

13 May 2019

Exit Payments Cap

Purpose

For information.

Summary

This report summarises the proposals to cap public sector exit payments as they relate to local government, which are now subject to consultation.

Recommendation

That the LGA Resources Board note the update and approve the approach to responding.

Action

As directed by members.

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Exit payments cap

Background

1. The government first announced plans to cap exit payments in the public sector in 2015. The cap was legislated for in the Enterprise Act 2016, which amends the Small Business, Enterprise and Employment Act 2015, but required secondary legislation to be introduced.
2. On 10 April 2019 HM Treasury (HMT) launched a [consultation](#) on draft regulations, guidance and Directions to implement the cap. The consultation will run for 12 weeks and closes on 3 July 2019. The LGA will be responding formally to the consultation ahead of the 3 July deadline.
3. The cap will apply to all public sector employers (except the armed forces, GCHQ, security and intelligence services) and is to be implemented in two stages. Local government employers and fire and rescue services will be covered in the first stage. As currently drafted, outsourced employees will not be covered.

The cap

4. The exit payment cap is set at £95,000 and the regulations do not include provision for this amount to be index-linked. Redundancy payments (including statutory redundancy payments) severance payments, pension strain costs – which arise when a Local Government Pension Scheme (LGPS) pension is paid unreduced before a member's normal pension age – and other payments made as a consequence of termination of employment are included in the cap.
5. Payments related to death in service or ill health retirement, pay in lieu of holiday and payments made in compliance with an order made by a court or tribunal are not exit payments for the purposes of these regulations which apply only to severance exits, not normal retirements.
6. The statutory redundancy element of an exit payment **cannot be reduced**. If the cap is exceeded, other elements that make up the exit payment must be reduced to achieve an exit payment of £95,000.
7. The cap applies to exit payments that arise within a 28 day period and the regulations cover the process to follow if an individual has multiple exits from public sector employment within 28 days.

Applying the cap in the Local Government

8. The impact of the regulations on a local government employee who is a member of the LGPS if the cap is exceeded and the exit payment includes pension strain cost is unclear in the consultation documents. We understand that the policy intent is for the member's pension benefits to be reduced to the extent that the exit payment cap is not breached, with the member having the option of paying extra to buy-out some or all of the reduction.

9. Amendments to LGPS regulations would be required to facilitate this change, plus guidance from the Government Actuary on calculating the pension reduction and operating the buy-out process. The method of calculating pension strain cost is currently formulated locally. It may be necessary to introduce a standard calculation of strain cost may be introduced to ensure the exit cap is applied consistently across all LGPS administering authorities though this would in turn have differing implications on funds and therefore future employer costs.

Relaxing the cap

10. There are circumstances when the cap must be (mandatory cases) or may be (discretionary cases) relaxed by the 'Decision Maker', and these are described in HMT Directions:
 - 10.1 **Mandatory cases:** relating to TUPE regulations or exits that would otherwise be considered by an Employment Tribunal under whistleblowing or discrimination legislation.
 - 10.2 **Discretionary cases:** to avoid undue hardship, to effect workforce reforms or exits agreed before the regulations take effect.
11. The 'Decision Maker' is a Minister of the Crown, but this power is delegated to Welsh Ministers, full council of a local authority, a fire and rescue authority or the London Assembly. Depending on the reason for the relaxation of the cap, HMT approval may also be required. In addition, the Guidance states that the sponsoring department would have to approve the business case supporting the relaxation of the exit cap as well as HMT. The requirement for this additional approval is not reflected in the wording of the Regulations or the HM Directions.

Employee, employer and Decision Maker responsibilities

12. A person who receives an exit payment must inform any other public body that employs them about that payment. Employers and Decision Makers are required to record and publish information about capped exit payments and any decisions made to relax the cap.

Further information

13. Further details about the regulations, the consultation and how to respond can be found in the [consultation documents](#) and in the [consultation briefing](#).

Implications for Wales

14. Although most employers in scope of the exit payment cap perform devolved functions, public sector compensation **is not** a power that has been devolved to the Welsh Assembly. The exit payment Regulations therefore do apply in Wales to local authorities, academies etc. with the exception of 'relevant Welsh exit payments' which are payments made to holders of these offices:
 - 14.1 member of the National Assembly for Wales;

- 14.2 the First Minister for Wales;
- 14.3 Welsh Minister appointed under section 48 of the Government of Wales Act 2006;
- 14.4 Counsel General to the Welsh Government;
- 14.5 Deputy Welsh Minister;
- 14.6 member of a county council or a county borough council in Wales;
- 14.7 member of a National Park Authority in Wales; and
- 14.8 member of a Fire and Rescue Authority in Wales.

Financial Implications

- 15. Additional support will be required for local authorities planning exits and negotiating settlements as the cap takes effect.

Next steps

- 16. The LGA has circulated the consultation and briefing to regional employers organisations directly and to authorities through the workforce bulletin. We are gathering views and reflections to inform our consultation response and informal discussions with MHCLG over issues flowing from the consultation.
- 17. We propose to respond to the consultation ahead of the 3 July deadline, in two parts. Firstly, outlining the policy issues including inconsistencies in the consultation documents, the waiver process and relaxation parameters; the second part will focus on the technical and operational issues relating to the LGPS. This will be instead of the question and answer format set out in the formal consultation document.
- 18. Key points the response will cover include:
 - 18.1 Lack of clarity in the draft regulations;
 - 18.2 Conflict between the draft regulations and other consultation documents;
 - 18.3 Strain cost calculation process;
 - 18.4 Waiver processes for discretionary powers;
 - 18.5 Scope of organisations covered and omitted;
 - 18.6 Lack of indexation of the cap extending coverage over time;
 - 18.7 Scope of cap to cover mid earning employees;
 - 18.8 Implementation timing and coordination with other legislative changes; and

- 18.9 Reporting obligations for employers and employees.
19. Members are invited to note this report and approve the proposed plan for the response to the consultation. We will circulate the response in draft form ahead of submission.