

RESPONDING TO THE CONSULTATION PAPER ON RESTRICTION ON EXIT PAYMENTS IN THE PUBLIC SECTOR

- Question 1: Does the draft schedule to the [regulations](#) capture the bodies intended? If not, please provide details.
- Question 2: Do you agree with the current list of bodies in scope of the first round of implementation? If not, please provide reasons.
- Question 3: Do you agree with the exemptions outlined?

Questions 1-3 are concerned with whether the bodies which come under the scope of the draft regulations are the relevant and appropriate bodies; in capping the termination payments for these groups, is the Government ensuring, as per the guidance, that employers in the public sector are acting responsibly and are using public money efficiently, and to ensure that pay and terms are always proportionate, justifiable and fair to tax payers?

Who will the cap affect?

- UK Civil Service
- NHS in England and Wales
- Academy schools
- Local government, including fire authorities' employees and maintained schools
- Police forces, including civilian and uniformed officers

The guidance however, notes at paragraph 2 that the Government expects public sector authorities which are not currently listed to apply commensurate arrangements voluntarily.

Payments not included;

Section 4.1 of the consultation document notes that the cap extends to "all bodies where employment terms are subject to approval by the UK Government." With that in mind, the following are not covered by the draft regulations;

- Payments made by a relevant Scottish authority as defined in s153B(6) of the 2015 Act;
- A relevant Welsh exit payment, as defined in s153B(6) of the 2015 Act; and
- Payments made by Northern Irish authorities which wholly or mainly exercise devolved functions.

Who is exempt?

- Intelligence service
- Security service
- Government Communications Headquarters (GCHQ)
- Armed Forces

What payments are exempt?

Pension Payments

Payments which the leaving employee or office holder receive from an accrued right to a pension on the termination of their employment or office is exempt from the cap. The exit payment cap applies to payments made in consequence of the termination of employment or office where there is an extra cost to the employer. So, pension “strain” payments are within the scope of the cap. These are payments made by the employer as an additional contribution at the termination of the individual's employment or period of office to enhance their pension payments.

Fire Service Pensions

Certain payments paid to firefighters under the Firefighters' Pension Scheme are also exempt.

WHAT ARE YOUR VIEWS ON QUESTIONS 1, 2 AND 3?

Do you think the list is fair?

Do you think including all these bodies will achieve the goal of making public employers more responsible?

Do you think capping the termination payments ties the hands of public sector employers when they are trying to act responsibly and use the public money efficiently and trying to move an employee on who is either underperforming or preventing a responsible use of public money?

Conversely, will the cap make it easier to move people on, as there will be no lengthy discussion as level of termination payment beyond the £95,000 cap?

Question 4: Does the guidance adequately support employers and individuals to apply the draft regulations as they stand?

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?

Question 6: Is there further information of how the regulations should be applied which you consider would be included in the guidance? If so, please provide details.

The Government has produced a 14-page guidance note, as the draft regulations themselves are relatively brief. A copy can be found [here](#).

In our view, the Guidance is helpful as it puts more flesh on the sparse bones of the draft regulations, although it doesn't, by any stretch of the imagination, answer every question.

WHAT ARE YOUR VIEWS ON QUESTIONS 4, 5 AND 6?

We would advise you read carefully section 5 where it sets out the mandatory relaxation powers; i.e. the cap is not applicable where monies are being paid as a result of TUPE, or a settlement involving either whistleblowing or discrimination.

Do you think this will work in practice?

Do you think the discretionary relaxation (where there are compassionate grounds, where payment necessary for an exit to give effect to urgent workplace reforms and where the exit was entered into prior to the regulations) gives any room for manoeuvre, especially given the guidance states that discretion will be exercised in only exceptional circumstances?

Question 7: Are there other impacts not covered above which you would highlight in relation to the proposals in this consultation document?

Question 8: Are you able to provide information and data in relation to the impacts set out above?

This is a catch-all for feedback about the regulations and the questions which arise when you read either our briefings or the Government's guidance.

Key issues we have spotted;

- What happens when contractual payments exceed the £95,000 cap – will failure to pay put you in breach of the employment contract?
- Likewise, what does an employer do when there is a PILON clause which exceeds the £95,000 cap – do they pay and breach the cap or not pay and breach the PILON?
- Will there be any clawback, as was originally suggested for individuals who receive a payment and then return to the public sector within 12 months?
- Payments made to settle whistleblowing or discrimination claims are exempt from the cap, so will departing employees allege such wrongdoings in order to qualify for a higher payout?
- What are the public sector employers that will be included in any further extension of the cap, and why aren't they included now?
- What of quasi-public sector employers – those who are carrying out the role of public authorities; will the scope of the cap affect them with these new draft regulations or when its remit is extended?

WHAT ARE THE ISSUES THAT YOU WOULD LIKE RAISING?

Key documents

All the key documents noted above can be found [here](#).

Please forward your responses to the questions and feedback sections to us and we'll collate them and put together a response on your behalf. Please email responses to matthew.gregson@anthonycollins.com.

Please let us have your responses by 24 June 2019.