

## EXECUTIVE SUMMARY

As the leading organisation representing councils, fire authorities and other public sector employers, the Local Government Association (LGA) response to this consultation focuses on the feasibility and consequences of implementing the government's stated policy in the manner set out in HM Treasury's consultation documentation. Our members have different views of the conceptual merits of the proposals but our purpose in this response is to consider the likely consequences of the provisions set out and, where possible, to suggest alternatives to minimise cost and disruption to local government employers and employees once the policy is implemented.

It is important for us to be absolutely clear that we have very serious concerns regarding the consequences of implementing this policy as set out in these consultation documents. We believe the employees in scope to have their exit payments capped are much lower earning than the consultation suggests; that, as drafted, these regulations present a range of potential legal risks that could increase costs to employers that have not been considered; that there are a number of changes to other legislation - most notably the regulations governing the Local Government Pension Scheme - that are required before these regulations can reasonably be applied; and, that the processes outlined to secure exemptions to the cap are overly bureaucratic and challenge the capacity of local government to make decisions in the interests of local taxpayers.

The LGA response to the consultation is divided into two sections, the first outlines the practical difficulties facing employers by the measures set out in these documents and the second lists the technical issues the regulations, as drafted, instigate. The key issues are listed below.

1. The scope of the cap as set out in this consultation could cover local government workers who have decades of service and earn less than £23,500 a year.
2. The absence of any review of the cap limit or any indexation of the £95,000 figure means that over time, more people with salaries below the UK average will be affected.
3. When originally proposed, the concept of a salary floor was suggested but there is no mention of that in this consultation. The LGA would support amendments to these regulations to introduce both salary floor and indexation revisions.
4. No implementation period is set out in this consultation. Due to the volume of consequential regulation changes required and the substantial changes needed to administrative systems we believe a minimum of nine months from the date the regulations are passed is required for the necessary reforms to the Local Government Pension Scheme to be introduced and the actuaries, payroll providers and others to respond accordingly.
5. The LGA is deeply concerned that the discretionary exemptions process set out in this consultation will prevent democratically elected councillors taking the necessary decisions to reform and manage the local government workforce. The overly bureaucratic process outlined which potentially requires three central government post holders (two civil servants and one Minister) to ratify a full council decision will frustrate

employer engagement with employees and inhibit the responsiveness of local authorities to changing situations.

6. We support the mandatory exemption provision for those with whistleblowing and discrimination cases however, the omission of health and safety reporting related cases seems inappropriate and inconsistent, bearing in mind tribunal awards for such cases are also unlimited. Therefore, we would support the extension of the mandatory exemption to cover those cases.
7. More broadly, the discretionary exemption process for other tribunal cases is problematic and we have a number of concerns that the process itself will prejudice an employer's position. In addition, we envisage increased costs resulting from tribunal cases as individuals will be reluctant to accept a settlement when the cap means they could achieve a higher award in tribunal.
8. The absence of a robust Equalities Impact Assessment is a cause for concern and is one of several areas where the LGA is concerned that these Regulations increase legal risks facing councils.
9. As drafted, cash exit payments in local government will potentially increase as a result of these regulations resulting in increased national insurance costs to councils when the National Insurance (Termination Awards and Sporting Testimonials) Bill comes into force.
10. Currently exit payments in local government are predominantly related to unreduced pension access for those above minimum benefit age and, particularly when compared with the wider public sector, the severance cash payments are low: generally 1.5 weeks per year reflecting the statutory system of accrual and actual weekly pay. As these regulations will inhibit pension access for some individuals earning considerably below UK average earnings, there will be pressure from trade unions to improve the severance framework in response.
11. Substantial clarification on the impact of the cap on the Local Government Pension Scheme is needed in order to make these Regulations workable. In particular there is no clarity on the application of the cap in a way which provides a 'fair choice' for the member between a reduced pension and the cash alternative referred to in the draft regulations. Also, there will be disputes due to the differing methods around the calculation of strain payments across the country and resultant inconsistencies in who is capped and to what extent.
12. Excluding outsourced employees from these regulations, as well as other areas of local government related employment creates a two tier workforce that will be exacerbated by the inclusion of an exemption for TUPE cases but not 'TUPE-like' cases resulting, for example, from government mandated reorganisations. There is significant confusion around coverage in these regulations which is made worse by the prospect of an iterative process gradually extending the range of organisations covered.

Our full response sets these issues out in detail and we would welcome further engagement with HM Treasury and others to resolve these concerns.