

Reference: CPFExitPRCR  
Date: 09 November 2020  
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Exit Pay Consultation  
Local Government Workforce and Pay Team,  
Ministry for Housing, Communities and Local  
Government  
2nd Floor, Fry Building  
2 Marsham Street  
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Dear Sir/Madam,

### **Consultation Response – Reforming Local Government Exit Pay**

With reference to the consultation launched on 7 September 2020 this response represents the views of the administering authority, Cambridgeshire County Council, in respect of Cambridgeshire Pension Fund.

There has been considerable confusion and uncertainty introduced by:

- a) The timing of The Restriction of Public Sector Exit Payments Regulations 2020 coming into force,
- b) The MHCLG Consultation on Exit Payment Cap covering a wider reform agenda than was initially anticipated, and
- c) The MHCLG Consultation document initially being issued with neither the associated draft regulations nor supporting GAD Guidance.

The regulations and GAD Guidance both being issued in draft form more than 5 weeks in to the 9 week consultation period has seriously compromised the ability to properly consider the actual arrangements that would be required to implement the proposals. The quality of the drafts would also suggest that these documents were still in actual fact 'works in progress' and their release had been somewhat rushed.

It is welcome that the deadline for comments on the draft regulations, and presumably the draft GAD guidance, has been extended to 18 December although this may extend the period of 'limbo' within which employing authorities and administering authorities will be subject to legal challenge as a result of the conflict between the existing LGPS Regulations 2013 and The Restriction of Public Sector Exit Payments Regulations 2020 bringing into force the £95k exit payment cap legislated for in the Small Business, Enterprise and Employment Act 2015 from 4 November 2020.

The 12 specific questions posed within the consultation document are reproduced below. Comments have been included where considered appropriate.

***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?***

No comment from an administering authority perspective.

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

An earnings related link would seem more appropriate than a prices related one, so rather than RPI or CPI a link to either Average Weekly Earnings or the award agreed under National Joint Council for Local Government Services should be considered.

Given that the £80,000 maximum salary referenced appears to stem from the NHS 'Agenda For Change' Agreement introduced in April 2015 it should arguably be uplifted at introduction relative to increases in the last 5+ years, or in the last 4+ years since it was referenced in the September 2016 Government's response to the consultation on Reforms to public sector exit payments.

***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?***

While making no comment from an administering authority perspective on the specific question regarding employees that would be more adversely affected, there does appear to be an issue with the proposed calculation methodology making the '15 months' ceiling option effectively unachievable and therefore meaningless.

Paragraph 13 of Part 2 of Schedule 9 to The Equality Act 2010 sets out conditions for the calculation of enhanced redundancy payments that would be automatically exempt from being considered to be age discriminatory without requiring objective justification. These conditions require that the calculation methodology mirror that used to determine statutory redundancy payments under the Employment Rights Act 1996, but with specific adjustments permitted under subparagraphs 13(5) and (6) of the 2010 Act.

It would appear that the "maximum tariff for calculating exit payments of three weeks' pay per year of service" proposed in 4.3 a) of the consultation is seeking to use the permitted adjustment under subparagraph 13(5)(c) of the 2010 Act ("may multiply the appropriate amount for each year of employment by a figure of more than one") however, since years of employment here would be limited to twenty under the 1996 Act, this would result in the redundancy payment only being able to be enhanced to

the equivalent of a maximum total of 60 weeks' pay, 6 weeks' pay less than the "ceiling of 15 months (66 weeks)" mentioned in 4.3 b) of the consultation.

A multiplier of more than three is permitted under subparagraph 13(5)(d) however this is not linked to years of service/employment.

In the draft Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2020 Regulation 9 (Discretionary Compensation) states in subparagraph (4):

*"The amount of compensation must not exceed whichever is the lower of—  
(a) 3 weeks' maximum pay per year of continuous service under the 1996 Act; or  
(b) 15 months' maximum pay."*

The limit in subparagraph (b) can never be greater than that in (a), since (b) will always be no more than 60 weeks' pay for the reason given above.

Clarification is therefore required over what the **actual** intention of the proposal is, and the draft Regulations should be corrected to appropriately reflect this.

***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?***

No comment from an administering authority perspective.

