Report to:	**Governance Committee**
Date of meeting:	**25 June 2019**
By:	**Chief Operating Officer**
Title:	**Consultation on the Proposed Regulations to Implement the £95k Exit Payment Cap**
Purpose:	**To inform the Governance Committee about the Government's proposal to introduce a cap on exit payments in the public sector and provide a draft response to the current consultation on the regulations to implement the cap.**

RECOMMENDATIONS

The Governance Committee is recommended to:

1. note the Government's proposal to implement a Public Sector Exit Payment Cap; and

2. give their views on the proposed draft response to the consultation on the regulations to implement the cap and delegate authority to the Chief Operating Officer to respond to the consultation, reflecting the Committee's views.

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1. Background

1.1 The Government first announced plans to introduce a cap on exit payments in the public sector in 2015. The Council's response to that consultation was essentially not in favour of such a cap and the Governance Committee approved a consultation response setting that out at its meeting on 22 September 2015. A copy is attached at Appendix 1.

1.2 Following that consultation, the cap on exit payments was legislated for in the Enterprise Act 2016 which amended the Small Business, Enterprise and Employment Act 2015. However, this required secondary legislation to be introduced to effect the cap.

1.3 On 10 April 2019, HM Treasury opened a further consultation on draft regulations, directions and guidance to implement the cap. The draft regulations define the types of payments intended to be subject to the cap, how the proposed cap is intended to operate and the scope of the regulations.

1.4 It is proposed that the exit payment cap remains set at £95k and will include redundancy payments, severance payments, PILON (pay in lieu of notice) if more than three months, pension strain costs and other payments made as a consequence of termination of employment. Payments related to death in service or ill health retirement, pay in lieu of holiday and payments made in compliance with a court or tribunal order are excluded

1.5 It should be noted that although regulation 153A of the Small Business, Enterprise and Employment Act 2015 allows for Regulations to be introduced which change the cap, there is no provision for the cap to be index-linked.

1.6 The cap will apply to the whole of the public sector but implemented in two stages with the majority of public sector employers in the first stage. It is proposed that the UK Civil Service, the NHS, Academy Schools, Local Government including Fire Authorities and Maintained Schools and Police Forces will be included in the first stage.

2. Supporting Information

2.1 There are a number of specific considerations that are worth highlighting.

<u>Redundancy Payments</u>

2.2 The draft regulations propose that 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 to

achieve an exit payment of £95,000. In circumstances of redundancy, the Council's current local discretionary policy is to pay an enhanced redundancy payment, based on (i) the actual, uncapped, weekly rate of gross pay of the employee and (ii) to enhance the lump sum severance payment further by applying a multiplier of 1.75 (up to a maximum of 52.5 weeks' pay).

2.3 As the enhanced redundancy payment is over and above the statutory entitlement, it may be appropriate for consideration to be given to the Council's current policy discretion, to apply an enhanced redundancy payment, once the outcome of the consultation is known.

Local Government Pension Scheme – LGPS

2.4 The draft regulations currently include pension strain costs as counting towards the cap. These arise in circumstances where an individual is accessing their pension before their normal date of retirement. Under the LGPS regulations, where an individual, over the age of 55, is made redundant, it is mandatory for the Council to pay the cost of the pension strain arising. It is important to note however that this is not cash for an individual in the same way as a redundancy or compensation payment and neither is the pension being enhanced beyond the entitlement the individual has earned; the strain costs are simply a reflection that the pension entitlement is being accessed earlier than expected (i.e. no more employer or employee contributions will be made).

2.5 The current policy intent of the regulations is for the individual's pension benefits to be reduced to the extent that the exit payment cap is not breached, with the individual having the option of paying extra to buy-out some or all of the reduction. The LGPS regulations do not currently allow partial reduction of pension benefits or the buying out of a reduction. As such, amendments to the LGPS regulations will be required. At present, there is no clarity about the Government's plans to enact such amendments.

2.6 It is clear that the inclusion of pension strain costs will affect many staff, not just the target group of 'high earners'. Some indicative examples have been worked through and these show that with 25 years plus service, frontline staff such as Senior Practitioners and Team Leaders will be impacted. These are attached at Appendix 2.

Relaxation of the cap

2.7 The draft regulations set out the circumstances in which the cap must be relaxed - mandatory cases (TUPE, complaints under whistleblowing or discrimination) and the circumstances when they may be relaxed – discretionary (to avoid undue hardship, to effect urgent workplace reforms or exits agreed before the regulations take effect).

2.8 The power to relax the cap is delegated to Full Council. However, where this is on discretionary grounds, the consent of HM Treasury is also required which potentially undermines the current autonomous status of Councils as democratically elected bodies. In addition to this, the grounds on which the cap can be exercised are very loosely defined, for example, 'undue hardship'. Local policies will therefore need to be developed to define this more clearly. Given the reach and impact of the cap, it is likely that this will lead to dispute and challenge, including through legal processes, in relation to how this discretion is exercised. Likewise, the provisions around relaxing the cap in circumstances of complaints of whistleblowing and discrimination are likely to drive more litigious behaviour.

Broader Impact

2.9 Given the impact of the cap, it is highly likely that it's implementation will significantly reduce our ability to achieve workforce reductions through voluntary means, therefore leading to more contentious negotiations with the attendant increase in costs and time associated. In addition, given that the cap will not just impact on the target group of 'high earners' but also on mid-level staff with long service, it is likely to have a negative impact on the image of Local Government as trusted employer of choice as staff will no longer be able to access all the benefits they have earned.

2.10 There are already a number of significant recruitment and retention issues in the local government workforce, for example, Social Workers and direct care staff, and the implementation of the cap is likely to compound this, particularly as it is not currently proposed for the cap to be index-linked.

3. Conclusion and Recommendations

3.1 The draft regulations raise a number of issues as highlighted above. In particular, it is clear that the cap will impact on a range of staff and not just the government's target group of 'high earners'.

3.2 The consultation closes on 3 July 2019 and attached at Appendix 3 is the proposed draft response. In formulating our response, we have linked in with both our public sector neighbours and professional bodies such as the Local Government Association and ALACE (the Association of Local Authority Chief Executives and Senior Managers) which are along very similar lines to ours. The Committee is invited to review this response and make any amendments it deems appropriate.

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