

Update on Exit Payments in the public sector? May 2019

New proposals for implementing the £95k cap on exit payments.

After a long delay (where many of us hoped this issue had permanently gone away), the Westminster government has published a new consultation on draft regulations that will enact the absolute cap on all exit payments in the Public Sector.

The draft regulations being consulted on are almost identical to previous drafts and UNISON will be responding robustly as in previous rounds of consultation.

We will also be asking members and activists to write to their MP's on this issue to highlight the very real concerns affecting our members.

The law introducing the cap has already passed and ignored many of the points UNISON and other bodies (including employers organisations) raised. However, the regulations being consulted on outline some of the missing detail of how the cap will be implemented and represents an opportunity to mitigate some of the worst aspects of the proposals.

The key points we must raise are as follows;

- The need for an exemption for lower paid staff (to at least exempt people earning less than £30k pa) as outlined in the original proposals
- Index linking the cap rises with inflation and doesn't devalue every year
- How will exit arrangements already agreed be honoured?
- Detail of the waiver process for non local authority staff
- Impact of including COT3 settlements but not Employment Tribunal awards
- Urgent need for an Equality Impact Assessment - there are potential discrimination issues that have not been adequately explored in terms of deciding which bodies are exempted from this cap (professions that are often male dominated)
- Actuarial valuations of pension strain payments – how will assessments of pension costs be fair and transparent?

UNISON is currently working on its formal response to this consultation and will be engaging in various ways to try and get these proposals clarified and changed.

This consultation period is the only chance we will have to seek amendment as regulations, once laid in parliament after consultation, cannot be amended – only accepted or rejected wholesale by MP's – rejection is very rare.

Watch this space...

UNISON will be updating members and activists with possible actions and any new information as this progresses through consultation and parliamentary system.

The attached Appendix gives the full background to this and other current attacks on public sector exit payments, the effect on members, answers to the most frequently asked questions and what you can do to help.

Background and current status of all attacks on exit payments.

As part of its attack on public sector workers, the Westminster government has introduced a set of reforms to exit payments (including redundancy payments) in the public sector – each set of proposals goes further than the last. All fly in the face of local, and even national, collective agreements, some agreed at the highest levels of government. Some of the proposals will mean re-opening regulations on pension entitlements, breaching the commitment not to alter public sector pensions for 25 years. The proposals have been on the back burner for a couple of years as the government tries to sort Brexit but, as outlined above, we now have a new set of draft proposals for implementing the £95k cap on exit settlements.

As a reminder we outline below the proposed changes and what they mean for members' terms and conditions of service. There are three main sets of proposals on exit payments:-

1. [Recovery of exit payments if you return to the public sector within 12 months](#)
2. [Absolute cap on the value of any exit payment set at a maximum of £95,000](#) – Updated May 2019
3. Proposed [reduced limits on calculating all exit payments.](#)

[What does this mean for UNISON Members](#)

[What Can I do?](#)

Scope and Devolution issues on the cap

The government is proposing a staged process of implementation across the public sector. The first stage will capture most public sector employees, before extending the cap to the rest of the public sector in the second stage.

They do **not** apply to the following :

- A. Payments made by a relevant Scottish authority, as defined in s 153B(5) of the 2015 act (see section 4.1 below)
- B. A relevant Welsh exit payment, as defined in s 153B(6) of the 2015 act
- C. Payments made by Northern Irish authorities which wholly or mainly exercise devolved functions

The following categories of public sector employer are within scope of these regulations where they fall within the responsibility of the UK government, regarding their employment:

- the UK Civil Service, its executive agencies, non-ministerial departments and non-departmental public bodies (including Crown non-departmental public bodies and Her Majesty's Prison and Probation Service)
- the NHS in England and Wales⁴
- academy schools
- local government including fire authorities' employees and maintained schools
- police forces, including civilian and uniformed officers

A full list of bodies covered in the draft regulations for the first wave can be found here https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791420/95k_cap_schedule_draft.pdf

1. Recovery of exit payments if you return to the public sector within 12 months

When does it come into force?

The proposed implementation date was set for 1st April 2016 however, the regulations have yet to be laid in parliament so have not yet actually come into force but may be implemented at very short notice.

Who is affected?

Anyone earning over £80,000pa when they were paid to exit public sector employment, if they return to a job ANYWHERE in the public sector within 12 months.

Up to 100% of the exit payment will be recovered by the old employer, or by the government if the old employer no longer exists.

What payments will it cover?

Payments made to an exiting employee, or a third party on behalf of the employee, including:

- Redundancy payments,
- Any pension top-up to enable early retirement
- Any payment made as part of an agreed exit settlement between the employer and the employee

What if I return part time?

The recovery will take that into account and there will be only partial recovery on a pro-rata basis.

What if I return on a lower salary?

This is not taken into account in the current proposals.

What happens to recognition of my previous service?

Treasury guidance MAY encourage new employers to consider lost service entitlement – it will not automatically be recognised. This means that if the member is made redundant, again their future service related entitlements will be dramatically reduced.

How can I return money given to my pension scheme as part of my exit package?

If a member took early retirement, and was in receipt of their pension, there would need to be special arrangements to recover the pension top up given to the scheme by the previous employer. The details of this have yet to be agreed other than a vague mention of

“abatement” which would mean a longer term recovery in the form of a reduced pension in payment.

What if I can't pay it back?

There will be a new requirement placed on prospective employers to withdraw any new job offer if recovery cannot be established.

What if I come back as a consultant?

