

## Public Sector Exit Payments cap - summary

The government first announced plans to cap exit payments in the public sector in 2015. On 10 April 2019 HM Treasury (HMT) launched a consultation on draft regulations, guidance and Directions to implement the cap. HMT published its [response to the consultation](#) on 21<sup>st</sup> July 2020.

[Regulations](#) have now also been published and will be followed by updated guidance and HMT Directions which will 'take into account' detailed responses made as part of the consultation process.

This document summarises the proposals as they relate to the Local Government Pension Scheme (LGPS) in England and Wales and questions marked\* have been updated in the light of the HMT response and regulations. Further details about the guidance to implement the cap will be made available as soon as they are made available.

### Who is covered?\*

The cap will apply to all public sector employers. A schedule listing all public sector bodies covered by the cap has been published alongside the regulations.

### What is covered?

The exit payment cap is set at a total of £95,000 with no provision for this amount to be index-linked. Exit payments include redundancy payments (including statutory redundancy payments), severance payments, pension strain costs – which arise when an LGPS pension is paid unreduced before a member's normal pension age – and other payments made as a consequence of termination of employment.

The cap applies to all exit payments that arise within a 28 day period and the regulations cover the process to follow if an individual has multiple exits from public sector employment within 28 days.

### What isn't covered?

Payments related to death in service or ill health retirement, pay in lieu of holiday, payments made in compliance with an order made by a court or tribunal and payments in lieu of notice that do not exceed a quarter of a person's salary are not exit payments for the purposes of these regulations.

Although statutory redundancy is included as an exit payment it cannot be reduced. If the cap is exceeded, other elements that make up the exit payment must be reduced to achieve an exit payment of £95,000 or less.

### Will the cap be indexed?\*

Proposals for the cap were first published in 2015. If the cap had been indexed by CPI since then it would now be in excess of £110K. There is however no intention to index the cap although the response states that it will be kept under review.

### When will the cap come into force?\*

Regulations provide for the cap to come into force 21 days after they are made. However, the regulations are subject to the affirmative procedure so will need to be approved by both Houses of Parliament before they can be made. We understand it is the intention that the cap will be in force for the end of the 2020 calendar year.

### Applying the cap in the LGPS\*

The major impact of the regulations will be on LGPS members aged 55 or over who currently qualify for an unreduced pension because of redundancy or efficiency retirement as well as a severance payment under The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006. We understand that changes to those regulations will prevent the payment of severance in addition to a pension strain cost. Not only will a severance payment no longer be payable but if a pension strain payment cannot be made in full because of the cap, then the member would be faced with having to take a reduced pension.

This raises serious questions around the inequity of lack of choice as well as the situation of different strain costs between LGPS funds resulting in different reductions being made for the same length of service and pay (currently strain cost is calculated at a local level based on the demographic make-up of the members in each fund). It also appears to be the intent to provide a facility for the member to buy out the reduction.

We understand that MHCLG is looking at options to introduce choice for members to take a deferred benefit rather than a reduced pension together with guidance on the calculation of standardised strain costs and the option to purchase the shortfall. Any changes to LGPS regulations would be subject to a further consultation.

### Relaxing the cap

There are circumstances, as set out in draft HMT Directions, when the cap must be or may be relaxed by a minister or the authority. However, most are subject to consent by HM Treasury even if passed by full council. Employers are required to record and publish information about any decisions made to relax the cap.

### Employee and employer responsibilities

A person who receives an exit payment must inform any other public body covered by the regulations that employs them about that payment. An employer must ensure that any exit payment does not exceed the cap (unless permitted by the relaxation directions) and, where a non-compliant payment is made, recover any overpayment subject to a value for money assessment.