

Public sector exit payments: Response to the consultation

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ISBN 978-1-913635-40-4 PU 2976

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Chapter 1

Introduction

- 1.1 The government published a consultation on 10 April 2019 seeking views on regulations implementing a £95,000 cap on exit payments in the public sector. The consultation closed on 3 July 2019.
- 1.2 The consultation received around 600 responses.
- 1.3 These responses highlighted complexities different bodies and workforces may experience in applying the regulations. We are extremely grateful for all responses received and the government will continue to refer to them whilst finalising the regulations.
- 1.4 The draft documents that were consulted on including: regulations, guidance document, consultation document and directions, can be found [here](#).
- 1.5 Based on responses to the consultation, the government will make revisions to the regulations and guidance, as explained below. The final versions of these documents will be published at a later date.
- 1.6 The government will take forward these proposals through secondary legislation in the form of affirmative regulations. The final regulations will include details on when the cap will come into force.

Chapter 2

Summary of policy

- 2.1 The Small Business, Enterprise and Employment Act 2015 ('the 2015 Act') as amended by the Enterprise Act 2016 ('the 2016 Act) provides the power for HM Treasury to make regulations implementing a £95,000 cap on exit payments in the public sector.
- 2.2 The cap of £95,000 will apply to the aggregate sum of payments made in consequence of termination of employment. The relevant payments in scope remain the same as in the regulations published on 10 April 2019.
- 2.3 The cap also applies where two or more relevant public sector exits occur in respect of the same person within any period of 28 consecutive days. The total amount of all exit payments made to that person must not exceed £95,000.
- 2.4 Following consultation, the government has decided to no longer implement the cap in two stages and will instead capture the whole public sector as soon as possible, with few exceptions. The final schedule listing all public sector bodies the cap will apply to is contained within the regulations.
- 2.5 The Scottish Government introduced a £95,000 cap on exit payments made by devolved bodies in September 2019 by updating the [Scottish Public Finance Manual](#).
- 2.6 The guidance and directions published at consultation set out circumstances and the process for when the mandatory waiver must be used to relax the cap, and the discretionary waiver can be used. Any relaxation outside of the circumstances outlined in the directions can only be done with HM Treasury consent. Updated versions of these documents will be published alongside the final regulations.
- 2.7 The power to relax the cap may be exercised by a Minister of the Crown, unless the regulations provide for that power to be exercised by another person.
- 2.8 Updated regulations and guidance documents will be published alongside the regulations coming into force.
- 2.9 The government remains committed to ensuring exit payments can be recovered when high-paid public servants move between jobs and will take forward further regulations in due course.

Chapter 3

Consultation response

- 3.1 This document forms the government response to the consultation on the regulations to implement the public sector exit payment cap.
- 3.2 Section 1 of this chapter reviews responses to consultation questions 1, 2 and 3, focusing on public sector organisations within scope of the exit payment cap.
- 3.3 Section 2 of this chapter reviews responses commenting on payments in scope of the cap.
- 3.4 Section 3 of this chapter reviews responses to consultation questions 4, 5 and 6, focusing on the guidance and the waiver process.
- 3.5 Section 4 of this chapter reviews responses to consultation questions 7 and 8, regarding the impact of the cap.
- 3.6 Section 5 of this chapter details other drafting changes made during and as a result of the consultation process.

Section 1: Bodies in scope

Summary of responses

- 3.7 The majority of respondents agreed that draft schedule 1 accurately captured the public sector bodies and office holders intended.
- 3.8 A significant amount of responses did not agree with the staged approach and believed the cap should apply to the whole of the public sector immediately. Some respondents also subsequently disagreed with the proposed exemptions for the Armed Forces, the Secret Intelligence Service, the Security Service, and Government Communications Headquarters.
- 3.9 Other responses requested additional exemptions for particular bodies for other reasons, including the government's typical role in overseeing the organisation and the contractual nature of the relationship between the individuals and the employer.
- 3.10 Some responses expressed concern that a newly created public sector body will not be in scope until it has been added to the schedule.

Government response

- 3.11 Following consultation, the government has decided to no longer proceed with a staged approach. The cap will now apply across all of the public sector when implemented. This approach will ensure that the cap applies where intended to ensure value for money as soon as feasible.

