment (SRP) based on the statutory limit on a week's pay¹ and not on actual week's pay.

For employees aged 55 and over

- It is proposed that a two (2x) multiplier to the statutory redundancy payment (SRP) be applied for applicants when pension entitlement is reduced or deferred, subject to the statutory limit on a week's pay. All payments are subject to the limits of the impending further exit payment reforms.

It is also proposed, that where insufficient voluntary redundancy applications have been received, that for any resultant compulsory redundancy exits, the Council's DCR Policy be amended to allow for the Head of Paid Service, in consultation with the Corporate Leadership Team, to determine, on a case by case basis, an enhancement to be made on the following basis:

- The application of a one and a half (1.5x) multiplier to the statutory redundancy payment (SRP), subject to the statutory limit on a week's pay. All payments are subject to the limits of the impending further exit payment reforms.
- Where an employee is aged over 55 and is entitled to an unreduced pension, the amount payable will be based on the statutory limit on a week's pay with no multiplier.

Overall, the proposals contained in this report will enable the Council to remain compliant with the Exit Pay restrictions, offer a financial enhancement on more equal terms, and offer an incentive to some employees who may no longer be entitled to access a fully unreduced pension.

This will support the delivery of savings that will contribute towards closing the budget gap with the aim of protecting essential services.

Recommendations:

¹ The statutory limit on a week's pay imposed by section 227 of the Employment Rights Act 1996 ("ERA"). With effect from 6 April 2020, the statutory limit of a week's pay is £538 per week.

1	<p>To approve the amendments to the Council’s DCR Policy Statement, as contained within Appendix 1 of this report, to allow for enhancement to voluntary redundancy payments on the following basis:</p> <p><u>For employees age under 55 on grades A-K (or equivalent) and SLMG (or equivalent):</u></p> <ul style="list-style-type: none"> • Redundancy payments will be based on a multiplier of two (2x) the statutory payment, subject to the statutory limit on a week’s pay. <p><u>For employees age 55 and over on grades A-K (or equivalent) and SLMG (or equivalent):</u></p> <ul style="list-style-type: none"> • The application of a two (2x) multiplier to the statutory payment for applicants when pension entitlement is reduced or deferred, subject to the statutory limit on a week’s pay. All payments are subject to the limits of the forthcoming further exit payment reforms. • No change to DCR where an applicant is entitled to an unreduced pension. The amount payable will be based on the statutory limit on a week’s pay with no multiplier.
2	<p>To approve the amendments to the Council’s DCR Policy Statement, as contained within Appendix 1 of this report, to allow for the Head of Paid Service, in consultation with the Corporate Leadership Team, to determine, on a case by case basis, an enhancement to compulsory redundancy payments to be made on the following basis:</p> <p><u>For employees age under 55 on grades A-K (or equivalent) and SLMG (or equivalent):</u></p> <ul style="list-style-type: none"> • The application of a one and a half (1.5x) multiplier to the statutory redundancy payment (SRP), subject to the statutory limit on a week’s pay. <p><u>For employees age 55 and over on grades A-K (or equivalent) and SLMG (or equivalent):</u></p> <ul style="list-style-type: none"> • The application of a one and a half (1.5x) multiplier to the statutory payment for applicants when pension entitlement is reduced or deferred, subject to the statutory limit on a week’s pay. All payments are subject to the limits of the forthcoming further exit payment reforms. • No change to DCR where an applicant is entitled to an unreduced pension. The amount payable will be based on the statutory limit on a week’s pay with no multiplier.
3	<p>To note the proposed reforms to redundancy compensation and early access to pension under consultation by MHCLG.</p>

1. **BACKGROUND**

1.1 ACOS approved changes to the Discretionary Compensation Regulations in June 2020 which introduced an enhancement for voluntary redundancy payments in order to facilitate and incentivise a voluntary redundancy programme.

