Exit cap information for LGPS administering authorities

This guide provides updated information for administering authorities on the position for redundancy and business efficiency exits now that the exit cap has been disapplied. It applies to exits of LGPS members who are aged 55 or over.

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Exit cap disapplied and revoked

On 12 February 2021, HM Treasury [HMT] published the Exit Payment Cap Directions 2021 [the Directions]. The Directions disapply regulations 3, 9 and 12 of the Restriction of Public Sector Exit Payment Regulations 2020 [the 2020 Regulations] with immediate effect. This means the exit cap does not apply to exits that take place on or after 12 February 2021.

HMT has provided further information in the Restriction of Public Sector Exit Payments: Guidance on the 2020 Regulations [the Guidance]. HMT confirms in the Guidance that:

> "the Government has concluded that the Cap may have had unintended consequences and the [2020] Regulations should be revoked. HMT Directions have been published that disapply the Cap until the Regulations have been revoked."

The Welsh Government has confirmed that, in their view, the exit cap no longer applies to exit payments made by a devolved Welsh authority.

On 25 February 2021, The Restriction of Public Sector Exit Payments (Revocation) Regulations 2021 [the Revocation Regulations] were made. These regulations confirm the effect of the Directions and come into force on 19 March 2021. The Revocation Regulations are not retrospective, but they do contain an obligation for employers to make payments to, or on behalf of a former employee, that they were previously unable to pay because of the exit cap. This includes payments that would have been made to a public service pension scheme. Interest for late payment is payable in accordance with the Judgment Debts (Rate of Interest) Order 1993.

Exits from 12 February 2021

The exit cap does not apply to exits that happen on or after 12 February 2021.

When an LGPS member exits due to redundancy or business efficiency at age 55 or over:

- the member is entitled to and must take an unreduced pension under regulation 30(7) of the LGPS Regulations 2013
- the Scheme employer must pay the strain cost of paying that pension early requested by the administering authority, and
- the Scheme employer must not make a cash alternative payment to or on behalf of the member.

We advised administering authorities to keep a record of those members who were offered the choice of a deferred or reduced pension because they were 'capped'. You will need to identify any members who left or are due to leave after 11 February 2021 that are in this category if you have already offered them this choice. You should contact these members and advise them that they are entitled to and must take an unreduced pension.

An active member who leaves employment below their Normal Pension age but after age 55 may elect for immediate payment of their pension under regulation 30(5) of the LGPS Regulations 2013. In this circumstance, a Scheme employer may waive some or all of the early payment reduction that would otherwise have applied. There is now no restriction on the strain cost that the employer can pay to reduce or eliminate the reduction.

Exits between 4 November 2020 and 11 February 2021

You will need to review any exits that occurred between 4 November 2020 and 11 February 2021 where the employer was not able to meet the full strain cost because of the exit cap.

The action you will need to take depends on whether the administering authority:

- paid an unreduced pension or
- offered the member a choice between a deferred or fully reduced pension.

Administering authority offered reduced or deferred benefits

If you offered ‘capped’ members a choice between reduced and deferred benefits, those members are now entitled to unreduced benefits. You should identify any exits between 4 November 2020 and 11 February 2021 where a member who left due to redundancy or efficiency was offered this choice. You must bring into effect the provisions of regulation 30(7):

- calculate the member’s unreduced benefits which are payable from the day after leaving, and
- let the employer know that an unreduced pension will be paid and request the full strain cost from the employer. You should also inform them of the date you would normally have invoiced for the strain cost had the cap not applied- they will need this information to calculate the interest due.

Administering authority paid unreduced benefits

Some administering authorities may have continued to pay unreduced benefits to all members aged 55 or over who left due to redundancy or business efficiency in accordance with regulation 30(7). If you have taken this approach, you will not need to review the LGPS benefits that are being paid in cases where the employer was not able to meet the full strain cost because of the exit cap.

The amount that a Scheme employer can pay in respect of an exit is no longer restricted. You will need to contact Scheme employers to request the full strain cost for any exits that have already been processed. Interest is payable on the difference between the amount of strain cost paid and the amount that would have been paid had the cap not applied. It is payable from the date you originally invoiced for the capped strain cost.

The interest calculation

The employer will need to calculate the amount of interest due on the strain cost payment. It is payable from the date you would normally have invoiced them for payment, had the cap not applied. You should provide the employer with the date interest is payable from when you notify them of the strain cost payable.

The interest due on payments by employers under the Revocation Regulations is 8% per year. The employer should calculate the cash amount of interest as follows:

1. Work out the yearly interest: take the amount due and multiply it by 0.08 (which is 8%)
2. Work out the daily interest: divide the yearly interest from step 1 by 365 (the number of days in a year)
3. Work out the total amount of interest: multiply the daily interest from step 2 by the number of days the payment is overdue.

Example

The employee was made redundant on 5 November 2020. Had the cap not applied, a strain cost of £150,000 would have been payable. You offered reduced or deferred benefits, so the employer has not paid a strain cost. You normally invoice for strain cost payments at the end of each quarter - so you would have issued an invoice on 31 December 2020. The employer pays the strain cost on 5 March 2021.

31 December 2020 to 4 March 2021 = 64 days

1. £150,000 × 0.08 = £12,000
2. £12,000 ÷ 365 = £32.88
3. £32.88 × 64 = £2,104.32

Interest due is £2,104.32.

If the employer paid a cash alternative

The Scheme Advisory Board (SAB) obtained legal advice from Eversheds and based on that advice it recommends that, where an employer has made payment of a cash alternative, the administering authority:

- should request the full strain cost of paying unreduced benefits from the Scheme employer, and
- should not seek to adjust the unreduced benefits or the strain cost payable by the Scheme employer to reflect any cash alternative payment the employer has paid.

You can read the full SAB commentary on the legal advice on the Public Sector Exit Payments page of the SAB website. The page also includes useful background information for administering authorities on the exit cap and the latest developments.

Looking ahead

The Government confirmed in the Guidance that "HM Treasury will bring forward proposals at pace to tackle unjustified exit payments". We understand that MHCLG plans to introduce further changes to exit payments following the recent MHCLG consultation on reforming local government exit pay.

MHCLG confirmed in the letter dated 4 March 2021 that this consultation is considered closed. They will consult again on further reforms to exit payments before any changes are made.

The Government has not confirmed when the exit cap or further reforms will be introduced, although we think it is unlikely to happen in the next few months due to the time it will take to consult and make changes to legislation.

Public sector employers planning future workforce reform will need to be aware that:

- an exit cap may be in force later in 2021, and
- MHCLG may introduce further reforms to exit pay when the exit cap is re-introduced.

We will share any information about timescales with you as soon as we receive it. In the meantime, administering authorities should continue to provide strain cost estimates for future redundancies or business efficiency exits to employers. We recommend that you include warnings about possible future reforms to exit payments when you provide these estimates.

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