***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?***

The positioning of this question indicates that it relates to the proposals set out in paragraphs 4.4 to 4.13 of the consultation document.

The proposals as expressed in the consultation document do appear to deliver the Government's stated intentions and it is recognised that, as stated in paragraph 2.7, the consultation is not seeking views or representations on the government's position regarding exit pay reform.

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

Given the significant changes that curbing the strain cost aspect of a member's exit package may have, introducing an option whereby that member is not compelled to take immediate payment of pension benefits that are subject to early payment reductions is welcome.

What is difficult to comprehend, however, is that after the proposals as set out are implemented there is potential for a significant difference in cost to employing

authorities for an individual member who would not come close to being impacted by the £95k Cap depending on whether they choose to:

- elect for immediate payment of unreduced benefits (or benefits subject to a partial reduction due to a SRP not being used by the member to 'buy out' that reduction), rather than
- an award of either deferred benefits or payment of fully reduced plus a discretionary severance payment,

i.e. there may be a significant difference between the strain cost payable to the appropriate fund on the one hand and the discretionary severance payment that would be payable to the member on the other.

The complex nature of the options available to members and the rather convoluted election and payment processes and timescales envisaged in the draft regulations would require careful liaison between employing and administering authorities alongside clear communication between each of them and the member.

There seems a very real risk of members claiming at some point after the event:

- to have "made the wrong decision",
- not to have been able to make the "right decision" within the timescale provided, or
- to have been provided with incomplete or misleading information.

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

The proposals will adversely affect all employees over the age of 55 in the LGPS. Those with long service will be particularly affected because of the interrelationship between strain on pension fund payments and other discretionary and statutory redundancy payments.

The majority of employees in local government roles are women and many will be at the lower ranges of pay. The proposals will affect all salary ranges as the GAD impact assessment illustrates. They will have a greater effect in purely financial terms on longer serving higher earners, but may have a more significant impact on lower paid workers (and so women and part-time workers) who may have greater need for a financial cushion upon their employment being terminated.

***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?***

No comment from an administering authority perspective.

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

It is assumed that the existing arrangements are deemed suitably robust and effective. Having said this, paragraph 5.8 of the consultation gives the impression that "each local authority is required to have its own policy on the abatement of pension benefits when people in receipt of a local government pension are reemployed in local

government”, when the policy in the LGPS is actually at administering authority level rather than employing authority level. In addition, benefits earned in schemes reformed under the Public Service Pensions Act 2013 are not subject to abatement.

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

An appropriate lead time should be built in to the reforms to allow for these to be implemented effectively, particularly in light of the variety of options that seem to be being proposed and the associated timelines linked to these within the draft regulations. A period of 6 months may be appropriate from an administering authority perspective, but it may be that a longer period would be required by employing authorities in order to accommodate the consultation timeframes involved in major workforce restructuring.

***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?***

Although we will take the opportunity to continue to reflect on the draft regulations and GAD guidance and may therefore submit a further response in relation to these within the revised deadline of 18 December, it was considered that it might be useful to have preliminary comments regarding these draft documents and these are shown below:

**Draft GAD Guidance**

- In paragraph 2.5:
  - the word “**less**” in the following sentence should be “**more**”:  
“If the member’s statutory redundancy pay is **less more** than the pension strain then the excess can be paid as a cash benefit, up to the £95,000 cap.”, and
  - In the following sentence, “less than” should be “less than or equal to” so it would read:  
“If the member’s discretionary severance pay is less than **or equal to** the value of the strain cost, no further payment is made”.
- In the Summary box in Section 3 Overview of process, in Step 2 “**LESS**” should be “**NOT GREATER**”, so the first bullet point reads “If pension strain is **LESS NOT GREATER** than £95,000, there is no breach of £95,000 cap”.
- In paragraph 4.11 in the description of “ERF table 1”, the reference to “**pre-2014** pension” should be to “**post-2014** pension”.
- In paragraph 5.2, the heading of the table (in the second row) rather than reading “less than (<)” should read “less than **or equal to (≤)**”.
- In paragraph 6.5 “less” should be “not greater” in the sentence “The pension strain is **less not greater** than £95,000, therefore, the member does not breach the £95,000 exit payment cap”.
- In paragraph 6.17 (Example 3 Option 3) the reference to “Immediate reduced **benefits pa**” should be to “immediate reduced **retirement grant**”.
- The assumption throughout the guidance appears to be that a statutory redundancy payment (SRP) will not *physically* be paid to a member, however that is not our understanding of how the process would be required to work; SRP will continue to be paid to the member by the employing authority but,