1.2 The amendments allowed for an enhancement to redundancy payments as follows:

For employees under age 55

- Any resultant redundancy payment payable to an employee aged under 55 on Local Government Services (“LGS”) grades A to K (or equivalent) will be based on a multiplier of two (2x) weeks’ pay subject to the statutory limit on a week’s pay imposed by section 227 of the Employment Rights Act 1996 (“ERA”); and
- Any resultant redundancy payment payable to a Strategic Leadership Management Group (“SLMG”) employee aged under 55 will be based on actual week’s pay and will not be subject to the statutory limit in section 227 of the ERA.

For employees aged 55 or over

- The amount payable will be based on weeks’ pay subject to the statutory limit on a week’s pay imposed by section 227 of the ERA.

1.3 A voluntary redundancy programme delivered over the summer, received 604 applications and enabled the Council to progress 234 voluntary redundancy dismissals and contribute towards savings in both the current and next financial year.

1.4 On the 4 November, the Restriction of Public Sector Exit Payments Regulations 2020 came into force. The regulations restrict the total value of an exit to £95,000 including any payment made on account of dismissal by reason of redundancy. Employees aged 55 and over and in the pension scheme with a total exit payment of £95,000 and over are affected.

Payments included in the cap are:

- a) any payment on account of dismissal by reason of redundancy;
- b) any payment to reduce or eliminate an actuarial reduction to a pension on early retirement (pension strain);
- c) any payment pursuant to an award of compensation under the ACAS arbitration scheme or a settlement or conciliation agreement;
- d) any severance payment or ex gratia payment;
- e) any payment in the form of shares or share options;
- f) any payment on voluntary exit;
- g) any payment in lieu of notice due under a contract of employment;
- h) any payment to extinguish any liability to pay money under a fixed term contract;
- i) any other payment, whether under a contract of employment or otherwise, in consequence of termination of employment or loss of office.

1.5 MHCLG is consulting on further reforms to local government exit pay to accommodate the £95,000 cap and to place additional restrictions to both

redundancy compensation pay and early access to pension, meaning employees with payments under £95,000 will also be affected. The Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) Regulations are expected to be implemented in early 2021 to accommodate the Exit Pay Cap restrictions.

- 1.6 Under current regulations, LGPS members are entitled to immediate payment of pension with no reduction for early payment and employer funded strain cost, alongside statutory redundancy payment and discretionary compensation in line with the employer policy in the case of redundancy dismissals. The effect of the exit pay reforms will be to prevent or limit payment being made in respect of employer costs in the event of pension benefits becoming immediately payable. The full regulations are still to be finalised but employees may have to accept a reduced pension, relinquish redundancy payments in exchange for an unreduced pension, or defer their benefits.
- 1.7 The proposed further exit payment reforms intend to place a cap of £80,000 on the salary used for calculating redundancy payment and to reduce the maximum number of weeks to be used in any redundancy calculation from 104 to 66 weeks.

2. REASONS FOR RECOMMENDATIONS (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 In light of continuing financial pressures, the Council will be required to make further reductions in its operating costs and its workforce. Whilst acknowledging that the offer of an enhanced voluntary redundancy pay will generate additional upfront costs to the Council, a voluntary process has the added benefit of enabling people to leave the organisation more quickly and result in additional salary savings. Compulsory redundancy processes require a high level of statutorily governed consultation with a much wider pool of employees and present more opportunities for grievance and challenge in our internal processes, particularly in relation to the significant time demands of the consultation process and undertaking of a fair and robust redundancy selection process, often via time consuming assessment / interview processes.
- 2.2 The proposed changes will simplify the existing mixed approach to the DCR policy with regards to employees under 55, with the proposal for calculations to be based on the statutory limit to a week's pay and not on an actual week's pay in respect of SLMG colleagues. This will give greater parity in approach to employees regardless of grade. The current approach for calculation of SLMG redundancy pay raised particular objection from Trade Unions that higher paid employees would disproportionately benefit.
- 2.3 Recommendations are made in light of the exit pay cap legislation and designed to accommodate future reforms as proposed by MHCLG to those over 55 years of age and in the LGPS. The recommendations are proposed to give a more balanced and fair outcome to the total benefits an employee receives while managing the overall cost to the council. The proposed changes are in line with MHCLG proposals to prevent or limit payment being made in respect of employer costs in the event of pension benefits becoming immediately payable.

