Annex 1

Extract from Local Government Association Advisory Bulletin 634

EXIT PAYMENTS: CONSULTATION ON FURTHER REFORMS

The Government is consulting on further reforms to public sector exit payments, in addition to its plans for a £95,000 cap and the recovery provisions that are currently working their way through Parliament. The policy proposals include options for further caps on exit payments, as well as removing or limiting employer-funded 'top up' pension payments, to enable early access to a pension. This would impact on the strain on fund costs payable by the employer to the Local Government Pension Scheme (LGPS) for employees made redundant aged 55 or over or where employers might facilitate early retirement on compassionate grounds.

Details of the proposals are set out below, along with the consultation questions with LGA comments. The LGA will be responding to the consultation and to assist with this we should be grateful if local authorities would send their views on the questions below to eru@local.gov.uk by 15 April 2016. Should authorities want to respond direct to the consultation, details of how to do so are set out in the consultation document and the closing date for responses is 3 May 2016. We would be grateful if a copy of such responses could also be sent to us for our records.

Policy intention

The consultation document states that the Government intends to pursue further reforms to exit payments to ensure that such payments represent a proportionate level of support for exiting employees, as well as value for money to taxpayers. It also states that public sector exit payments should be considered in the context of such payments in the private sector, which on the figures quoted are lower (an average of £12,700 as opposed to £15,800 in the public sector). However, the Government does recognise that some of that difference may be due to the fact that public sector employees often have longer service.

In respect of employer-funded pension top ups, the consultation indicates that current exit arrangements may not reflect the fact that individuals are getting early access to pension on an exit, yet due to improvements in life expectancy remain economically active.

Finally, although the Government wants different parts of the public sector to have sufficient flexibility to adjust exit terms for their particular workforce, it wants to set an overall framework to reduce costs and to ensure a reasonable degree of consistency across different public sector workforces.

The proposals

The proposal is to take forward <u>some or all</u> of the following elements:

1. Setting the maximum tariff for calculating exit payments at three weeks' pay per year of service.

2. Capping the number of months used to calculate redundancy payments at 15 months. In respect of this, the consultation suggests that where employers have different arrangements for voluntary and compulsory redundancies, there may be a case for maintaining that difference by applying a lower limit (presumably for compulsory redundancies). In the same way where employers offer exit packages that are not classed as redundancy, then there might be a case for applying a slightly higher limit.

3. Setting a maximum salary for the purpose of calculating an exit payment. For example, this could potentially align with the NHS limit of £80,000.

4. Tapering the amount of lump sum compensation an individual is entitled to receive as they get closer to pension retirement age.

5. Reducing or ending employer-funded early access to pension. This could include

    a. capping the amount of employer funded pension contribution top ups to no more than the redundancy lump sum the individual would be entitled to (as applies in the NHS now);

    b. removing the ability of employer top ups altogether, while giving the individual the option of deciding whether to use any lump sum exit payment to increase their pension entitlement;

    c. increasing the minimum age at which an employee is able to receive an employer funded top up, so it is more closely aligned with the individual's Normal Pension Age NPA (in most cases 67 or 68) under their pension scheme. The minimum age could be set at 5 years before the individual's NPA, or at a minimum age of 55 or 58 across all public sector pension schemes.

The LGA's comments on the proposals are set out under the questions section below.

Questions 1-3

1. *Are there alternative options and approaches to compensation provision reform you think the Government should be considering? What alternative?*

2. *Do you agree with the proposed approach of limiting early retirement benefits with reference to the cost for the employer? What alternative approaches would you suggest and why?*

3. *Do you agree with the proposed options around capping tariff terms? What alternative approaches would you suggest and why?*

LGA comments

To start with it is not clear how any three-week per year or similar maximum would interact with any 15 months' or similar cap. Is it intended that the 15-month cap would be an overriding cap? In any event local authority redundancy payments are in many cases not generous in comparison with other parts of the public sector, and a three-week per year entitlement is the exception rather than the norm. Further, local government already operates within a transparent legislative framework including published policies and a requirement that any exit payment of over £100,000 is approved by full council. Therefore, we do not consider that further legislation is necessary in this area.

With regard to the proposals around pension costs, the LGA would wish to see the Government's desire for a value for money framework balanced with sufficient flexibility to enable employers to manage their workforce cost effectively. In that respect we would propose the following arrangements:

- Employees who leave prior to the normal pension age for any reason including redundancy or efficiency should be able to defer their accrued pension or transfer it to a new provider

- If the employee wishes to receive their pension immediately employers should have the ability to offer to waive all or part of any actuarial reduction in respect of the early payment of pension at their own cost subject to the exit payment cap, where applicable.

- Alternatively employees should have the ability to meet the cost of full or partial waiver of any actuarial reduction in respect of early payment of pension

- Any waiver of the actuarial reduction met by the employer should be limited to the lower of a) the available total under the exit payment cap, or b) the total evidenced amount of savings over three years directly resulting from the exit.

- The earliest retirement date at which an accrued pension may be brought into payment should be set at 10 years prior to the employee's State Pension Age.

