

REPORT REFERENCE NO.	HRMDC/20/4
MEETING	HUMAN RESOURCES MANAGEMENT & DEVELOPMENT COMMITTEE
DATE OF MEETING	21 OCTOBER 2020
SUBJECT OF REPORT	CONSULTATION RESPONSE TO REFORMING LOCAL GOVERNMENT EXIT PAYMENTS
LEAD OFFICER	Deputy Chief Fire Officer
RECOMMENDATIONS	<i>That the consultation response contained within this report is submitted to the Ministry of Housing, Communities and Local Government on behalf of the Authority.</i>
EXECUTIVE SUMMARY	<p>As part of the 2015 Spending Review, the government had announced that it was seeking to introduce an Exit Cap for public sector workers. Provision for the cap was included in legislation but as yet this has not been enacted. The Restriction of Public Sector Exit Payments Regulations 2020 were laid before Parliament on 21 July 2020 and were voted on by parliament on the 30 September 2020. Once the affirmative parliamentary procedure is completed which means includes approved by both Houses of Parliament then the regulations will come into force.</p> <p>The Ministry of Housing, Communities and Local Government (MHCLG) has opened a consultation on the reform of exit payments in local government. The consultation is concerning the effect that the reforms could have on redundancy compensation pay and early access to pensions in local government and the overall impact on the local government workforce. For the Authority, this therefore relates to Support Staff, Control Staff and non-operational Directors. These categories of staff have a pension provision through the Local Government Pension Scheme. This paper provides a draft response relating to this consultation which, if supported by the Committee, will be submitted to the MHCLG.</p>
RESOURCE IMPLICATIONS	None directly as a result of this paper but the change in legislation will limit the potential cost of exit payments in the future.
EQUALITY RISKS AND BENEFITS ANALYSIS	As part of the consultation MHCLG will complete a full impact assessment including equalities.
APPENDICES	Appendix A: Reforming Local Government Exit Pay Consultation, The Ministry of Housing, Communities and Local Government (MHCLG)

BACKGROUND PAPERS	None
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1. INTRODUCTION

- 1.1 As part of the 2015 Spending Review, the government had announced that it was seeking to introduce an Exit Cap for public sector workers. This was intended to continue the modernisation of the terms and conditions for public sector workers and target areas where the public sector has more generous rights than most of the private sector. Provision for the cap was included in the Small Business, Enterprise and Employment Act 2015 which provided the power for Her Majesty's (HM) Treasury to make regulations implementing a £95,000 cap on exit payments in the public sector.
- 1.2 In September 2016, the government published a response to an initial consultation on the exit cap and concluded that it remained appropriate to reform exit payment arrangements across the public sector. In April 2019, HM Treasury consulted on draft Regulations and guidance on the implementation of the exit pay restrictions. The response to that consultation, was published on 21 July 2020 along with new draft Regulations. Initially, it had been proposed to implement the cap in stages but within the government consultation response it concluded that the whole public sector would be done as soon as possible. The draft Restriction of Public Sector Exit Payment Regulations 2020 were voted on by parliament on 30 September 2020 and once approved, through the full parliament stages will come into force 21 days after the approval.
- 1.3 The Ministry of Housing, Communities and Local Government (MHCLG) has opened a consultation on the reform of exit payments in local government which will close on 9 November 2020. The consultation does not relate to the principle of a cap on exit pay but is seeking to consult on the effect that the reforms could have on redundancy compensation pay and early access to pensions in local government and the overall impact on the local government workforce.
- 1.4 For Devon & Somerset Fire & Rescue Authority ("the Authority"), this therefore relates to Support Staff, Control Staff and non-operational Directors. These categories of staff have a pension provision through the Local Government Pension Scheme (LGPS). This paper provides a draft response relating to this consultation which if supported by the Committee will be submitted to the MHCLG.

2. EXISTING ARRANGEMENTS CONCERNING REDUNDANCY AND PENSIONS IMPACTED BY THE EXIT CAP

- 2.1 The current system for local government redundancy compensation payments will vary between employers but they must operate within a framework set by regulations which are set within the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006. These regulations provide that the total maximum lump-sum pay-out for redundancies is 104 weeks' (24 months') pay.

- 2.2 Devon & Somerset Fire & Rescue Service operates by using the statutory redundancy calculation for an employee with at least 2 years' continuous service which is based on the employee's age, salary and the length of service:
- Up to the age of 21: 0.5 week's pay for each completed year of service.
 - 22 - 40 years of age: 1 week's pay for each completed year of service.
 - 41+ years of age: 1.5 weeks' pay for each completed year of service.

NB. A "week's pay" is subject to the statutory maximum (currently £538) but the service has opted to use actual weekly pay if this is higher.

- 2.3 The current system for local government early access to pensions under the LGPS Regulations means that employees aged 55 or more who are members of the LGPS are currently entitled to immediate access to unreduced pension where:
- The member is dismissed from an employment on redundancy or business efficiency grounds, or
 - The employment is terminated by mutual consent on business efficiency grounds.

- 2.4 An employer participating in the LGPS which provides early, unreduced payment of pension benefits has to make additional payments to the relevant pension fund to make up the resulting shortfall in the pension funding. This is because the provision for early exits is not included in their standard employer contributions. This extra payment is also known as the pension "strain" cost.

3. PROPOSED NEW REFORMS FOR REDUNDANCY AND PENSION

- 3.1 The new proposals for reforms will modify the redundancy payments to set the following limits:
- A maximum tariff for calculating exit payments of three weeks' pay per year of service. Employers could apply tariff rates below these limits;
 - A ceiling of 15 months (66 weeks) on the maximum number of months' or weeks salary that can be paid as a redundancy compensation payment. Employers will have discretion to apply lower limits, as they do at present under the 2006 Early Termination Regulations; and
 - A maximum salary of £80,000 on which a redundancy compensation payment can be based, to be reviewed on an annual basis using an appropriate mechanism, for example: CPI (Consumer Prices Index).
- 3.2 The Service redundancy payments would be within these levels and the only posts with salary levels above the maximum salary of £80,000 would be Executive Board positions.