- 2.4 The recommended changes to the DCR for employees aged over 55 with enhancement offered to those who take a reduced pension or defer their pension, reflects that there is no pension strain cost payable by the Council in these circumstances. It should, however, be noted, that not all employees will benefit from this enhancement if the regulations currently in consultation are implemented as proposed, as entitlement to discretionary compensation pay will be limited in some circumstances, and depend on the pension option the member elects.
- 2.5 It is also proposed that where a voluntary redundancy exercise, linked to an approved budget proposal, has insufficient voluntary redundancy applications to meet the savings target, that for any resultant compulsory redundancies, the Head of Paid Service be enabled to determine, in consultation with the Corporate Leadership Team, on a case by case basis, an enhancement of 1.5x to the statutory redundancy payment. It is proposed, that all other compulsory redundancies are progressed under statutory payment rules only, as is the current practice. This mixed approach will help to balance costs, and reflects that in the absence of a financial incentive for voluntary redundancy, it is likely that there will be insufficient interest generated, and this will lead to an increase in the number of compulsory redundancy processes.
- 2.6 The tables below provide comparative illustrations of voluntary redundancy payments using the current and the proposed DCR policy, based on notional average workforce data.
- 2.7 Included are examples to reflect the proposals currently under consultation by MHCLG and the potential impact on pension entitlement and redundancy compensation if the regulations are implemented as proposed:

Under 55		
	Grade A-K	SLMG
Average salary*	£22,602	£64,671
Average statutory redundancy payment	£3,789	£8,816
Current DCR	£7,578 (x2 multiplier)	£21,487 (actual week's pay)
Proposed DCR	£7,578 (No change)	£17,632 (x2 multiplier, cap on week's pay)

*Based on actual pay and hours worked

Over 55		
	Grade A-K	SLMG
Average salary*	£19,843	£66,046
Average statutory redundancy payment	£7,026	£13,570
Current DCR	£7,026 plus unreduced pension benefits	£13,570 plus unreduced pension benefits
Proposed DCR	Unreduced pension	£7,026
	Fully reduced pension	£14,052

			£27,140
	Deferred pension	£14,052	£27,140
	Proposed New Regulations** Partially reduced pension	£7,026 SRP Plus discretionary compensation in excess of pension strain	£13,570 SRP Plus discretionary compensation in excess of pension strain
	Proposed New Regulations** Relinquish statutory redundancy for full pension	£0 SRP (unless in excess of pension strain)	£0 SRP (unless in excess of pension strain)

* Based on actual pay and hours worked

** *The Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) Regulations*.

2.8 Research of other core city local authorities found various discretionary compensation approaches to their DCR policy, these include:

- Using an actual week's pay rather than the statutory limit on a week's pay for calculation of redundancy payment.
- Applying different multipliers to statutory redundancy pay, i.e. x1.2, x1.45 and x1.5.

2.9 The key finding was that nearly all local authorities that had been approached, operated a DCR policy that enabled enhancement above statutory redundancy or the statutory cap on a week's pay to be waived. The proposals in this report would, therefore, remain consistent with approaches used by other local authorities in this regard.

3. OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

3.1 Other options considered were:

3.2 Revert to a DCR policy at the statutory rate, with no enhancement for voluntary redundancy: This option was discounted as it will not incentivise employees to volunteer for redundancy and will inevitably increase the number of compulsory redundancies. A compulsory redundancy process can take considerably more time, will require significant management and HR resources and have an impact on savings.

