



Redundancy and the local government pension scheme

This factsheet explains the pension rights of LGPS members facing redundancy. It aims to summarise the key issues for negotiators. Please note that all references to redundancy also apply equally to retirement in the interests of efficiency of the service.

Basic entitlement

All LGPS members in England, Wales and Scotland over minimum pension age have an absolute right to draw unreduced pension benefits in the event of redundancy.

The minimum pension age in England and Wales is currently 50 but will increase to 55 with effect from the 1 April 2010, in line with changes to the law affecting all pension schemes. Any member who has joined since the 1 April 2008 will already have a minimum pension age of 55.

The minimum pension age in Scotland is also currently 50 and will increase to 55 on 1 April 2010. However, there is a significant difference in the Scottish scheme from the LGPS in England and Wales – any person who was a member of the 1998 scheme in Scotland as at 5 April 2006 has a protected minimum pension age for redundancy purposes of 50. New joiners to the LGPS in Scotland from the 1 April 2009 will have a minimum pension age of 55.

Service enhancements

Under regulation 12 of the LGPS (Benefits Membership and Contributions) Regulations 2007 (as amended), an employer in England and Wales has the discretion to increase service by up to 10 years, up to six months after leaving employment. This is a general power that can be used to award added years on redundancy or leaving for other reasons. As an alternative, under regulation 13 of the same regulations, the employer has the discretion to also award up to £5,000 a year extra pension before the member leaves.

In Scotland, regulation 12 of the LGPS (Benefits Membership and Contributions) (Scotland) Regulations 2008 sets out the same powers to award up to 10 years, but only before the date of leaving. Regulation 13 also allows the employer to award up to £5,000 a year extra pension before leaving.

The difference is that Scottish employers can still use the Discretionary Payments Regulations to award up to 10 compensatory added years on redundancy, within six months of leaving, as an alternative to awarding extra service under the LGPS.

This is possible because a Scottish employer who uses the powers in the Discretionary Payments Regulations can pay for the increase out of current revenue and may not have to pay all the money up front to the LGPS to fund the increase. In England and Wales, compensatory added years cannot be awarded under the Discretionary Payments Regulations and so additional service awarded under the LGPS has to be paid up front.

Department of Work and Pensions amendment to the Age Regulations

Many employers use the Age Regulations as an excuse not to award added years. UNISON's position is that amendments to the Age Regulations should allow employers to continue to award added years. The full text of the amendment is below:

Section 13 B of the Employment Equality (Age) (Amendment No 2) Regulations 2006

- (1) A minimum age for any member of a scheme for payment of or entitlement to a particular age related benefit on the grounds of redundancy where it is enhanced in accordance with subparagraph (2) and paid either with or without consent (whether of an employer, the trustees or managers of the scheme or otherwise).
- (2) The enhancement of any age related benefit payable to or in respect of a member on the grounds of redundancy where the enhancement is calculated in one or more of the following ways:
 - (a) by reference to the years of prospective pensionable service a member would have completed if he had remained in pensionable service until normal pension age;
 - (b) by reference to a fixed number of years of prospective pensionable service;

(c) by making an actuarial reduction which is smaller than if early retirement had been on grounds to which paragraph 12 applied; or

(d) by not making any actuarial reduction for early retirement.

(3) Sub-paragraph (1) shall also apply to different minimum ages for different groups or categories of members.

Discretionary compensation payments

We are seeing more and more employing authorities making compensation payments in the event of redundancy, instead of awarding extra years of pensionable service or extra pension.

In England and Wales, the maximum award for such compensation payments is 104 weeks' pay, including statutory redundancy pay. In Scotland, the maximum limit is has also been extended to 104 weeks' pay.

These compensation payments in excess of statutory redundancy payments are purely discretionary and employing authorities are required to publish and keep under review their particular policies. Unfortunately, we are seeing numerous examples of employing authorities making compensation payments well below the permitted maximum. These can be difficult to challenge given the discretionary nature of these requirements.

Employer's policy statements

Employing authorities in England, Wales and Scotland are required by law to prepare a written statement of their policy in relation to both the exercise of their functions to increase total pensionable service and to increase the amount of pension payable. Furthermore, these statements must be published and kept under review.

Redundancy and pension rights in other pension schemes

Pension rights on redundancy in trust-based occupational pension schemes depend on scheme rules. Like the LGPS, early payment of unreduced pension benefits for members over the minimum pension age is not uncommon, but service enhancements are likely to be very rare. Checking the scheme rules will therefore be vital to ascertaining pension entitlement in the event of redundancy in trust-based pension schemes.

In contract-based pension schemes, which are commonly stakeholder pension schemes or personal pension schemes, it's very unlikely that the pension contract terms themselves will provide any redundancy protection, although it's possible that the actual employment contract could offer some protection. There is nothing to stop an individual from drawing their pension benefits early in the event of redundancy. However, in such an arrangement, they will need to be at least 50 years of age to be able to do so, with the age increasing to 55 with effect from the 6 April 2010.

Key negotiator points

- members have automatic right to unreduced benefits if over minimum pension age
- these can potentially be enhanced through awards of additional service or payment of additional pension
- alternatively, employing authorities can make compensation payments up to 104 weeks pay
- each employing authority is required by law to publish a policy statement in relation to the above
- 'ungenerous' policies should be reported to UNISON's pensions unit
- a more detailed paper covering England and Wales is available at unison.org.uk/pensions

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