Bodies/individuals and payments in scope	The consultation states that the proposals “are intended to apply to the major workforces under existing public sector compensation schemes and other arrangements. The major workforces include the Civil Service, Teachers, NHS workers, local government workers, police officers and the judiciary”. In terms of payments in scope, no details are given save that limits “would be imposed on most employer-funded payments made in relation to leaving employment”. However, pension top up payments made by employers in relation to injury, ill-health, physical fitness or death during employment are out of scope. In terms of devolution, the Government intends to take the same approach it says will apply to the exit cap and recovery reforms, that is the reforms will apply to those areas which are the responsibility of the UK Government. It will be for the Scottish and Welsh governments and Northern Ireland Executive to determine if they want to implement similar reforms for their devolved bodies and workforces.
Question 4	4. *Do you agree that the Government has established the correct scope for the implementation of this policy? Are there other factors the Government should be taking into account with regard to scope?*
LGA comments	Subject to our comments on questions 1-3 above, we agree that it would be sensible to have cross public-sector restrictions on exit payments, so as to ensure a relatively level playing field across different parts of the public sector. We recognise that payments in relation to injury, ill health and death will be excluded from any of the proposed restrictions, but as with the £95,000 cap and the recovery provisions, payments made under regulation 62 of the Firefighters Pension Scheme

	(England) Regulations 2014 in accordance with the fitness provisions should also be excluded.
Impact	In its initial analysis the Government has identified the following impacts. • Economic, fiscal and costs impacts: The Government's view is that although there will be administrative costs arising from the reforms, the costs saving benefits will outweigh those costs. It also believes the wider economic impact of the reforms will be limited, as although it could reduce the spending power of those directly affected by the reforms, it may provide an incentive for those individuals to find a job more quickly. • Social impacts and equalities: The Labour Force Survey shows that compared to the wider working population, the public sector workforce has a greater proportion of those who are: female, aged 40-59, Christian, White or Black/African/Carribean/Black British, married, cohabiting or in a civil partnership, or who have some form of disability. Therefore the Government notes that individuals with some of the above characteristics may be more likely to be affected by the policy. Further, any changes to employer pension top up arrangements would have a direct effect on older workers and may affect lower earning individuals. The Government will consider the equalities impacts.
Questions 5-7 with LGA comments	5. *Are there other impacts not covered in the above which you would highlight in relation to the proposals in this consultation document?* 6. *Are you able to provide any further information and data in relation to the impacts which may be relevant to the government in setting out the above?*

7. *Are you able to provide information and data in relation to redundancy provision in the wider economy which could be used to inform the Government's response to this consultation?*

LGA comments

Should the proposals be implemented, there will be fewer volunteers for redundancy. This will have a negative effect on the efficacy of restructuring programmes. Instead of receiving requests from volunteers to leave, employers will have to make compulsory redundancies involving full consultation and notice periods. This may well mean that any savings in the proposals will be eroded, if not eliminated; the positive effect on morale and service delivery from being able to reduce the number of compulsory redundancies should not be overlooked.

The policy could also have further impact on the ability to recruit and retain skills and knowledge in the public sector. Authorities are already seeing difficulties recruiting in professions such as IT, planning and legal, as they are failing to compete with the private sector. These difficulties can be even more acute in London and the South East.

EXIT PAYMENT CAP: UPDATE ON IMPLEMENTATION

In the Public Bill Parliamentary Committee on 23 February 2016, Anna Soubry, Minister for Small Business, Industry and Enterprise, was asked a direct question about the Government's intended date for the implementation of the £95,000 exit payment cap in the Enterprise Bill, assuming that it completes its passage through Parliament. She was also asked what reassurance could she give to workers that, if they have already negotiated exit settlements, the Government will not overturn those plans at the last minute and in effect make them subject to a retrospective measure.

The Minister replied that there should be no doubt about the Government's intention to implement the measure and that public sector planners should be planning accordingly. However, she specifically stated:

	"… the regulations giving effect to the cap will not be in force until 1 October 2016 at the earliest, giving employers and employees time to prepare. The power to relax the cap [presumably the waiver] can address any unforeseen unfairness or hardships that arise, which will include cases where the exit is agreed and scheduled to take place before the regulations come into force, but, for a reason beyond the control of the employee, the exit occurs after they have come into force."
Comments	This statement provides a useful starting point for planning purposes in that the legislation should not be in place before 1 October 2016. It also provides an indication that there will be some flexibility regarding possible unfairness created purely by the date of implementation of the legislation. However, it does not go so far as to provide assurances about transitional provisions, as the Minister specifically refers to the use of the waiver where an exit is scheduled to take place before the legislation comes into force, but takes place afterwards for a reason beyond the control of the employee. Authorities therefore should remain cautious about making commitments going beyond 1 October 2016 which could fall foul of the basic intentions of the policy. In the meantime the LGA will be talking to the Government about the Treasury directions that will accompany the waiver process, and we will keep authorities updated on its development. Further information on the exit payment cap can be found at www.local.gov.uk/employment-relations.