depending the benefit option choice made by the member, that member may then elect to offset the actuarial reduction resulting from the impact of the SRP on the strain cost by making a payment to the pension fund. References to “a cash payment” or “a cash top up” in relation to SRP therefore seem inappropriate since this suggests a further payment being made to the member when, in fact, the member will be paid the SRP in full and would be deciding whether to ‘buy out’ the actuarial reduction resulting from the SRP.

- As an example of this, the following wording appears in paragraph 5.2’s table: “If the member’s pension strain is less than the statutory redundancy pay, the member is entitled to a cash payment, up to the amount of statutory redundancy pay. This cash top up is equal to [SRP – strain]”.

The reference to a “cash top up” in relation to an element of discretionary severance payment (DSP) in the same table, in the context of cases where (unreduced) strain cost is less than combined SRP and DSP, is less incongruous as this *would* be an additional payment due to the member over and above the SRP being paid to them, and the required strain cost payment (reduced by the SRP) being made to the pension fund, by the employer.

### **Draft Regulations**

- For clarity and ease of interpretation consistent terminology should be used.
  - Termination date vs. leaving employment.  
 Regulation 1 includes the following definition ““termination date” in relation to a person means the final day of that person’s employment.”  
 The timeframes set out in Regulations 3(a) and 4(2)(a) should be set by reference to “termination date” as defined in Regulation 1 rather than the undefined “leaving their employment”.  
 It is believed that this would mean:
    - a) Regulation 3(a) becoming “*the election by the Scheme member to make the payment is made by notice in writing to the administering authority given not later than the day before ~~leaving their employment~~ **their termination date** (or such longer period as they allow); and*”, and
    - b) Regulation 4(2)(a) becoming “the election to make the payment is made by notice in writing to the administering authority given not later than the expiry of the period of three months beginning on the day after ~~leaving that employment~~ **their termination date** (or such longer period as they allow); and”.
  - Employing authority vs. employer  
 The term “employer” is used in Regulation 9(8)(a) whereas for consistency within these Regulations the term “employing authority” as defined in Regulation 1 should be used:  
 Regulation 9(8)(a) would become “*is to be reduced by any amount paid by the ~~employer~~ **employing authority** in relation to that employment under regulation 68 of the 2013 Regulations (employer’s further payments);*”
  - Payments to be made to the appropriate fund vs. the administering authority  
 References in the following Regulations to payments being made by either the relevant Scheme member or employing authority to “the

(relevant) administering authority” should be revised to “the appropriate fund”. It is believed that this would mean

- a) Regulation 3 would become “...*may elect to pay to the ~~administering authority~~ appropriate fund an amount..*”, and
  - o 10(5)(c) would become “...*pay to the ~~relevant administering authority~~ appropriate fund within one month...*”.
- The timeframe set out in Regulation 9(2) “*Where this regulation applies, the employing authority may decide to pay compensation under this regulation no later than three months **before** the termination date*” appears inappropriate – should the word “before” be “after”?
- The references to “Regulation 9” in Regulation 9(6) and (8) should presumably be to Regulation 8.
- The references in Regulation 9(7) and (12), which appear to be seeking to increase the £80,000 relative to Pensions Increase would need to be worded more appropriately if that was the chosen review mechanism/index.

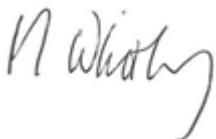
**12. Would you recommend anything else to be addressed as part of this consultation?**

At this point, no.

Ideally, there would have been a properly managed alignment of the three separate strands to the Government’s exit payment reform strategy that has been trailed since 2015, i.e. in relation to the Cap, the reform of compensation arrangements at exit and the provisions for potential recovery of payments upon return to public service within specified timescales, however that is no longer an available way forward.

I trust that this response proves helpful.

Yours faithfully,



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