- 3.12 The final schedule listing all public sector bodies the cap will apply to will be published at a later date ahead of the regulations coming into force.
- 3.13 The Armed Forces, the Secret Intelligence Service, the Security Service, and Government Communications Headquarters will continue to be exempted due to the unique natures of the careers of their staff and the core role of compensation and resettlement packages within remuneration arrangements. The government expects that these bodies will ensure they are making value for money exit payments that are fair to the taxpayer.
- 3.14 The Royal Bank of Scotland Group plc, NRAM Limited, and Bradford & Bingley will be excluded from the scope of the regulations. Government intervened in these firms to protect financial and economic stability, with policy being to return them to the private sector when it represents value for money to do so and market conditions allow. Excluding these firms is deemed to be proportionate to ensure Government can exit its temporary ownership of these companies in a way that represents value for money.
- 3.15 The power to make regulations implementing a cap is provided in the 2015 Act as amended by the 2016 Act and as a result the cap will take precedence over existing contractual agreements where they are less stringent than the exit payment cap regulations.
- 3.16 The schedule will be kept under review to assess whether any further bodies should be added, including as a result of Machinery of Government changes. It is our expectation that government departments will inform HM Treasury of any new bodies which should be in scope of the cap, and if any bodies listed on the schedule cease to exist.

Section 2: Payments in scope

Summary of responses

- 3.17 Respondents generally did not comment on the overall list of exit payments in scope.
- 3.18 A significant amount of responses, however, expressed concern over the inclusion of employer funded early access to pensions (pension top-up payments) within scope of the exit payment cap and how this could affect long serving lower earning employees. Some also argued that this would be discriminatory towards older workers.
- 3.19 Respondents welcomed the exemption for specific payments connected to the Firefighters Pension Scheme.
- 3.20 Some responses requested clarity on the order in which payments should be capped.

Government response

- 3.21 The government believes it is right to include all payments related to exit within scope of the cap. The option of employer-funded early retirement is

often the most costly element of an exit payment and is ultimately funded by the taxpayer so it is right that it is included.

- 3.22 The government has expressed its expectation that pension schemes, employment contracts, and compensation schemes will be amended to reflect the introduction of the cap. The exit payment cap legislation will allow relevant employers and authorities to pay the pension scheme member an equivalent sum if the pension scheme has not been amended to reflect the introduction of the cap. Any further changes should be taken forward by the relevant scheme and sponsoring department.
- 3.23 The government has reviewed payments exempt from the cap and believes it is fair and consistent to also exempt payments made in respect of injury to feelings.
- 3.24 The order in which payments made in respect of an exit are to be capped has not been prescribed with the exception relating to multiple exit payments made by an employer which includes a statutory redundancy payment. This allows employers and employees discretion and flexibility based on individual circumstances. Individuals are entitled to receive their full statutory redundancy sum and our expectation is that, in the majority of cases, employers would cap the contractual redundancy lump-sum in excess of the statutory entitlement to allow for the full pension top up and statutory redundancy to be paid.

Section 3: Waiver

Summary of responses

- 3.25 Respondents were typically welcoming of the inclusion of a discretionary waiver but questioned how the overall waiver system would work in practice. This was particularly the case for local authorities, where the power to waive the cap is delegated to full council, who raised concerns over how long the process would take.
- 3.26 Respondents confirmed the guidance was clear on how to apply the waiver in the case of whistleblowers. Many responses highlighted that the mandatory waiver for discrimination and whistleblowing claims should also be extended to health and safety related detriment and unfair dismissal claims.
- 3.27 Respondents that commented on the mandatory waiver for workers transferred under TUPE were welcoming of this being included within scope of the relaxation criteria.

Government response

- 3.28 The waiver process is designed to ensure that the cap can be relaxed in exceptional circumstances where it is necessary or desirable. The government is committed to making the process for considering waivers efficient in order to not cause any unnecessary delays for public sector employers and

employees, whilst ensuring that cases receive sufficient and appropriate scrutiny.

- 3.29 The waiver process has been designed to ensure there is accountability for the way the waiver is being used at all stages, therefore it's appropriate that uses of the waiver receive ministerial clearance. If needed, further guidance may be provided by the sponsoring department or employer.
- 3.30 The government will provide policy direction in the published guidance document, however, employers should consult legal advisors on specific cases, including with regards to the mandatory TUPE waiver, once the cap comes into force.
- 3.31 The government agrees that the mandatory waiver should be extended to include health and safety related detriment and unfair dismissal claims and will update the directions to reflect this.
- 3.32 The mandatory waiver provisions in the directions made under the regulations will also be extended to employees of UK Asset Resolution (UKAR) if necessary in due course. The waiver will cover any payment on account of dismissal by reason of redundancy. Other exit related payments to UKAR employees, such as payment in lieu of notice, will remain in scope of the cap. This is on the basis that UKAR may need to make redundancy payments in the future as part of its activities to wind down the government's holdings in NRAM Limited and Bradford & Bingley. The guidance and directions will be updated when required to reflect this.

Section 4: Impacts

Summary of responses

- 3.33 Responses raised concern that the government had not published an equalities impact assessment since the previous consultation in 2016.
- 3.34 A significant amount of responses raised concerns that there was no provision to uprate the £95,000 figure over time. They flagged that this would lead to more lower earning employees being captured. Many suggested index linking the cap with the rate of inflation.

