

Exit cap information for LGPS employers

This guide provides information for redundancy and business efficiency exits that occur from 4 November 2020 until the LGPS regulations are changed to accommodate the exit cap. It applies to exits of **LGPS members who are aged 55 or over**. Information about other circumstances where a pension strain cost is payable will follow.

Contents

Employer process for exits	1
Exit cap responsibilities	5
Disclaimer	6
Exit cap information for LGPS employers – flowchart	7

Employer process for exits

It is particularly important that you maintain close contact with your LGPS administering authority throughout the process set out below.

Step 1: Check if the exit cap regulations apply to you as an employer. You do this by looking at the [Schedule at the end of the Restriction of Public Sector Exit Payments Regulations 2020](#). If your employer is listed here, the exit cap regulations will apply.

Step 2: If the exit cap regulations apply, check the total value of the exit payments you would normally make to, or in respect of, the employee that is exiting your employment. For a list of exit payments that you need to consider for the exit cap, see [regulation 5 of the exit cap regulations](#) and chapter three of the [guidance to accompany the regulations](#).

HM Treasury (HMT) has confirmed that employer’s national insurance contributions in relation to an exit payment should not be included when calculating the value of an individual’s total exit payment.

The LGPS pension is normally payable immediately without reduction. You must include the pension strain cost when checking the total value of the exit payments.

Special rules apply if the employee is exiting from more than one public sector employment in a 28-day period. Under the exit cap regulations, the employee must tell you about any other public sector exits. You may wish to ask the employee about any other exits from public sector employment to ensure that you do not inadvertently breach the cap.

If the total value of the exit payments is less than or equal to £95,000 go to **step 3**. If the total value of the exit payments is more than £95,000 go to **step 4**.

Step 3: If the total of the exit payments is less than or equal to £95,000, process the exit as normal. The pension is payable immediately without reduction for early payment in line with the LGPS regulations. Your normal process for meeting the strain cost continues to apply.

You must inform your LGPS administering authority that the employee is not capped. You need take no further action under the exit cap regulations in respect of this exit.

Step 4: If the total value of the exit payments is more than £95,000, consider whether either a mandatory or discretionary waiver is applicable. For information about when a waiver is appropriate and a pro forma, see the documents produced by HMT:

[Guidance on the regulations](#)

[Directions on waiving the cap](#)

If the waiver application will go to MHCLG for consideration, you will also need to refer to [MHCLG's guide on waiver applications](#). If you apply for a waiver on compassionate grounds owing to undue hardship, you will need to ask your LGPS administering authority for the pension benefits the member would receive with and without the cap being waived. You will need to include this information in the business case you submit to MHCLG.

MHCLG's guide states that the LGPS administering authority should provide employers with the strain cost associated with the exit if the power to waive the cap is both exercised and not exercised. If the power is not exercised, the pension benefits will be fully reduced so the strain cost will be zero; therefore, the administering authority will only provide you will the full strain cost.

The [LGA issued a statement on MHCLG's guide on waiver applications](#). The statement raises a number of issues with the guide.

If you are not sure if your waiver application should go to MHCLG you can check with by emailing LGExitPay@communities.gov.uk.

Local authorities may also wish to refer to the [LGA's position paper on the exit cap, guidance and directions](#).

If you decide a waiver is applicable, follow the process set out in the HMT documents and, where appropriate, the MHCLG guidance. You should not make any formal offers to employees or confirm their last day of service before you have been informed if the waiver application has been approved.

You must inform your LGPS administering authority that the employee is capped but a waiver request has been made.

If the waiver request is approved, the pension is payable immediately without reduction for early payment. Your normal process for meeting the strain cost continues to apply.

You must inform your LGPS administering authority that the cap has been waived in respect of this exit.

If you decide a waiver is not applicable or the waiver request is denied, move to **step 5**.

Step 5: Consider the elements that make up the total exit payment. Decide if any exit payments other than pension strain cost, statutory redundancy payment (SRP) and any other payments you are obliged to make can be reduced to bring the total to no more than £95,000.

