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# Strain cost caveat wording

Eversheds Sutherland (LLP) has produced the warning below for LGPS administering authorities to use when providing strain cost quotes to employers subject to the exit cap. It can be used for exits that occur from 4 November 2020 until the revised LGPS regulations and GAD guidance are in place.

You will need to adapt the warning to take into account your authority’s approach to calculating strain costs. The [exit cap information for LGPS administering authorities document](https://lgpslibrary.org/assets/gas/ew/Exit%20cap%20AA%20v2.0c.pdf) provides information about the exit cap and the considerations for LGPS administering authorities.

## Warning

The early retirement strain cost quoted above is provided as an illustration only and the actual strain cost charged at the point of retirement may be more or less than the figure quoted. The Ministry of Housing, Communities and Local Government (“MHCLG”) is currently consulting on new Regulations which will amend the Local Government Pension Scheme Regulations 2013 (the “LGPS Regulations”) in respect of employers who are subject to The Restriction of Public Sector Exit Payments Regulations 2020 (the “Exit Payments Regulations”).

Based on the current draft Regulations, individual funds within the LGPS will have to move to using a standard methodology and factors set by the Government Actuary’s Department (“GAD”) for employers who are subject to the Exit Payments Regulations.

As part of the MHCLG consultation, GAD have issued draft Guidance containing the methodology and factors to be used to calculate the pension strain for all exits subject to the Exit Payments Regulations. However, this draft GAD Guidance is subject to the outcome of the consultation and will not come into effect until the LGPS Regulations are formally amended. We do not know when this will take place yet, especially in light of pending judicial review cases, although this is unlikely to be before April 2021.

FUNDS WHO ARE FOLLOWING THE DRAFT GAD GUIDANCE AND FACTORS: [However, the [ABC] Pension Fund has decided to follow the draft GAD Guidance in advance of the formal amendment to the LGPS Regulations and so the figures quoted are based on the Guidance methodology and proposed new standard GAD factors. ]

FUNDS WHO ARE FOLLOWING THE DRAFT GAD GUIDANCE METHODOLOGY BUT USING CURRENT EARLY RETIREMENT FACTORS: [However, the [ABC] Pension Fund has decided to follow the methodology set out in the draft GAD Guidance but using the current early retirement factors for pre 2014 membership instead of the new factors provided in the guidance. The figures quoted are based on this approach. The Fund may decide to adopt the new GAD factors before the LGPS Regulations are formally amended, although no decision on this point has yet been made (or on whether to apply that GAD Guidance to other employers within the Fund). Therefore, depending on when a redundancy/termination actually takes place, the strain cost could be more or less than the figure quoted above. ]

FUNDS WHO HAVE NOT ADOPTED THE DRAFT GAD GUIDANCE: [The [ABC] Pension Fund has not yet adopted the draft GAD Guidance and is still using its own Fund-specific methodology and factors. The Fund may decide to adopt the draft GAD Guidance before the LGPS Regulations are formally amended, although no decision on this point has yet been made (or on whether to apply that GAD Guidance to other employers within the Fund). Therefore, depending on when a redundancy/termination actually takes place, the strain cost could be more or less than the figure quoted above. ]

FUNDS WHO ARE QUOTING ON BOTH BASES: [The [ABC] Pension Fund has not yet adopted the draft GAD Guidance and is still using its own Fund-specific methodology and factors. However, the figures quoted above show the strain cost using both the Fund’s own method and factors and using the draft GAD Guidance. The Fund has not yet decided whether it will adopt the draft GAD Guidance before the LGPS Regulations are formally amended (or whether to apply the GAD Guidance to other employers within the Fund). Therefore, depending on when a redundancy/termination actually takes place, the appropriate strain cost will need to be used.]

TO BE USED IN ALL CASES: It should also be noted that the proposed amendments to the LGPS Regulations will fundamentally change the way that redundancy/business efficiency triggered early retirement benefits under regulation 30(7) are calculated for all LGPS active members who are employed by employers subject to the Exit Payments Regulations. This will be the case irrespective of whether a member’s total exit payments exceed the exit cap.

Based on our current understanding of the draft Regulations:

a)       strain costs relating to the immediate payment of early retirement benefits under regulation 30(7) (early leavers on grounds of redundancy or business efficiency) of the LGPS Regulations will be reduced by the value of the member’s statutory redundancy payment. The member’s benefits will then be reduced accordingly unless the member decides to pay an amount equal to the statutory redundancy payment to the Fund. This also applies to regulation 30(5) (early retirement) and 30(6) (flexible retirement) although statutory redundancy payments may not be applicable in these circumstances; and

b)       in addition, in respect of members whose total exit payments (including the strain cost) exceed the exit cap, they will have an option to take a deferred pension, to take immediate payment of actuarially reduced LGPS benefits or to pay some or all of the strain cost (above the exit cap) from their own finances and receive either unreduced benefits or benefits with a lower actuarial reduction.

The figures quoted above do not take these proposed changes to the LGPS Regulations into account. If a retirement takes place after the LGPS Regulations have been amended, then a new quotation (based on the new LGPS benefit structure and member options) will be required. As noted above, we do not currently know when the LGPS Regulations will be amended although this is unlikely to be before April 2021.