Government response

- 3.35 An impact assessment was conducted ahead of the passage of the primary legislation and published along with the consultation on the primary legislation. An updated assessment has been conducted based on the final regulations amended in line with this consultation response. This updated impact assessment will be published with the final guidance alongside the regulations coming into force.
- 3.36 The primary legislation allows the government to change the level of the cap through further secondary legislation. Whilst we do not propose to change the level of the cap at this stage, the level of the cap will be kept under review in order to allow for a flexible approach to make decisions on the level of the cap with reference to full contextual factors.

Section 5: Regulations

- 3.37 The government will publish updated regulations and guidance documents alongside the regulations coming into force. These documents will take into account the detailed responses provided by stakeholders as part of the consultation process.
- 3.38 Respondents highlighted discrepancies between the draft regulations and draft guidance which have been amended to ensure clarity.
- 3.39 We have adjusted the guidance to clarify that the only part of any payment in lieu of notice that will be capped is the amount that exceeds a quarter of the individuals' salary.

Annex A

List of respondents

The following organisations submitted responses to the consultation:

| | |
|--|--|
| Arun District Council | East Staffordshire Borough Council |
| Aylesbury Vale District Council | East Sussex County Council |
| Barnsley Metropolitan Borough Council | Eastbourne Borough Council |
| Basildon Borough Council | Erewash Borough Council |
| Bedford Borough Council | Exeter City Council |
| Birmingham City Council | Flintshire County Council |
| Blackburn with Darwen Borough Council | Forest of Dean District Council |
| Blaenau Gwent County Borough Council | Gateshead Council |
| Bracknell Forest Council | Gedling Borough Council |
| Brent Council | Gloucester City Council |
| Bridgend County Borough Council | Greater London Authority |
| Bristol City Council | Guilford Borough Council |
| Broxtowe Borough Council | Gwynedd Council |
| Buckinghamshire County Council | Hampshire County Council |
| Bury Council | Hartlepool Borough Council |
| Cambridge City Council | Huntingdonshire District Council |
| Cambridgeshire County Council | Kent County Council |
| Canterbury City Council | Kettering Borough Council |
| Carmarthenshire County Council | Lancashire County Council |
| Chelmsford City Council | Leeds City Council |
| Cheltenham Borough Council | Lincolnshire County Council |
| Cheshire East Council | London Borough of Camden |
| Cheshire West and Chester Council | London Borough of Enfield |
| Chiltern and South Bucks District Councils | London Borough of Hackney |
| City of Lincoln Council | London Borough of Hammersmith and Fulham |
| City of Wolverhampton Council | London Borough of Havering |
| Colchester Borough Council | London Borough of Tower Hamlets |
| Cornwall Council | Manchester City Council |
| Costessey Town Council | Melton Borough Council |
| Cotswold District Council | Middlesbrough Council |
| Crawley Borough Council | Milton Keynes Council |
| Cumbria County Council | Monmouthshire County Council |
| Darlington Borough Council | Neath Port Talbot County Borough Council |
| Daventry District Council | Newcastle City Council |
| Derby City Council | Newport Pagnell Town Council |
| Derbyshire County Council | North East Lincolnshire Council |
| Devon County Council | North Kesteven District Council |
| East Midlands Councils | North Lincolnshire Council |
| East Riding of Yorkshire Council | North Tyneside Council |
| | North Yorkshire County Council |
| | Northamptonshire County Council |

Oldham Council
 Oxfordshire County Council
 Peterborough City Council
 Plymouth City Council
 Portsmouth City Council
 Redcar and Cleveland Borough Council
 Rhondda Cynon Taf Council
 Ribble Valley Borough Council
 Rotherham Metropolitan Borough Council
 Royal Borough of Kensington and Chelsea
 Royal Borough of Windsor and Maidenhead
 Rushcliffe Borough Council
 Rushmoor Borough Council
 Salford City Council
 Sefton Council
 Selby District Council
 Sevenoaks District Council
 Shropshire Council
 South Hams District Council
 South Somerset District Council
 South Tyneside Council
 St Albans City and District Council
 Liverpool City Council
 Staffordshire County Council
 Stockton-on-Tees Borough Council
 Suffolk County Council
 Sunderland City Council
 Surrey County Council
 Swansea Council
 Teignbridge District Council
 Thanet District Council
 West Devon Borough Council
 West Oxfordshire District Council
 West Suffolk Council
 West Sussex County Council
 Westminster City Council
 Worcester City Council
 Worcestershire County Council
 Wyre Borough Council
 Wyre Forest District Council

