

Report to	North Wales Fire and Rescue Authority
Date	17/06/2019
Lead Officer	Helen MacArthur, Assistant Chief Officer (Finance and Resources)
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Subject	UK Government consultation on restricting exit payments in the public sector.



PURPOSE OF REPORT

- 1 To present to Members information on the UK Government's proposed regulations to limit exit payments in the public sector to a maximum of £95,000.

EXECUTIVE SUMMARY

- 2 The UK Government introduced legislation for a cap of £95,000 on exit payments in the public sector in the Small Business Enterprise and Employment Act 2015 (the Act). The cap can only be implemented through secondary legislation and the Government is currently consulting on the proposed regulations.
- 3 This report provides information on the scope of the proposed regulations, the types of payments intended to be subject to the cap and the intended operation of the cap.
- 4 This report outlines the Authority's draft response to the UK Government's consultation on the proposed regulations.

RECOMMENDATIONS

- 5 That Members:
 - (i) note the information provided on the proposed regulations to implement a cap of £95,000 on exit payments in the public sector; and
 - (ii) endorse the response to the UK Government's consultation.

OBSERVATIONS FROM THE EXECUTIVE PANEL/AUDIT COMMITTEE

- 6 This report has not previously been considered by Members.

BACKGROUND

- 7 The provision of exit payments enables employers to reform and react to new circumstances whilst providing support for employees in finding new employment or as a financial bridge until retirement. Exit payments associated with loss of employment cost the taxpayer a total of £1.2billion in 2016/17 with £0.2billion relating to sums in excess of £100,000.
- 8 The UK Government does not consider that the majority of the six figure payments are proportionate or provide value for money to taxpayers, especially as they are in excess of those available to most workers either in the public sector or in the wider economy.
- 9 The UK Government introduced powers to cap exit payments in the public sector at £95,000 in the Small Business, Enterprise and Employment Act 2015 (the Act). The consultation sets out the proposed method of implementing the cap including the bodies and payments within scope.

Proposed Regulations

- 10 The draft regulations prescribe the bodies intended to be covered by the Act and, subject to a number of exceptions, include; the UK Civil Service, the NHS in England and Wales, local government including fire authorities and police forces. North Wales Fire and Rescue Service is, therefore, within the scope of the proposed regulations.
- 11 The regulations apply to all staff but contain the following exemptions for firefighters:
 - the commuted lump sum in respect of their pension payments; and
 - pension fund payments in respect of firefighters who are unable to maintain operational fitness through no fault of their own and their employer has initiated an early retirement.

- 12 The limit of £95,00 is made up of a number of costs associated with the termination of employment and includes:
- redundancy pay (including statutory entitlement and any discretionary payments above this amount);
 - payments made to prevent the reduction of pension on early retirement;
 - payments in lieu of notice (except where the payment does not exceed 25% of the employee's salary);
 - compensation under a settlement agreement (except for cases involving whistleblowing or discrimination cases); and
 - compensation for the termination of a fixed term contract.
- 13 The following payments are excluded from the cap:
- death in service;
 - ill health early retirement;
 - annual leave;
 - payments on the instruction of a court or tribunal; and
 - pay in lieu of notice not exceeding 25% of the employee's salary.

Application of the cap to North Wales Fire and Rescue Service

- 14 North Wales Fire and Rescue Service is within scope of the proposed regulations and, therefore, the proposed regulations will impact on decisions surrounding the early termination of employment. The impact has been considered below.

Staff eligible to join the Local Government Pension Scheme.

- 15 The Early Termination Policy for staff eligible to join the Local Government Pension Scheme (LGPS) was approved by the Fire and Rescue Authority in 2007. These members of staff benefit from discretionary arrangements which enhance statutory redundancy by a multiple of 2.5, up to a maximum of 75 weeks of pay. In addition, if the individual has attained the age of 55, their accrued pension can be paid without actuarial reduction.
- 16 For staff below 55 years of age, the application of the cap will only affect those with a salary in excess of £66,000. For staff above 55 years of age, the additional pension costs must also be taken into account.

- 17 The early payment of an employee’s pension without an actuarial reduction creates an additional cost to the employer. This cost must also be included within the cap calculation. The Authority’s Scheme Manager, Clwyd Pension Fund, has not undertaken detailed modelling but has confirmed that in the following circumstances the cap of £95,000 would be exceeded:

Salary £	Length of service
35,000	30
38,000	27
44,000	20
51,000	15

Staff eligible to join the Firefighters’ Pension Scheme (FPS).

- 18 At this time there is no nationally agreed policy relating to discretionary payments on the early termination of staff eligible to join the Firefighters’ Pension Scheme. There are no previous instances of early termination of employment for this cohort of employees.
- 19 In the event of an early termination of employment, the pension scheme includes the discretion to pay the employee their pension without an actuarial reduction from the age of 55.
- 20 In addition to the above the proposed regulations include two provisions specifically in relation to members of the FPS as detailed within paragraph 10.

Consultation

- 21 The full consultation can be accessed via the following link:
<https://www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector>
- 22 The application of the cap would impact on the Authority in the event that early terminations were considered for very senior staff or employees over the age of 55. The regulations make specific provision for firefighters and all staff retiring on the grounds of ill health.
- 23 The consultation questions and proposed responses are detailed in Appendix 1.

IMPLICATIONS

Well-being Objectives	The regulations are aimed at reducing the costs associated with early terminations in the public sector, thus promoting financial sustainability in the longer term.
Budget	The regulations will impose a mandatory cap on individual exit payments. The budget implication will be a reduction in costs should the Authority determine that early termination is required.
Legal	The Authority is required to fully comply with all relevant legislation.
Staffing	The regulations apply equally to all staff, subject to specific exemptions relating to firefighters. A discretionary policy is in place which enhances the statutory redundancy benefits for staff eligible to join the LGPS.
Equalities/Human Rights/ Welsh Language	The regulations apply equally to all staff but do not apply in the event of ill health retirement. Special exemptions for firefighters have been proposed which address the need to maintain physical fitness.
Risks	Based on historical experience the risks associated with the cap are deemed to be low.

Consultation Questions and Response

	Question	Response
1	Does draft schedule 1 to the regulations capture the bodies intended?	The scope of the regulations is sufficiently comprehensive to ensure consistency across the public sector.
2	Do you agree with the current list of bodies in scope, for the first round of implementation? If not, please provide reasons.	No observations to note
3	Do you agree with the exemptions outlined? If not, please provide evidence	The exemptions in respect of firefighters appear proportionate to the requirements of their roles.
4	Does the guidance adequately support employers and individuals to apply the draft regulations as they stand? If not, please provide information on how the guidance could be enhanced.	The regulations appear sufficiently comprehensive to enable an assessment to be undertaken to establish which payments should be included and excluded from the calculation.
5	Is the guidance sufficiently clear on how to apply the mandatory and discretionary relaxation of the regulations, especially in the case of whistleblowers?	Further information would be helpful to provide guidance on the criteria that should be applied to determine the specific circumstances when a whistleblowing disclosure allows the regulations to be disapplied.
6	Is there further information or explanation of how the regulations should be applied which you consider should be included in the guidance? If so, please provide details.	The guidance would benefit from worked examples to evidence how the cap should be practically applied.
7	Are there other impacts not covered above which you would highlight in relation to the proposals in this consultation document?	It is noted that there doesn't appear to be provision for the cap to be subject to any inflationary increase as would be expected to ensure parity over time.
8	Are you able to provide information and data in relation to the impacts set out above?	No detailed modelling has been undertaken.