

# Committee Report

<b>Decision Maker:</b>	<b>PENSION FUND COMMITTEE</b>
<b>Date:</b>	<b>20 June 2019</b>
<b>Classification:</b>	<b>General Release</b>
<b>Title:</b>	<b>Exit Cap Consultation</b>
<b>Wards Affected:</b>	<b>None</b>
<b>Policy Context:</b>	<b>Effective control over council activities</b>
<b>Financial Summary:</b>	<b>There are no immediate financial implications arising from this report.</b>
<b>Report of:</b>	<b>Phil Triggs</b> <b><i>Tri-Borough Director of Treasury and Pensions</i></b> <a href="mailto:ptriggs@westminster.gov.uk">ptriggs@westminster.gov.uk</a> <b>020 7641 4136</b>

## 1. Executive Summary

- 1.1 This paper provides the Pension Fund Committee with a summary of the background of the proposed £95,000 cap on exit payments in the public sector.

## 2. Recommendations

- 2.1 The Committee is requested to:

Note the report, make appropriate comments and feedback with a view to making a suitable response.

## 3. Exit Payments

- 3.1 In 2015, the Government first announced plans to introduce a cap on exit payments in the public sector. It was intended that a cap would include any pension strain cost. The cap was legislated for in the Enterprise Act 2016, which amends the Small Business, Enterprise and Employment Act 2015, but required secondary legislation to be introduced.
- 3.2 It is intended that the exit cap will apply to the whole of the public sector. At the first stage of implementation, the Regulations will apply to exit payments made by all local authorities, the UK Civil Service, the NHS in England and Wales,

academy schools, Police Forces (including civilian staff) and Fire and Rescue Authorities. Exceptions are housing management companies, further and higher education corporations and sixth form college corporations who are not covered by the Regulations.

- 3.3 On 10 April 2019, HM Treasury opened a consultation on the draft Regulations, directions and guidance to implement the exit cap. The consultation will run for 12 weeks and close on 3 July 2019.
- 3.4 The background of the proposed cap is the prevention of senior managers retiring early with significant six-figure pension strain and other statutory redundancy pay-offs.
- 3.5 Payments related to death in service, ill health retirement, pay in lieu of holiday and payments made in compliance with an order made by a court or tribunal are not exit payments for the purposes of these Regulations.
- 3.6 If the cap is imposed, with an individual taking an early, enforced retirement as a result of the local authority's implementation of business efficiency changes (applies to officers aged over 55), whereas under the current regime that officer's pension would be made up to retirement age with no pensions reduction, under the new rules the total of the statutory redundancy payment and the pension strain would not be allowed to exceed £95,000. As a result, the officer would suffer an actuarial reduction in their pension if the pension strain exceeded the cap.
- 3.7 The exit cap covers redundancy payments (including statutory redundancy payments), severance payments, pension strain costs and all other payments made as a result of termination of employment. The statutory redundancy element of an exit payment cannot be reduced. If the cap is exceeded, other elements that make up the exit payment must be reduced, so that an exit payment at or below £95,000 is achieved.
- 3.8 The proposed Regulations do not apply to the lump sum element of a retiree's pension.

#### **4. Applying the cap in the LGPS**

- 4.1 The impact of the Regulations on a LGPS member if the exit cap was to be exceeded (with the exit payment including pension strain cost) is not 100% clear in the consultation document. It is understood that the policy intent is for the member's pension benefits to be actuarially reduced to the extent that the total exit payment cap of £95,000 is not breached, with the member having the option of paying extra to buy out some or all the reduction, or the member taking a pension cut.
- 4.2 Amendments to current LGPS Regulations would be required to facilitate this change, plus guidance from the Government Actuary Department on how to calculate the pension reduction.

- 4.3 A person who receives any exit payment must inform any other public body that employs them about that payment. Employers are required to record and publish information about capped exit payments.
- 4.4 The consultation invites responses from employing bodies within scope and out of scope of the Regulations, employees, bodies representing those employers or employees, academics with expertise in this area, public and private sector pay, pension, remuneration and HR professionals and anyone else who might be impacted by this consultation.
- 4.5 Westminster City Council will be responding formally to the consultation ahead of the deadline on 3 July 2019. This will be a collaboration between feedback from this meeting, the Pension Board and Westminster City Council overall.
- 4.6 The following questions have been asked:
1. Does draft schedule 1 to the regulations capture the bodies intended? If not, please provide reasons.
  2. Do you agree with the current list of bodies in scope for the first round of implementation? If not, please provide reasons.
  3. Do you agree with the exemptions outlined? If not, please provide evidence.
  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.
  5. Is the guidance sufficiently clear on how to apply the mandatory and discretionary relaxation of the regulations, especially in the case of whistle-blowers?
  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.
  7. Are there other impacts not covered above which you would highlight in relation to the proposals in this consultation document?
  8. Are you able to provide information and data in relation to the impacts set out above?

**If you have any questions about this report, or wish to inspect one of the background papers, please contact the report author:**

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**BACKGROUND PAPERS:** None

**APPENDICES:**

Appendix 1: Exit Cap Consultation Document