

CONSULTATION ON FURTHER REFORMS TO PUBLIC SECTOR EXIT PAYMENTS

LOCAL GOVERNMENT ASSOCIATION RESPONSE

This response is submitted by the Local Government Association (the LGA), on behalf of local authorities. The LGA is the national voice of local government. We work with councils to support, promote and improve local government. The LGA covers every part of England and Wales and includes county and district councils, metropolitan and unitary councils, London boroughs, Welsh unitary councils (via the Welsh LGA), and fire and national park authorities. The Workforce Team of the LGA offers advice on employment issues and represents local government employer interests to central government, government agencies, trades unions and European institutions.

Our response is based on views expressed by authorities following a consultation that we carried out with them.

Question 1: Are there alternative options and approaches to compensation provision reform you think the government should be considering? What alternative approaches would you suggest and why?

We do not have any specific comments in response to this question, but you will note that the points made in response to questions 2 and 3 put forward some suggestions and alternative approaches.

Question 2: Do you agree with the proposed approach of limiting early retirement benefits with reference to the cost for the employer? What alternative approaches would you suggest and why?

With regard to the proposals around pension costs, authorities would wish to see the Government's desire for a value for money framework balanced with sufficient flexibility to enable employers to manage their workforce cost effectively. In that respect we would propose the following arrangements:

- Employees who leave prior to the normal pension age when aged 55 or over (but excluding ill health) for any reason including redundancy or efficiency should be able to defer their accrued pension or transfer it to a new provider

- If the employee wishes to receive their pension immediately employers should have the ability to offer to waive all or part of any actuarial reduction in respect of the early payment of pension at their own cost subject to the exit payment cap, where applicable. There would need to be clear guidance around when this would be appropriate and how it would operate e.g. in the case of local authorities would full council need to approve the waiver.
- Alternatively employees should have the ability to meet the cost of full or partial waiver of any actuarial reduction in respect of early payment of pension (e.g. by deduction from any lump sum termination payment that would otherwise have been made).
- Any waiver of the actuarial reduction met by the employer should be limited to the lower of either a) the available total under the exit payment cap, or b) the total evidenced amount of savings over three years directly resulting from the exit.
- The earliest retirement date at which an accrued pension may be brought into payment (other than on ill-health grounds) should be set at 10 years prior to the employee's State Pension Age (but with a minimum age of 55, as there could be some women with a current SPA of under 65).

In all cases though where benefits are linked to age, it will be necessary to consider the equality issues, noting that costs alone cannot justify potential discrimination. Further, any such changes would follow a number of other changes to the Local Government Pension Scheme, and authorities have expressed concerns that this could result in employees losing faith in the scheme, and so declined membership and contributions, and a potential knock on effect in recruitment and retention.

Question 3: Do you agree with the proposed options around capping tariff terms? What alternative approaches would you suggest and why?

We have interpreted this question to include the proposals for:

- setting the maximum tariff for calculating exit payments at three weeks' pay per year of service (we have assumed this means per whole years' service and that a week's pay is based on actual pay, rather than being subject to the statutory cap on a week's pay);
- capping the number of months used to calculate redundancy payments at 15 months (again we assume this is based on actual pay);
- setting a maximum salary for the purpose of calculating an exit payment. For example, this could potentially align with the NHS limit of £80,000 (we assume the limit would not apply to the calculation of pension benefits); and

- tapering the amount of lump sum compensation an individual is entitled to receive as they get closer to pension retirement age.

Starting then with the first two points, it is not clear in the consultation document how any three-week per year or similar maximum would interact with any 15-months or similar cap. Is it intended that the 15-month cap would be an overriding cap?

In any event local authority redundancy payments are in many cases not generous in comparison with other parts of the public sector, and a three-week per year entitlement is the exception rather than the norm. In fire authorities, there is no statutory provision for payments to firefighters, meaning statutory redundancy pay is the norm. Further, we would ask you to note that local government already operates within a transparent legislative framework including published policies and a requirement that any exit payment of over £100,000 is approved by full council.

Therefore, many authorities do not consider that further legislation capping/setting tariffs is necessary in this area.

Turning to the proposal to set a maximum salary for calculating a redundancy payment, local authorities have not expressed any strong views on this proposal save that they would like to see consistency with the other restrictions on public sector exit payments, and on that basis an £80,000 limit would be consistent with the recovery of exit payments requirements. It will also be important to set out clearly what counts as salary for those purposes. For example, what would happen in the case of a salary sacrifice or benefits in kind?

In terms of tapering compensation as an individual reaches pension age, authorities have stressed that the equality outcomes would need careful consideration, otherwise it could result in authorities and other public bodies subject to the tapering provisions facing discrimination claims in their role as employer. (Indeed the whole framework of the statutory redundancy payments and public sector exit payments policy needs a robust age and gender discrimination justification analysis, as a number of inconsistencies have developed over the year.) Linked to this, a tapering proposal would appear to be based on an assumption that the employee is going to receive an occupational pension, sufficient to form the basis for justifying such tapering, and that the pension is not going to be affected by any exit payment cap. Therefore, in order to justify tapering it might be necessary to allow tapering to be reduced or waived in cases where the individual will not get an occupational pension, or it will be affected by an exit payment cap.

Question 4: Do you agree that the government has established the correct scope for the implementation of this policy? Are there other factors the government should be taking into account with regard to scope?

Subject to our comments on questions 1-3 above, authorities agree that it would be sensible to have cross public-sector restrictions on exit payments, so as to ensure a relatively level playing field across different parts of the public sector.

Authorities also recognise and support the proposal that any payments in relation to injury, ill health and death would be excluded from any of the proposed restrictions. However, as with the £95,000 cap on exit payments and the recovery provisions, payments made under regulation 62 of the Firefighters Pension Scheme (England) Regulations 2014 in accordance with the fitness provisions should also be expressly excluded.

Question 5: Are there other impacts not covered in the above which you would highlight in relation to the proposals in this consultation document?

Should the proposals be implemented, authorities are concerned that there will be fewer volunteers for redundancy. This will have a negative effect on the efficiency of restructuring programmes. Instead of receiving requests from volunteers to leave, employers will have to make compulsory redundancies involving full consultation and notice periods. This may well mean that any savings in the proposals will be eroded, if not eliminated. In this respect the positive effect on morale and service delivery from being able to reduce the number of compulsory redundancies should not be overlooked. It is noted that the Government will consider transitional protections, but the limited extent of those proposed protections would not in our view alleviate the negative effects the proposals could have on restructuring proposals.

The policy could also have further impact on the ability to recruit and retain skills and knowledge in the public sector, especially for higher paid posts. Authorities are already seeing difficulties recruiting in professions such as IT, planning and legal, as they are failing to compete with the private sector. These difficulties can be even more acute in London and the South East.

Finally, the administrative costs of any such proposals needs to be considered, although such costs could be alleviated should clear guidance accompany the proposals.

Question 6: Are you able to provide any further information and data in relation to the impacts which may be relevant to the government in setting out the above?

The Local Government Association carries out an annual local authority workforce survey, and gather other intelligence, and it may be that as the Governments plans are formulated that some of that information in may be relevant. Should the Government wish to explore this it should contact us at eru@local.gov.uk

Question 7: Are you able to provide information and data in relation to redundancy provision in the wider economy which could be used to inform the government's response to this consultation?

We do not have any such information or data.

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Local Government Association