3.3 Apply a different multiplier: A range of multipliers were used to assess different levels of costs at multipliers of 1.5, 1.7, 2.0 2.2 and, using an actual week's pay for calculation. These can be seen in the table at para 3.4 below. Using an actual week's pay can greatly increase costs, and disproportionately benefit higher earners. A 2x multiplier, with the statutory cap on a week's pay is therefore deemed to be sufficient enough to incentivise colleagues to apply for voluntary redundancy and help keep a balanced approach against the rising costs to the council and budgetary savings required.

3.4 Table illustrating impact of multipliers:

Multiplier	Payment	Additional amount above the
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		statutory redundancy payment
Average Statutory redundancy pay	£4,748	£0
1.5 multiplier	£7,122	+£2,374
1.7 multiplier	£8,071	+£3,323
2.0 multiplier	£9,496	+£4,748
2.2 multiplier*	£10,445	+£5,697
Actual week' pay 1.5 multiplier	£8,370	+£3,622
Actual week' pay 1.7 multiplier	£9,486	+£4,738
Actual week' pay 2 multiplier	£11,160	+£6,412
2.2 multiplier*	£12,276	+£7,528

*maximum weeks proposed under new Regulations

4. FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY/VAT)

- 4.1 The Council has been operating in a challenging financial environment for a number of years and from 2010/11 to 2019/20 has had to make cumulative budget savings of **£271.4m** and the 2020/21 budget included new savings of **£15.623m**. The 2020/21 budget and Medium Term Financial Plan was approved by Full Council in March 2020 prior to the start of the pandemic. The pandemic has resulted in the Council incurring significantly increased costs and reduced income and the funding from Government isn't sufficient to cover the impact of Covid-19. This changing financial environment has resulted in three financial reports being presented and approved by Executive Board, each report highlighting the financial impact of Covid-19. The third report was the Interim Budget for 2020/21, Medium Term Financial Outlook and Draft Strategy 2021/22 to 2023/24 and was approved by September 2020 Executive Board and October 2020 Full Council.
- 4.2 The Interim 2020/21 budget presents a balanced in year position. The strategy for achieving a balanced position required the use of **£70.022m** of reserves and represents a **49.3%** reduction on earmarked reserves from the previous year. Of the **£70.022m** usage of reserves **£38.718m** are to be permanently released and not replenished and **£31.304m** are to be replenished and therefore will add to the budget gap for future years. This usage of reserves to support the 2020/21 position has significantly reduced future budget flexibility.
- 4.3 The latest Medium Term Financial Outlook for 2021/22 without further Government funding shows a budget gap in the range of **£39m to £54m** rising to **£53m to £64m** in 2023/24. The budget gap for 2021/22 has increased from **£25m** as reported to Executive Board in February 2020 to **£39m to £54m**, this is predominately due to pressures resulting from the pandemic of continued increased expenditure and reduced income.
- 4.4 The Medium Term Financial Plan has an annual provision of **£1.500m** for redundancy and associated exit costs. The redundancy and associated pension strain costs from the Interim Budget and the October 2020 Exec Board VR report will exhaust the 2020/21 and 2021/22 revenue budgets for redundancy and also the redundancy reserve. The additional VRs as approved by December 2020 Executive Board will be a pressure in 2020/21 and will be reported to Executive Board as part of the 2020/21 Budget Monitoring process.

4.5 The actual financial impact of the new legislation, proposed further reforms from MHCLG and the changes within this report will depend on the number of VR applications approved and the profile of colleagues. Therefore at this stage it isn't possible to identify the true financial impact however an assumption based on the 2021/22 Budget Consultation will need to be considered as part of the Medium Term Financial Plan which will be presented to February 2021 Executive Board. The in year budget is monitored on a monthly basis and reported periodically to Executive Board, therefore the impact of changes to the redundancy policy will be reported to CLT and Executive Board as required.

5. RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS AND CRIME AND DISORDER ACT IMPLICATIONS)

5.1 Legal Implications

5.2 The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 ("the DCR") provide for a limited regime for discretionary compensation as follows:

- Regulation 5 of the DCR gives a local authority the power to pay enhanced redundancy payments on an actual week's pay basis (statutory redundancy payments are capped at a statutory maximum for a week's pay).
- Regulation 6 of the DCR gives a local authority the power to pay discretionary compensation on termination of employment, but:
 - This is limited to a maximum of 104 weeks' pay; and
 - Any statutory redundancy payment must be deducted from any such discretionary compensation.
- Regulation 7 of the DCR requires each employing authority to formulate, publish and keep under review the policy that they apply in exercise of their discretionary powers under regulations 5 and 6 of the DCR. In formulating and reviewing their DCR policy the local authority must:
 - 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
 - Be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.
- Regulation 7 of the DCR requires that if the employing authority decide to change their DCR 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.
- Regulation 8 of the DCR places a duty on a local authority that pays a sum in error under the DCR to a person to issue that person with a notice and if that error entails an overpayment and the person fails to re-pay the overpayment, the local authority is then required to recover that overpayment from the person.

5.3 Currently, the Nottingham City Council (“Council”) DCR policy:

- In terms of regulation 5 of the DCR, limits redundancy payments to statutory entitlement in the event of a compulsory redundancy.
- In terms of regulation 5 of the DCR, where the Council’s Corporate Leadership Team makes a determination to initiate a voluntary redundancy programme that is linked to corporate budget proposals and budgetary savings:
 - any resultant redundancy payment payable to a Strategic Leadership Management Group (“SLMG”) employee aged under 55 will be based on actual week’s pay and will not be subject to the statutory limit in section 227 of the ERA; and
 - Any resultant redundancy payment payable to an SLMG employee aged 55 or over will be based on a week’s pay subject to the statutory limit on a week’s pay imposed by section 227 of the ERA.
- In terms of regulation 6, for an employee who is entitled to a statutory redundancy payment resulting from a compulsory redundancy process, no discretionary compensation element will be paid to enhance that redundancy payment.
- In terms of regulation 6, where the Council’s Corporate Leadership Team makes a determination to initiate a voluntary redundancy programme that is linked to corporate budget proposals and budgetary savings:
 - Any resultant redundancy payment payable to an employee aged under 55 on Local Government Services (“LGS”) grades A to K (or equivalent) will be based on a multiplier of two (2x) weeks’ pay subject to the statutory limit on a week’s pay imposed by section 227 of the ERA; and
 - Any resultant redundancy payment payable to an employee aged 55 or over on LGS grades A to K (or equivalent) will be based on a week’s pay subject to the statutory limit on a week’s pay imposed by section 227 of the ERA.
- In terms of regulation 6 of the DCR, only provides for discretionary compensation of up to 52 weeks’ pay to be paid to an employee who is dismissed in the interests of the efficient exercise of the Council’s functions, where there is a demonstrable business benefit to the Council arising from the payment and this is in exceptional circumstances.

5.4 Therefore, if the Council is to introduce a discretion to further vary enhanced redundancy payments, it will need to amend its DCR policy and publish it. Furthermore, NCC may not give effect to any policy change until one month after the date of publication

5.5 This report addresses the above points. It sets out a proposed revised NCC DCR policy that seeks to extend the discretions available to NCC under

regulation 5 and regulation 6 of the DCR where there are proposed redundancies linked to corporate budget proposals and budgetary savings to offer an enhanced voluntary redundancy payment to an employee affected by that restructure. Therefore this proposal envisages NCC using available discretionary powers in a rational and proportionate way, which would be lawful.

