

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

PERSONNEL COMMITTEE

24th June 2019

Report of the Head of Human Resources – Sheenagh Rees

SECTION A – MATTER FOR DECISION

WARDS AFFECTED – ALL

Response to Government Consultation: Restriction of Public Sector Exit Payments Regulations 2019

Purpose of the Report

1. To seek Council approval for the draft response enclosed at Appendix 1 in response to HM Treasury's Consultation on proposals to restrict exit payments in the public sector.

Executive Summary

2. In 2015 the UK government first announced plans to introduce a cap on exit payments in the public sector. The cap includes 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. On 10th April 2019, HM Treasury opened a consultation on draft regulations, Directions and guidance to implement the exit cap. The deadline for responses is 3rd July 2019. This report provides Members with a broad overview of the proposals, and a draft response at Appendix 1 for approval.

The Draft Regulations

3. The draft Regulations set out an exit payment cap of £95,000. The cap will apply to the whole of the public sector but it is being implemented in 2 stages. Local government employers will be included in stage 1. A public sector exit is defined as when an employee leaves the employment of a public sector authority (as listed in the schedule included within the legislation).
4. The cap will apply to payments of the following types, but see also the list of exclusions:
 - a) any payment on account of dismissal by reason of redundancy – including a statutory redundancy payment
 - b) any payment made to reduce or eliminate an actuarial reduction to a pension on early retirement or in respect of the cost of a pension scheme of such a reduction not being made (pension strain costs)
 - c) any payment made pursuant to an award of compensation under the ACAS arbitration scheme or a settlement or conciliation agreement
 - d) any severance payment or ex gratia payment
 - e) any payment in the form of shares or share options
 - f) any payment on voluntary exit
 - g) any payment in lieu of notice due under a contract of employment (but only if it exceeds a quarter of the employee's annual salary)
 - h) any payment made to extinguish any liability to pay money under a fixed term contract
 - i) any other payment, whether under a contract of employment or otherwise, in consequence of termination of employment or loss of office.
5. The following payments are not exit payments for the purposes of the Regulations:
 - a) any payment made in respect of death in service
 - b) any payment made in respect of incapacity as a result of accident, injury or illness
 - c) certain payment made to retiring firefighters

- d) a specific service award paid to a member of the judiciary
 - e) a service payment made in respect of annual leave due under a contract of employment
 - f) any payment made in compliance with an order of any court or tribunal
 - g) a payment in lieu of notice due under a contract of employment that does not exceed one quarter of the relevant person's annual salary.
6. The government's expectation is that employment contracts, compensation schemes and pension schemes will be amended to reflect the introduction of the cap. This is particularly important in relation to the Local Government Pension Scheme, which for example currently requires an employer to fully buy out an actuarial reduction when a pension is taken before normal pension age in redundancy situations. Pension strain costs could, depending on the circumstances, exceed the £95k cap (real examples of this are provided in the draft consultation response at Appendix 1).
7. The regulations set out that an individual, if eligible, must receive a redundancy payment that is at least equal to their minimum statutory entitlement under the Employment Rights Act 1996 (ERA 1996). HM Treasury's assumption is that employers will, where possible, cap any additional contractual redundancy lump sum in order to allow individuals to receive any pension top up in full – however where the cap is breached by pension strain costs, retirement benefits will be reduced to a level which means the cap is not breached. The individual would have the option of buying out some or all of that reduction (subject to the necessary amendment being made to the LGPS).
8. The proposals set out situations where there will be the power to relax the restrictions imposed by the regulations. For example, where a payment is made to avoid employment tribunal litigation in relation to a complaint that someone has suffered a detriment or been dismissed as a result of whistleblowing, or a discrimination complaint. Whilst in England, the full council of a local authority can determine the relaxations that are permitted

under the regulations, in Wales the regulations set out that any relaxation will have to be determined by a Welsh Minister. The practicality of this is not explained.

Financial impact

9. The Government set out that the key aim of the regulations is to ensure exit payments represent value for money and are fair to the taxpayer.

Equality impact assessment

10. There is no requirement for an Integrated Impact Assessment in respect of this particular report.

Workforce impacts

11. The draft regulations will have an impact on the Council's workforce and these impacts are described in the draft consultation response at Appendix 1.

Legal impacts

12. If implemented, the Council will be required to comply with Restriction of Public Sector Exit Payments Regulations 2019.

Risk Management

13. The consultation has asked respondents to highlight any impacts of the regulations and these are set out in the draft consultation response at Appendix 1.

Consultation

14. The consultation runs for twelve weeks, closing on 3rd July.

Recommendation

15. It is recommended that Members consider and approve a response, as outlined in Appendix 1, to the Restricting Exit Payments in the Public Sector: consultation on implementation of regulations.

