Enterprise Bill 2015

PUBLIC SECTOR EMPLOYMENTS: RESTRICTIONS ON EXIT PAYMENTS

Summary

- A £95k cap on exit payments will be introduced in summer/autumn 2016
- There are no plans for a transitional period; therefore all exits after its introduction will be subject to the cap
- The cap will include all payments in relation to all exits from relevant employments that occur within a 28 day period
- Employments or offices with the majority of employers defined as public sector by the Office of National Statistics (ONS) will be included
- A wide range of payments including pension strain costs will be covered by the cap
- There will be a limited number of exempt payments (e.g. death or injury)
- There will be a power for full council to waive the cap subject to Treasury directions (to be published)

PLEASE NOTE: This Q&A has been compiled based on the LGA's understanding of the version of the Bill as passed at the report stage in the House of Lords 30th November 2015 together with accompanying draft regulations and discussions with officials in the Department for Business Innovation and Skills (BIS), the Department for Communities and Local Government (DCLG) and Her Majesty's Treasury (HMT). This Q&A is therefore NOT a definitive guide to the exit payment cap and the information contained is subject to any changes made to the Bill and regulations after the date of its publication – 01 December 2015.

Q1: What does the Bill propose in relation to exit payments?

A1: That exit payments in the public sector be capped at a maximum of £95,000 including any pension strain costs.

Q2: When will this cap be introduced?
A2: Regulations implementing the cap cannot be put to parliament until the Enterprise Bill receives royal assent probably in late spring 2016. In a letter of 27th November, the government stated its intention 'to lay the regulations and seek their approval by affirmative resolution procedure in Parliament in summer/autumn 2016'.

Q3: Will there be any transitional arrangements for agreements that cover the period of implementation of the cap?
A3: The government does not see a case for transitional arrangements and will expect all exits after the implementation of regulations to be capped. However it does envisage circumstances where the cap could be waived in the period of implementation, for example if there was a delay to the date of exit beyond the start of the cap outside of the individual's control, and will issue guidance to cover such circumstances.

Q4: Will the cap relate to a payment, a person, or an employment?
A4: All exit payments in respect of exits from relevant employments within a period of 28 days count toward the cap. So if a person has two employments, exits both at the same time and a payment is made in relation to each then both payments must be added together and checked against the cap even if those employments are with different employers. However if one employment ends, say, three months before the other then the cap applies to each employment separately.

Q5: How will I know if a person has received an exit payment in relation to another public sector employment or office?
A5: Draft regulations place a responsibility on the individual on receipt of an exit payment to notify all other public sector employers of their date of exit, the amount of the exit payment/s made and the identity of the paying employer.

Note: we have raised the question of what order the cap should operate in a multiple employer situation – e.g. if the aggregate payment needs to be reduced, should that reduction be applied proportionally across all employments, in the order the payments are made or is some other methodology to be used?

Q6: What counts as a public sector employment?

A6: Any employee of a ‘prescribed public sector authority’ or holder of a ‘prescribed public sector office’ is deemed to have a public sector employment for the purposes of the cap. The prescription of authorities and offices will be set out in regulation. The draft indicates that all bodies defined by the Office for National Statistics as public sector will be included by default with a schedule listing exemptions. It would be safe to assume that local authorities will be prescribed authorities to which the cap would apply.

Q7: What counts as an exit payment?

A7: Any payment of a ‘prescribed description’ made as a consequence of the individual leaving the prescribed employment or office. Regulations will include a list of prescribed payments which will include the following:

- Redundancy payments
- Payments on voluntary exits
- Pension strain costs
- Severance or ex-gratia payments
- Payment for outstanding entitlement
- Compensation under the terms of a contract
- Pay in lieu of notice
- Shares or share options

The draft regulations also include a general cover all provision to include ‘any other payment made as a consequence of, in relation to, or conditional on loss of employment whether under a contract of employment or otherwise’.

Q8: What is the impact of including pension strain costs for the Local Government Pension Scheme (LGPS)?

A8: Currently a redundancy pension in the LGPS is paid unreduced to active members who are made redundant at the age of 55 or over. The cost of the member receiving an unreduced pension is typically met via a pension strain cost that has to be paid into the pension fund from the individual’s employer. The Bill includes changes to the LGPS which would limit the pension payable on redundancy by applying the actuarial reduction necessary to bring the cost within the cap. There are also provisions to allow the individual to pay all or part of the strain cost themselves in order to receive an unreduced pension.

Note: we have raised a number of questions with regard to the inclusion of strain costs – e.g. will the cap apply to all strain costs (e.g. flexible retirement) or only those relating to an exit from a public sector employment, will the cost be calculated on a central set of assumptions, whether 85 year rule protections and/ or payment of pension on compassionate grounds will be included, what order the payments have to be set against the cap, etc. We await answers to these questions from the government.

Q9: How will the cap apply to the Teachers' Pension Scheme (TPS)?
A9: It is an employer discretion to pay 'unreduced' premature benefits to teachers aged 55 and over on redundancy. The Bill contains provisions to amend the TPS regulations to limit the amount of strain cost to ensure that when added to other exit costs the total remains within the £95k cap.

Q10: How will the cap apply to the Firefighters' Pension Schemes (FPS)?
A10: The Firefighters' Pension Schemes allow for employer discretionary uplifts to the pension on exit. These include a raised commutation limit in the 1992 scheme and payment of an unreduced pension in the 2006 and 2015 schemes. As the costs of unreduced pension are met annually a capital cost will need to be calculated for use in the cap. FPS regulations will require amendment to limit these discretions in order to ensure that when added to other exit costs the total remains within the £95k cap.

Q11: Will any payments be excluded from the cap?
A11: The Bill provides for regulations to exempt payments of prescribed description and draft regulations currently exclude payments made in relation to:

- Incapacity or death, as a result of accident, injury of illness
- Firefighter fitness provisions
- Contractual leave not taken
- Contractual bonuses

- Court orders

Q12: Will there be any power to waive the cap?
A12: The Bill provides for a Minister of the Crown to relax the cap in respect of an employee or office holder or a description of such in relation to all or part of an exit payment. It also provides for regulations to enable specified persons to exercise the same power on behalf of the minister (in accordance with Treasury direction). The draft regulations include a provision to enable a full council of a local authority to exercise that power in relation to payments made by itself.

Note: we have raised the question of who may be able to waive the cap for other employers such as schools.

LGA Workforce team
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