- 5.6 Central Government are currently in the process of consultation with regards to revoking the DCR and replacing them with a new set of regulations. These regulations are currently in draft form and are titled, The Local Government Pension Scheme (Restriction of Exit Payments)(Early Termination of Employment)(Discretionary Compensation and Exit Payments)(England and Wales) Regulations 2020 (“Draft Regulations”). The recommendations sought above are permitted by the Draft Regulations in their current form. Therefore, with regards to the recommendations sought, there is the possibility that an element of “future-proofing” incorporated into them.

6. EQUALITY IMPACT ASSESSMENT

- 6.1 The proposed changes to the DCR relate to voluntary redundancy exits, targeted to areas with approved budget reduction proposals with associated staffing reductions, and not offered across the council as a whole.
- 6.2 It is anticipated that employees closer to retirement age will be more likely to apply for voluntary redundancy. Therefore these proposals may affect older workers.
- 6.3 All budget proposals will require an equality impact assessment of both the impact on the workforce and on service provision.
- 6.4 The proposed DCR Policy Statement recommends an enhancement for employees regardless of pay grade, therefore may have a positive benefit for more. Employees aged 55 and over, will also benefit, where they are LGPS members, from the immediate payment of an unreduced pension benefit or enhanced redundancy payment in some cases.

7. LIST OF APPENDICES:

- 7.1 Appendix A: Revised Discretionary Compensation Regulations Policy Statement.

8. LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

- 8.1 None.

9. PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

- 9.1 None.

Appendix A:

THE LOCAL GOVERNMENT (EARLY TERMINATION OF EMPLOYMENT) (DISCRETIONARY COMPENSATION) (ENGLAND AND WALES) REGULATIONS 2006 - POLICY STATEMENT

1. Preamble

1.1 In accordance with the requirements of regulation 7(1) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (“the DCR”), Nottingham City Council (“the Council”) has formulated and published the following policy statement in respect of the discretions available under regulations 5 and 6 of the DCR.

2. Regulation 5

2.1 For employees with two or more years continuous service with the Council (or with an organisation covered by the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999) (“the RPMO”), who are dismissed by reason of redundancy, compensation will be paid equivalent to the statutory redundancy payment to which they are entitled under the Employment Rights Act 1996 (“ERA”).

2.2 Continuous service with an organisation covered by the provisions of the RPMO will count towards the redundancy compensation calculated under regulation 5 of the DCR.

2.3 In calculating the amount of redundancy compensation to which an employee is entitled under regulation 5 of the DCR resulting from a compulsory redundancy process, the statutory limit² on a week’s pay, as imposed by section 227 of the ERA, will apply.

3. Regulation 6

3.1 Where a policy decision is confirmed by the Executive Board, that reductions are to be made in a service area and makes a determination to initiate a voluntary redundancy exercise, linked to corporate budget proposals:-

1) Save for the circumstance set out in 2) below, any resultant redundancy payment payable to an employee will be based on a multiplier of two (2x) weeks’ pay subject to the statutory limit on a week’s pay imposed by section 227 of the Employment Rights Act; and

2) Where an employee is aged over 55 and is entitled to an unreduced actuarial immediate payment of pension by virtue of regulation 30(7) of the Local Government Pension Scheme Regulations 2013, SI 2013/2356 (“LGPS Regulations”) which is not affected by the Restriction of Public Sector Exit Payments Regulations 2020 (“Exit Payment Cap Regulations”) or the Local Government Pension Scheme (Restrictions of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2021 (“New Pension Regulations”), any resultant redundancy payment payable to an

² With effect from 6 April 2020, the statutory limit of a week’s pay is £538 per week.

employee will be based on a multiplier of one (1x) weeks' pay subject to the statutory limit on a week's pay imposed by section 227 of the Employment Rights Act 1996 ("ERA").

