Restricting Exit Payments in the Public Sector: Consultation on implementation of the regulations – Proposed Response

Q1. Does draft Schedule 1 to the Regulations capture the bodies intended (described in section 2.1 of the consultation paper)? If not, please provide details
NO
The list of bodies does not reference Unitary Councils.

Q2. Do you agree with the current list of bodies in scope, for the first round of implementation? If not, please provide reasons
NO
The Enterprise Act 2016 received Royal Assent on 4 May 2016. The Treasury has had almost 3 years to bring forward an approach that applies across the public sector. It is unacceptable and unfair that the regulations might apply to many parts of the public sector before they are brought into force for other public bodies.

It is, however, difficult to comment further as it is not clear which bodies will be included in the second round of implementation and no reason has been given for this different treatment.

Q3. Do you agree with the exemptions outlined? If not please provide evidence.
NO
Bodies in Scope: we do not believe that all exit payments in respect of the armed forces and the security service should be exempt. For senior officers or officials, it is normal to work until their mid-50s or beyond and earn relatively high salaries with good pensions. We do not believe therefore that there is a rationale for a blanket exemption for such posts.

Payments in scope:
It is our view that the cap should only apply to genuine exit payments such as redundancy payments. We do not believe that pension strain costs should be included as these are not payments to the individual but rather to a pension fund to ensure the individual gains access to the pension they have earned and paid into over a long period of time. In addition, the existence of the cap will mean that the terms of the pension benefits being offered are different to those that individuals signed up to and therefore planned for, when they joined the pension scheme.

It is also important to note that the inclusion of pension strain costs will not only affect the 'high earners' that are the Government's target group but also mid-level staff with long service eg frontline Senior Social Worker and Team Leader roles where the post holders have more than 25 years' service.

Further, under the local government pension scheme regulations, it is mandatory for councils to pay the cost of pension strain where an individual aged 55 or over is made redundant and there is no choice for the employee – including on whether to defer receipt of pension if the cap is brought into force. Further clarity and guidance is therefor required on the proposed option of allowing partial reduction and the option of buy-out.

The method of calculating pension strain cost is currently set locally by each administering authority and is based on the demographics of their membership and actuarial assumptions. This will therefore result in the exit payment cap having different results for individuals in the LGPS in different administering authorities, despite being the same in all other respects, eg age, salary, length of service etc.

The cost of pension strain is not cash in an individual's pocket in the same way as a redundancy or compensation payment i.e. it is not an immediate lump sum payment to an individual but rather it is spread out over the life of the pension. Further, it does not give anyone a pension that is higher than the entitlement they have earned. We therefore feel strongly that pension strain should be omitted altogether. At the very least, its "cash value" to the individual should be assessed by applying an appropriate divisor as the pension will be received over many years, not in a single lump sum. We would suggest a divisor of 20, the mirror of the multiplier of 20 used to test whether a pension exceeds the lifetime allowance.

Finally, bearing in mind the recent changes to the Tax and National Insurance treatment of payments in lieu of notice to simplify the system, the exemption for payments in lieu of notice (where notice is three months or less) should be extended to all payments in lieu of notice to provide clarity and simplify calculations on exit.

Q4. 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.

NO

The guidance has largely been written from the perspective of Government Departments as there are several references to what departments should do. Given the different nature of the Local Government Pension Scheme and the autonomous role of directly-elected councils, we believe there should be a separate version that better meets the needs of Local Government.

In addition, greater clarity on the order of priority for different payments is needed e.g. redundancy pay, pension strain costs, other payments. Allied to this, clarity on the provisions for offering a cash payment as an alternative to a pension strain cost is required.

The guidance is not clear on whether the power to relax the cap can be delegated by Full Council to another sub-Committee, particularly important given the frequency of Full Council meetings.

Further guidance on how the regulations will operate for Schools and Academies is also required, particularly in terms of the relaxation of the cap arrangements.

Finally, a clear date for when they will come into force is needed with sufficient lead-in time to make necessary adjustments, policy changes and communications

Q5. Is the guidance sufficiently clear on how to apply the mandatory and discretionary relaxation of the Regulations, especially in the case of whistleblowers?