FOR DECISION

Reason for proposed decision

16. To ensure that the Council's responds to the Restricting Exit Payments in the Public Sector: consultation on implementation of regulations

Implementation of Decision

17. The decision is proposed for implementation after the three day call in period.

Appendices

Appendix 1 – Draft Response to the Restricting Exit Payments in the Public Sector: consultation on implementation of regulations

List of Background Papers

<https://www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector>

Officer contact

18. Sheenagh Rees, Head of Human Resources, telephone number: 01639 763315, email: s.rees5@npt.gov.uk

Public Sector Exit Payments

NPT Responses to Consultation Questions

Question 1

Does draft schedule 1 to the regulations capture the bodies intended (described in section 2.1 above)? If not please provide details.

NPT Response:

- Yes - this list appears comprehensive.

Question 2

Do you agree with the current list of bodies in scope, for the first round of implementation? If not, please provide reasons

NPT Response:

- Local government is included in the first round of implementation. Whilst there is no objection as such to this, we must point out that implementation will depend on the necessary changes to the Local Government Pension Scheme being in place. Without a guarantee around this, it will not be possible for local government to implement restrictions on exit payments. Clarity around how the relaxation of the restriction will be operated in Wales will also be needed.

Questions 3

Do you agree with the exemptions outlined. If not, please provide evidence

NPT Response:

- No comment in relation to the exemptions outlined.

Question 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?

NPT Response:

- *“The government’s expectation is that.....pension schemes will be amended to reflect the introduction of the cap”*
As a local government employer we need to understand what amendments will be introduced into the Local Government Pension Scheme and when, with an assurance that these changes will be in place by the time the exit payment restrictions are implemented. If the LGPS remains unchanged at the time of implementation of the cap, then as an employer it is not at all clear how we marry our obligation to implement the cap, with our employer obligations as set

out in the LGPS with regards to members who are made redundant or leave on the grounds of business efficiency at age 55 or over.

- There is no reference to the option of a member to defer payment of their LGPS benefits on redundancy or retirement on business efficiency grounds at age 55 or over – this is currently not possible under LPGA rules, and the Council suggests that enabling this option would make the introduction of the restriction more palatable to long serving local government employees who have contributed for many years to their pension.

Question 5

Is the guidance sufficiently clear on how to apply the mandatory and discretionary relaxation of the regulations, especially in the case of whistleblowers?

NPT Response:

- There needs to be clarity on how this will operate in Wales.

Question 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.

NPT Response:

- No further comment.

Question 7

Are there any other impacts not covered above which you would highlight in relation to the proposals in this consultation document?

NPT Response:

- Since 2011, this Council has responded to the very difficult funding position by applying a number of measures to reduce pay bill costs but at the same time minimise compulsory redundancy. These measures have proved very successful, evidenced by data which shows that since 2011, of the 1,064 jobs that have been made redundant, 12% were through compulsory redundancy. We introduced our own cap into our voluntary redundancy schemes in 2011 and reduced the value of our contractual redundancy lump sum payments. These actions have not been easy, but demonstrate that this Council has sought to operate in the interests of the public purse during difficult times, and as the major employer within this country borough, we have also sought to ensure by minimising the impact of compulsory redundancy we can continue to maintain employment for local people, and maintain financial security which is so important for the local economy.
- Local government remains a less certain employment choice, and it is very important that despite this we can continue to attract talented and committed

people to work for us, and very importantly into senior leadership positions. We employ less staff than we did 10 years ago, but the burden of responsibility and accountability on those that remain has only increased, and in particular at senior levels. Whilst our own actions demonstrate that we accept a clear need to demonstrate accountability to the public purse, this Council is concerned that the introduction of the cap may, in time, cause recruitment and retention difficulties to positions that can already be difficult to recruit to, particularly as the proposals impact on the pension that employees can expect to receive if ever placed in the difficult position of being made compulsory redundant. This is particularly so, as this is a benefit employees make significant contributions to themselves. The inclusion of pension strain costs within the cap will have an impact on many local government employees with a history of long public service, who could not necessarily be viewed as high earners. Examples are provided below.

- There is also a great risk that employees will elect to not join the LGPS in the future, impacting on the longer term sustainability of the scheme.

Question 8

Are you able to provide information and data in relation to the impacts set out above?

NPT Response:

Post Title	Age At Termination	Service At Termination	Salary	Discretionary Redundancy	Statutory Redundancy	Early Access To Pension	Total Cost
			£'000	£'000	£'000	£'000	£'000
School Improvement - Challenge Advisor	56	33	55	48	14	106	168
Community Social Worker	56	30	37	30	14	76	120