3.2

Where a voluntary redundancy exercise receives insufficient applications, for the Head of Paid Service, in consultation with the Corporate Leadership Team, to determine, on a case by case basis, an enhancement to be made to resultant compulsory redundancies on the following basis:-

1) Save for the circumstance set out in 2) below, any resultant redundancy payment payable to an employee will be based on a multiplier of one and a half (1.5x) weeks' pay subject to the statutory limit on a week's pay imposed by section 227 of the Employment Rights Act; and

2) Where an employee is aged over 55 and is entitled to an unreduced actuarial immediate payment of pension by virtue of regulation 30(7) of the Local Government Pension Scheme Regulations 2013, SI 2013/2356 ("LGPS Regulations") which is not affected by the Restriction of Public Sector Exit Payments Regulations 2020 ("Exit Payment Cap Regulations") or the Local Government Pension Scheme (Restrictions of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2021 ("New Pension Regulations"), any resultant redundancy payment payable to an employee will be based on a multiplier of one (1x) weeks' pay subject to the statutory limit on a week's pay imposed by section 227 of the Employment Rights Act 1996 ("ERA").

3.3 Save for the circumstances set out in 3.2 above, for an employee who is entitled to a statutory redundancy payment resulting from a compulsory redundancy process, no discretionary compensation element will be paid under regulation 6 of the DCR to enhance that redundancy payment.

3.4 For an employee who is dismissed in the interests of the efficient exercise of the Council's functions, the Council will have the discretion to make a payment to the employee up to a maximum of 52 weeks' pay in circumstances where there is a demonstrable business benefit to the Council arising from the payment. Discretionary compensation payments paid in the interests of the efficient exercise of the Council's functions will not normally exceed £30,000.00 (excluding the Council's pension strain) unless prior approval is obtained from the Council's Appointments and Conditions of Service Committee. It is expected that discretionary payments made under regulation 6 of the DCR in the interests of the efficient exercise of the Council's functions will only be considered in exceptional circumstances.

3.5 Discretions under paragraph 3.4 of the DCR Policy will be applied in the following manner:-

- Payments to officers at the level of Head of Service and above³ in the efficient exercise of the functions of the Council will be made at the discretion of the Appointments and Conditions of Service Committee.
- Payments to officers below the level of Head of Service in the efficient exercise of the functions of the Council will be made at the discretion of the Chief Executive.

3.6 In accordance with the Local Government Pension Scheme regulations⁴, employees who have attained the age of 55 or over and who are members of the local government pension scheme with at least two years qualifying membership in the pension scheme or transferred pension rights into the pension scheme from another scheme, are also entitled to receive and must take immediate payment of an unreduced pension if they are dismissed by reason of redundancy or business efficiency, or if their employment is terminated by mutual consent on grounds of business efficiency.

4. Overpayment or sums paid in error

4.1 In accordance with regulation 8 of the DCR where a sum is paid in error and that error entails an overpayment, the Council is required to recover the overpayment. In line with the DCR should this happen then the Council reserves the right to seek recovery of any overpayments made in error.

5. Changes to this policy

5.1 In accordance with regulation 7 of the DCR, any changes to this policy and its application will not have effect until one month after a statement setting out the intended changes has been published. The policy will be periodically reviewed to ensure its continued effectiveness.

³ This includes Corporate Directors and officers within the Strategic Leadership Management Group (SLMG).

⁴ As may be amended or superseded by the Restriction of Public Sector Exit Payments Regulations 2020 ("Exit Payment Cap Regulations") or the Local Government Pension Scheme (Restrictions of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2021

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Document history

Revision date	Version number	Author of changes	Summary of changes
04.04.2016	1	Della Sewell	Statutory change
06.06.2017	2	Sheena Yadav-Staples	Statutory change to limit to a week's pay.
19.06.2020	3	Daljit Singh Nijran/Ana Farenden	Revision to regulation 6 to allow for payment above the statutory minimum where redundancies are through a voluntary redundancy process linked to corporate budget proposals.
05.01.2021	4	Jo Hill	Revision to regulation 5 to remove exception to statutory limit. Revision to regulation 6 to allow for payment above the statutory minimum. Changes resulting from the Exit Pay Cap Regulations

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