You must decide the status, priority and order of exit payments if the cap is breached. You may wish to take legal advice and consult with the employee during this process.

If the new total of the exit payments being made to or in respect of the individual is less than or equal to £95,000, go to **step 6**. If the total is over £95,000 when the pension strain, statutory redundancy pay and any other payments you are obliged to make are left, go to **step 7**.

Step 6: The uncapped employee will be entitled to immediate payment of their LGPS pension without reduction for early payment in line with the LGPS regulations. Your normal process for meeting the strain cost continues to apply.

You must inform your LGPS administering authority that the employee is not capped. You need take no further action under the exit cap regulations in respect of this exit.

Step 7: If the total exit payment is over £95,000 when just the pension strain, statutory redundancy payment and any other payments you are obliged to make remain, there is a conflict between the exit cap regulations and the LGPS regulations.

The LGPS regulations still require the member to take payment of an unreduced pension, but the exit cap regulations prevent the employer from paying the full strain cost.

You must inform your LGPS administering authority that the employee is capped.

As an employer, you need to decide whether to make a cash alternative payment under [regulation 8 of the exit cap regulations](#). To assist you with this decision, the Scheme Advisory Board (SAB) has obtained legal advice. You can read a commentary on that legal advice on the [Public Sector Exit Payments](#) page of the SAB website. You should also have regard to the [letter from MHCLG to LGPS administering authorities](#) dated 28 October 2020.

The cash alternative will be equal to the amount of the capped strain cost. It is for you to determine the amount as it requires access to confidential exit payment information as well as decisions you make regarding the status, priority and order of exit payments. Your LGPS administering authority should only provide you with the full strain cost.

Although you must make your own decision regarding a cash alternative, the SAB recommends you delay any decisions until the employee's pension is confirmed based on the following considerations:

- If your LGPS administering authority decides to pay an unreduced pension they will ask for a strain cost payment, payable up to the cap. You will not be able to make this payment if you have paid a cash alternative. You could end up paying twice, once as a cash alternative and once as increased scheme costs.
- If the employee is denied an unreduced pension, they are likely to lodge a claim. If they win, they could be awarded payment of an unreduced pension. Your LGPS administering authority will then ask you for a strain cost payment,

payable up to the cap. You will not be able to make this payment if you have paid a cash alternative. In this case you could end up paying twice, once as a cash alternative and once as increased scheme costs.

- A cash alternative payment attracts both income tax and employer’s National Insurance where the total termination payment is above £30,000. An employee who receives a reduced pension may prefer you to pay the cash alternative to the LGPS administering authority to purchase extra pension.

If you decide to make a cash alternative payment regardless of the potential outcomes mentioned above, you should ensure the decision is made at the appropriate level for your organisation. The decision-making process should be documented and auditable. You should inform your LGPS administering authority of the decision.

Please note, it is for your LGPS administering authority to decide if a full or reduced pension is payable in these circumstances. Your LGPS administering authority will inform you once the employee’s pension is confirmed.

The process described above is summarised in a flow chart at the end of this document. The flowchart is not accessible to screen reader software, but all the information is contained in the text above.

Exit cap responsibilities

Action / Decision	Responsibility
Assess if the employer is subject to the exit cap regulations	Employer
Decide if the cap is breached For LGPS members over age 55, the administering authority (AA) should provide a full strain cost and must not ask what other termination payments the employer would normally make.	Employer
Consider if a waiver is applicable	Employer
Decide the status, priority and order of exit payments if the cap is breached The employer may wish to take legal advice and consult with the employee during this process. The AA should not be involved in the decision.	Employer

Action / Decision	Responsibility
Decide what pension benefits should be paid if the employer cannot pay the full strain cost because the cap is breached.	Administering authority
Decide how much the cash alternative payment is Note: the SAB recommends employers defer payment of a cash alternative. The AA should only provide the full strain cost.	Employer

Disclaimer

This document has been prepared by the LGA. It should not be treated as a complete and authoritative statement of the law. Employers may wish, or will need, to take their own legal advice. No responsibility whatsoever will be assumed by the LGA for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained in this document.

Exit cap information for LGPS employers – flowchart