 Association of Local Authority Chief Executives and Senior Managers
 Association of School and College Leaders
 British Dental Association
 British Medical Association
 Chartered Society of Physiotherapy
 FDA
 Federation of Clinical Scientists

Fire Brigades Union
 GMB
 GMB – Dudley branch
 GMB – Halton branch
 GMB - Merthyr Tydfil County Borough branch
 GMB – North West Ambulance branch
 GMB - Rhondda Cynon Taff branch
 GMB – Sefton branch
 GMB – West Yorkshire Police branch
 GMB – Yorkshire and North Derbyshire branch
 Managers in Partnership
 National Association of Head Teachers
 National Education Union
 Prospect
 Prospect – Magnox Ltd branch
 Public and Commercial Services Union
 Royal College of Nursing
 The National Association of Schoolmasters Union of Women Teachers
 Trades Union Congress
 Transport Salaried Staffs’ Association
 UNISON
 UNISON - Cambridge City & South
 UNISON – Gateshead branch
 UNISON – Haringey branch
 UNISON – Harrogate branch
 UNISON – Knowsley branch
 UNISON – Solihull branch
 UNISON – Worcestershire branch

 Chief Police Officers Staff Association
 Civil Nuclear Constabulary branch of the Police Superintendents Association
 Gwent Police
 Hampshire Constabulary
 Lancashire Constabulary
 Leicestershire & Northamptonshire Police
 Metropolitan Police Service
 National Police Chiefs’ Council
 Nottinghamshire Police & Crime Commissioner
 Office of the Police and Crime Commissioner for Hampshire
 Police Advisory Board for England and Wales
 Police and Crime Commissioner for Dyfed-Powys Dafydd Llywelyn
 Police and Crime Commissioners
 Treasurers’ Society

Police Federation of England and Wales
Police Superintendents' Association
South Wales Police
West Yorkshire Police

All Wales Workforce and OD Directors Peer Group
NHS Employers
Nursing and Midwifery Council
York Teaching Hospital NHS Foundation Trust

Anthony Collins Solicitors
Association of Pension Lawyers
Barnett Waddingham LLP
Birmingham Law Society
Employment Lawyers Association
Eversheds Sutherland LLP
Hymans Robertson
Lawyers in Local Government

Bedfordshire Fire and Rescue Service
Cambridgeshire Fire and Rescue Service
East Sussex Fire and Rescue Authority
Essex Fire and Rescue Service
Fire Officers Association
Firefighters (England) Pension Scheme Advisory Board
Hampshire Fire and Rescue Authority
Hereford & Worcester Fire and Rescue Service
Kent and Medway Fire and Rescue Authority
Lancashire Fire & Rescue Service
London Fire Commissioner
National Fire Chiefs Council
North Wales Fire and Rescue Service
Nottinghamshire Fire and Rescue Service
Royal Berkshire Fire Authority
Shropshire Fire and Rescue Service
Staffordshire Fire and Rescue Service
Suffolk Fire and Rescue Service
West Midlands Fire Service

Avon Pension Fund
Bedfordshire Pension Fund
Buckinghamshire County Council Pension Fund
Cambridgeshire Pension Fund
Cheshire Pension Fund
Clwyd Pension Fund

Cornwall Pension Fund
Cumbria Local Government Pension Scheme Pension Committee
Dorset County Pension Fund
Essex Pension Fund
Greater Manchester Pension Fund
Gwynedd Pension Fund
Hampshire Pension Fund
Lincolnshire Pension Fund
Local Government Pension Scheme Advisory Board
London Borough of Hackney Pension Fund
Merseyside Pension Fund
Northamptonshire Pension Fund
Royal County of Berkshire Pension Fund
Shropshire County Pension Fund
Suffolk Pension Fund
The City & County of Swansea Pension Fund
The Pensions Regulator
Tyne and Wear Pension Fund
West Midlands Pension Fund
Wiltshire Pension Fund

Children and Family Court Advisory and Support Service
Civil Nuclear Constabulary
Department for Work and Pensions
HM Prison and Probation Service
National Gallery
Network Rail Limited
Post Office Limited
TaxPayers' Alliance
Transport for London
Valuation Tribunal Service

Auditor General for Wales
Cavendish Learning Trust
Cornwall College
District Councils Network
East of England Local Government Association
Heads of Human Resources Network for London Councils
Local Government Association
North West Employers
North West Employers – Greater Manchester authorities
Publica Group Limited
Society of District Council Treasurers
Society of London Treasurers
Solace

Solace Wales
South East Employers
South West Councils
St Leger Homes of Doncaster Ltd
The Gateshead Housing Company
Welsh Local Government Association

West Midlands Employers
Yorkshire & Humber Employers
Association
Yorkshire Dales National Park
Authority