Being paid to perform work in the service of the public sector will still count as re-entry into the public sector for the purposes of this legislation.

Are there any exceptions?

There is a waiver process whereby employers can ask the relevant government for an individual exemption from recovery. Waivers will be dealt with on an individual basis. It is anticipated that settlements made as a result of whistleblowing would be likely to receive such an exemption.

2. Absolute cap on the value of any exit payment set at a maximum of £95,000

When does it come into force?

This is unclear at this stage but currently in consultation phase for regulations. The legislation for allowing this cap was agreed in 2015.

Who is affected?

Anyone working in the public sector who gets an exit/redundancy/early retirement settlement. It will mostly affect high earners, but despite previous government promises, it will also affect moderate earners if they have long service such as nurses, social workers, paramedics and librarians – particularly if they were previously entitled to access early retirement as an alternative to being made redundant.

What does it cover?

Payments made to an exiting employee, or a third party on behalf of the employee, including:

- Redundancy payments,
- Any pension top-up to enable early retirement,
- Any payment made as part of an agreed exit settlement between the employer and the employee

I'm not a high earner - how could this affect me?

If you have long service, you may have earned redundancy entitlements that mean you will exceed this cap. In the NHS, the maximum exit payment allowable is currently set at 24 months of current salary. For a nurse working in central London, doing night shifts, this could easily mean that long service would mean an exit payment would breach the £95k cap.

In local government, where anyone made redundant after age 55 is currently automatically entitled to early retirement instead of redundancy, someone earning as little as £25,000 could be affected, because an early retirement settlement (made directly to the pension scheme to compensate for taking current entitlements earlier than expected) is often much larger than a straightforward redundancy settlement. In other words, the £95,000 cap applies to the whole settlement, even the part of it which is paid to the pension scheme – not just the part which the individual receives.

What do I do if my exit payment is no longer enough to cover my entitlement to an early retirement??

The government is clear that the member would have three choices:

- Take a straight redundancy payment instead of early retirement or
- Make up the difference themselves (find part of the lump sum to pay the pension scheme) or
- Accept a partly reduced pension.

However, current regulations in the Local Government pension Scheme (LGPS) conflict with this advice as, currently, regulations do not give those options to employees.

How will this affect Tribunal awards?

Tribunal and Whistleblowing awards are not affected but all other settlements including settlements agreed as part of the mandatory ACAS pre-Tribunal early conciliation process will be included.

Including early conciliation payments would contradict previous government legislation mandating an attempt to settle cases before a tribunal hearing through ACAS, as under these proposals there would be less incentive to settle pre-tribunal where the new cap would apply.

Are there any exceptions?

There is a waiver process whereby employers can ask the relevant government minister for an individual exemption from recovery. Waivers will be dealt with on an individual basis. It is anticipated that settlements made as a result of whistleblowing would be likely to receive such an exemption.

For local authority employees, an exception can be made by a vote of the full council, though the detailed guidance on which circumstances might be acceptable for an exception to be granted has not yet been published.

3. New reduced limits on calculating all exit payments

When does it come into force?

These proposals are currently only at a consultation stage which has stalled. However, the government is clear that once the consultation period is over, guidance or legislation may be issued for implementing any new proposals if they cannot be achieved through negotiation.

Who is affected?

All workers in the public sector.

What is proposed?

The proposals are three fold:

1. New maximum redundancy / exit entitlements (see below)
2. Reducing entitlements as people near retirement
3. Reducing, or eliminating, access to early retirement options.

The maximum limits on redundancy entitlements being consulted on are

- Maximum of 3 weeks' pay for each year of service
- Maximum of 15 months' pay in total and possibly less for compulsory redundancies (to encourage people to take exit packages earlier)
- Maximum salary for calculating an exit payment set at £80,000

What does this mean for UNISON members?

In light of the extent of public service budget cuts and the proposed future cuts, these new proposals to cap exit payments in the public sector are entirely punitive, representing yet another attack on public sector workers and the services they provide.

This initiative would tear up collective agreements and negotiated settlements, many of which are still in the process of being agreed directly with government departments, at a time when the flexibility required by employers to negotiate redundancies with recognised trade unions could not be more acute.

It is clear that the proposals, as they stand, will not only affect high earners but will also impact on moderate earners such as nurses, midwives, social workers and librarians with long service in public services.

Public service workers often devote years of loyal service: the government's own evidence on sector comparisons makes it clear that many professionals working in the public sector could earn greater salaries in the private sector.

UNISON believes that the local and national damage done to industrial relations, and the impact on staff morale and the employers' ability to facilitate necessary change, is too high a price to pay for what may amount – at most - to very moderate savings to the government purse. This will be especially true when you take into account the cost of the sub-standard reorganisations that may result from these restrictions.

What can we do?

UNISON is joining with other unions and the TUC to challenge these new attacks on exit payments and here are four ways in which you can get involved:

- **Email your MP here and tell her/him why this is an unfair and unproductive attack on public sector workers**
- **Ask your UNISON branch to consider making a submission to the new consultation on the cap regulations** (deadline 3rd July found here at <https://www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector>)
- **Contact your employer, and if they are opposed to the proposals, ask them to respond to the consultation too.**
- **Talk to your colleagues and let them know what's happening - we need as many people as possible to be aware of what's happening and to take action for these proposals to be challenged.**
- **Encourage non-members to join UNISON and get involved our campaigns.**

For queries please contact Michelle Singleton, Policy Unit, at policy@unison.co.uk