

# sixty seconds

news summary

August 2015

## Consultation on a public sector exit payment cap

On 31<sup>st</sup> July, the Government announced a [consultation](#) capping the total amount of redundancy and other exit payments (including employer pension costs) that can be made to individuals leaving the public sector to £95,000. This is in response to its concern over the increasing cost to the tax payer of financing early retirement packages in recent years. The closing date for responses to the consultation is 27<sup>th</sup> August 2015.

### Scope

With a small number of exemptions set out in the consultation both central government departments (such as civil service, teachers, NHS and academies) and local government organisations (such as local authorities and fire and rescue authorities) as well as non-financial public corporations (e.g. ALMOs) would be within the scope of the consultation. It is unclear at the moment to what extent these proposals might cover the wider scheme employer and admitted body pool in local government. Consultees are also asked to consider the impact of staff moving between public and private sector employers under the TUPE rules.

The policy would extend to all of the bodies where employment and remuneration practices are the responsibility of the UK government, with Scottish government, Welsh government and the Northern Ireland Executive to determine if and how they want to take forward similar arrangements in relation to devolved bodies.

### What exit payments are covered?

In terms of local government the proposal is that the £95,000 cap would include the aggregate of:

- pay in lieu of notice;
- redundancy payments (including any enhancements over and above statutory limits);
- other severance payments (including ex-gratia and special severance payments, whether or not as part of an Employment Tribunal claim);
- the employer cost of funding redundancy and efficiency retirements as well as other voluntary early retirements (i.e. “funding strain”); and
- pay in lieu of outstanding annual leave.



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Payments associated with death or injury attributable to the employment, serious ill health and ill health retirement would be excluded from the cap, as would payments made following litigation for breach of contract or unfair dismissal.

### What is the practical impact from introducing the exit payment cap?

The consultation acknowledges the specific entitlement within the LGPS Regulations to an immediate and unreduced payment of accrued pension to those scheme members aged 55+ where employment terminates on the grounds of redundancy or efficiency. That said the government is of the view that local government should be subject to the cap in the same way as central government departments. The government therefore intends that the pension strain resulting from any early access to unreduced pensions in the LGPS (other than ill health) is within scope of the exit payments cap.

The suggestion is that employees would retain the right to take the unreduced pension immediately in such circumstances, but the extra cost to the employer should not exceed the £95,000 cap (less any other termination payments that have been made). It is unclear what would happen in circumstances where the cap was exceeded as a result of the “strain payment” where a statutory requirement to immediate and unreduced benefits existed. At this stage we assume CLG will be considering what changes, if any, might be required to the redundancy provisions of the LGPS in order to ensure compliance with the exit payment cap policy.

### Exceptions

In its consultation the Government recognises that there may be legitimate exceptions to the £95,000 cap. Within the local government arena local authorities would be required to publish a policy on the circumstances where an exception might be considered and agreement of the full Council, or in the case of fire and rescue authorities a meeting of members, would be required in individual cases.

All exemptions would then be required to be published in the authorities annual Statement of Accounts. In addition employers will be required to keep records and publish annually details of all exit payments during the financial year.

### Wider reforms

Alongside a cap on exit payments the government is also considering further reforms to the actual calculation of compensation terms and to employer funded early retirement in circumstances of redundancy. This is expected at a later date and we assume will include local government, but this is not explicitly clear within the consultation.

### Conclusions

It is clear from the consultation that there is still much detail to be fleshed out as to how the exit payment cap would actually work in practice. We plan to issue a briefing note shortly setting out some further thoughts. While the implications of this particular consultation may have more direct relevance to employers, rather than the Fund, we are aware that many employers will look to you for guidance on this. Please feel free to share the contents of this Summary and our subsequent Briefing Note with your employers. In the meantime, if you have any questions please feel free to get in touch with your usual Hymans contact.