3.3 In terms of any strain payments, these will be taken into account along with any statutory or discretionary redundancy payments. In order to limit the strain payments, the pension regulations will need to be modified so that the Statutory Redundancy Pay is deducted from the strain payment and that any discretionary redundancy pay is either limited to ensure that the overall package is within the exit cap or the pension is actuarially adjusted in line with the revised strain cost. Alternatively, the employee can forgo any discretionary redundancy or defer their pension benefits.

4. CONSULTATION QUESTIONS AND RESPONSES

4.1 As mentioned in paragraph 1.3 above, the consultation does not relate to the principle of a cap on exit pay but is seeking to consult on the effect that the reforms could have on redundancy compensation pay and early access to pensions in local government and the overall impact on the local government workforce. The consultation questions and proposed responses are set out below for consideration.

Q.1. Are there any groups of local government employees that would be more adversely affected than others by our proposed action on employer funded early access to pension? If so please provide data/evidence to back up your views? How would you mitigate the impact on these employees?

Response: *The employees that would be more adversely affected by this action are those who are aged 55 or more and are members of the Local Pension Scheme. The Service only very occasionally utilises the strain payment and where this occurs it will be reported through the Annual Statement of Accounts as termination payments. It is noted that the government intends to undertake an impact assessment concerning protected groups and this Authority would expect this to consider any impact arising from potential indirect age discrimination. It would not be possible to mitigate the impact of this proposal on this group of employees.*

Q.2. What is the most appropriate mechanism or index when considering how the maximum salary might be reviewed on an annual basis?

Response: *The Consumer Price Index (CPI) would be the most appropriate mechanism and would enable the annual maximum salary to be reviewed on an annual basis.*

Q.3. Are there any groups of local government employees that would be more adversely affected than others by our proposed ceiling of 15 months or 66 weeks as the maximum number of months' or weeks' salary that can be paid as a redundancy payment? If so please provide data/evidence to back up your views? How would you mitigate the impact on these employees?

Response: *None within this Authority since the maximum number of weeks' payable for redundancy is already limited to 30 weeks.*

Q.4. Are there any groups of local government employees that would be more adversely affected than others by our proposal to put in place a maximum salary of £80,000 on which an exit payment can be based? If so please provide data/evidence to back up your views? How would you mitigate the impact on these employees?

Response: *The only posts with salary levels above the maximum salary levels would be two positions on the Service's Executive Board. The pay band for these two positions is £85k - £95k and is published on the Authority's website [here](#). It would not be possible to mitigate the impact of this proposal on this group of employees.*

Q.5. Do you agree with these proposals? If not, how else can the Government's policy objectives on exit pay be delivered for local government workers?

Response: *The Authority welcomes any flexibilities that provides additional options for employees impacted by the Exit Payment Regulations. However, the constraints on a local authority to exercise power to relax the cap set in paragraphs 4.10 to 4.13 are such that it effectively fetters any discretion an authority has in this respect. This Authority is concerned that this could have a detrimental impact on the Authority's ability to introduce workforce reform without increasing the risk of employment relations disputes or litigation through the employment tribunals.*

Q.6. Do you agree that the further option identified at paragraph 4.8 should be offered?

Response: *This is the option to defer pension benefits in order to remain under the exit cap. In all likelihood it will be the pension strain payments that take an employee over the exit cap and this mechanism seems to lack sufficient flexibility if the decision for the employee is simply to defer all the pension benefits at the point of the termination. If this option enabled the employee to select their retirement date adjusted for early payment based on the level of strain payment to be applied, then it is more likely to be an option that employees could utilise.*

Q.7. Are there any groups of local government employees that would be more adversely affected than others by our proposals?

Response: *Subject to government undertaking an impact assessment concerning protected groups and such impact assessment considering any impact arising from potential indirect age discrimination, there are no other groups of local government employees more adversely impacted.*

Q.8. From a local government perspective, are there any impacts not covered at Section 5 (Impact Analysis), which you would highlight in relation to the proposals and/or process above?

Response: *No, subject to such impact assessment considering any impact arising from potential indirect age discrimination.*

- Q.9.** Are these transparency arrangements suitably robust? If not, how could current arrangements be improved?

Response: *There is already sufficient transparency with Local Authorities that are required to publish Pay Policy Statements and also disclose Termination Benefits within the Annual Statement of Accounts.*

- Q.10.** Would any transitional arrangements be useful in helping to smooth the introduction of these arrangements?

Response: *The introduction of the legislation is likely to be before any changes to the LGPS regulations and we will therefore have a period when there is a conflict between the exit payment and pension regulations. Clarification on the legal standing of any transitional arrangements in this respect is essential and is required before the arrangements become effective.*

- Q.11.** Is there any other information specific to the proposals set out in this consultation, which is not covered above which may be relevant to these reforms?

Response: No

- Q.12.** Would you recommend anything else to be addressed as part of this consultation?

Response: Yes. Confirmation of how any potential direct or indirect age discrimination has been considered should be shared with local government employers together with confirmation of how the conflict between the Exit Payment Regulations and the existing LGPS Regulations is to be managed.

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CONCLUSION

- 5.1 This paper sets out the background to the exit cap legislation and provides a draft consultation response for the Committee to consider prior to submission to the MHCLG by the deadline of 9 November 2020.

JOE HASSELL
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