NO

The guidance on relaxation is very widely written and will require each organisation to determine a policy/protocol setting out the circumstances that would be deemed to meet the criteria for relaxation. As well as resulting in a lack of consistency in the way in which the regulations are applied, it will also lead to formal challenges from individuals about the way in which any discretions to relax the cap are exercised.

Further guidance should be provided on the information needed by the Minister of the Crown to relax the cap on mandatory grounds. Likewise, clearer guidance on what circumstances will count as 'hardship' is also required, as well as the criteria to be used in the context of facilitating 'workforce reform'.

In addition, the inclusion of the settlement of complaints of whistleblowing and/or discrimination as specific grounds for relaxing the cap are likely to lead to a significant increase in the number of cases being presented under these headings. This will lead to an increase in formal processes such as grievances, Tribunal claims etc, as well as an increase in litigation costs.

<u>Q6. 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.</u>

YES

More information and explanation is required regarding pension strain costs for Local Government, specifically around the interaction of the LGPS for those over 55 who are provided with automatic access to an unreduced pension on being made redundant. It is understood that the policy intent is for the individual's benefits to be reduced to the extent that the cap is not breached, with the individual having the option of paying extra to buy-out some or all of the reduction.

Amendments to the LGPS regulations will be required to facilitate this change plus guidance on calculating the pension reduction and operating the buy-out.

<u>Q7. Are there other impacts not covered above which you would highlight in relation to the proposals covered in this consultation document? If yes, please provide details.</u>

YES

<u>Workforce Reform</u>

Exit payments are important tools in enabling local authorities to achieve workforce reductions. In common with most other Councils we are facing significant financial challenges and the implementation of a cap will significantly reduce our ability to achieve the necessary workforce reductions through voluntary means.

This will therefore lead to more contentious negotiations with the attendant increase in costs and time associated with that, as well as the likely negative impact on the workforce in terms of morale and motivation. As noted previously, the provisions for relaxing the cap are very widely drawn. This will lead to cases of formal challenge and appeal on the way such a discretion is designed and exercised as well as an increase in the costs of litigation.

<u>Discrimination</u>

The inclusion of the pension strain costs is likely to significantly impact on those working in Local Government who have reached the age of 55. This creates a potential for age discrimination either because this group had their exit pay capped or from a younger age group who have been selected for redundancy because there will be no liability for pension strain costs.

In addition, men are more likely to suffer a detriment compared to women. Gender Pay Gap reports show that men generally earn more than women and are likely to have longer lengths of service. As such, it is more likely that the cap will limit their exit pay. This is potentially discriminatory on the grounds of sex.

Given the above, an updated equality impact assessment should be completed.

Hardship

If the LGPS regulations are changed to allow an individual to take an actuarially reduced pension, rather than have the pension strain costs included in their exit pay, this could cause significant financial hardship in the future. As previously noted, clear guidance is required around what constitutes hardship for the purposes of relaxation of the cap.

Recruitment and Retention

As previously noted and demonstrated in the example below, the cap will not just impact on the government's target group of 'high earners' but also mid-level staff with long service eg frontline Senior Social Worker and Team Leader roles where the post holders have more than 25 years' service. The impact of the cap on lower paid, long serving members of the workforce is likely to have a negative impact on the image of Local Government as a trusted employer of choice as workers will no longer be able to access all the benefits they have earned.

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 cap will simply compound this.

The cap amount has not risen since the £95k figure was first proposed three years ago. Meanwhile, salaries have increased and ONS indicates that living costs have risen by 9.4%. The cap figure needs to be linked to average pay increases or index linked, or have a clear timescale for regular review. In addition, failure to index-link the cap will impact a growing number of individuals over time, likely leading individuals to choose career options and/or sectors where the cap does not exist.

Q8. Are you able to provide information and data in relation to the impacts set out above?

YES

We have previously noted that the cap will impact much deeper into the workforce than just the target group of 'high earners'. The example below shows how the cap will impact on a frontline worker in an occupation of national shortage.

Position	Age	Service	Salary	Statutory Redundancy	Pension Strain	Total	Impact
Senior Social Worker	56	37 years	£41,965	£22,132.14	£100,546	£122,678	-£27,678