

# Exit cap information for LGPS employers

This guide provides updated information for employers 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

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 Regulations should be revoked. HMT Directions have been published that disapply the Cap until the Regulations have been revoked.”

The Guidance is not clear on whether the 2020 Regulations will be revoked retrospectively.

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

## Exits between 4 November 2020 and 11 February 2021

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

Whilst the Guidance does not address pensions directly, the Government has confirmed it expects employers to pay the additional sums that would have been due, had the cap not applied. This is set out in section 3 of the Guidance. Had the cap not applied, the employer would have paid the full strain cost requested by the LGPS administering authority in these cases. The action you now need to take depends on whether you made a cash alternative payment.

### Background to the cash alternative payment

We previously advised you of the conflict between the 2020 Regulations and the LGPS regulations. The LGPS regulations require that an employee age 55 or over, who is made redundant or leaves due to business efficiency, must take payment of an unreduced pension. Before they were disapplied, the 2020 Regulations prevented the employer from paying the full strain cost where the total exit payment was over £95,000.

In a [letter from MHCLG to councils and LGPS administering authorities](#) dated 28 October 2020, MHCLG recommended that LGPS administering authorities should not pay unreduced benefits and that employers should pay the cash alternative to the member in accordance with [regulation 8 of the 2020 Regulations](#). The cash alternative was equal to the amount of capped strain cost the employer could pay.

The Scheme Advisory Board (SAB) sought legal advice on the conflict between the 2020 Regulations and the LGPS Regulations. The SAB recommended that administering authorities offer a deferred or fully reduced pension and that employers delay paying a cash alternative payment until the legal uncertainty was resolved.

### Actions to take now

1. **Identify any exits between 4 November 2020 and 11 February 2021** where you were not able to pay the full strain cost because of the exit cap.
2. **If you applied for a mandatory or discretionary waiver** – this is no longer needed. You can pay a full strain cost and you should notify your LGPS administering authority accordingly.
3. **Check if you made a cash alternative payment.**
4. **If you have not made a cash alternative payment** – you are able to make provisions to pay a full strain cost to the LGPS administering authority. You may

wish to send a list to your LGPS administering authority to let them know which former employees are affected.

**5. If you have made a cash alternative payment** – the SAB recommends that you:

- make provision to pay a full strain cost to the LGPS administering authority if they request it
- seek to recover the cash alternative payment made to the employee when the LGPS administering authority confirms they will be paying an unreduced pension.

SAB's view is based on [legal advice provided by Eversheds Sutherland](#). SAB accepts there is a financial risk to employers paying a full strain cost because it may not be possible, in all circumstances, to recover the cash alternative. This risk was highlighted in SAB's commentary of 30 October 2020 and earlier versions of this information note – it was the reason for recommending that you delay payment of the cash alternative.

Local authorities may also wish to refer to the [LGA's guidance on the exit cap](#). The LGA has stated that, in the interests of effective use of public money and the reputation of the sector, it expects councils that have made cash alternative payments to seek recovery of the amounts paid.

You can read SAB's commentary on the legal advice provided by Eversheds Sutherland and the commentary of 30 October 2020 on the [Public Sector Exit Payments page](#) of the SAB website.

**6. Other termination payments** – you may wish to review other termination payments that were restricted due to the exit cap in line with your policy, eg discretionary compensation pay. You may also be approached by employees seeking additional amounts where such termination payments were made. The LGA recommends that local authorities consider requests from employees in line with their published policies and their own legal advice. Other employers may wish to take the same approach.

## **Exits from 12 February 2021**

The exit cap does not apply to exits that take place on or after 12 February 2021; however, the government has confirmed it remains committed to the policy and will introduce legislation to tackle unjustified exit payments.

In addition, we understand that MHCLG plans to introduce further changes to exit payments, following the recent [MHCLG consultation on reforming local government exit pay](#), at the same time as the exit cap is re-introduced. MHCLG has confirmed

that 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. You will need to consider both when undertaking future workforce reforms. We advise that you include appropriate warnings when providing employees with information on their potential exit packages.

However, for the time being if an LGPS member exits due to redundancy or business efficiency at age 55 or over on or after 12 February 2021:

- the member is entitled to and must take an unreduced pension under regulation 30(7) of the LGPS Regulations 2013
- you must pay the strain cost associated with the early payment of that pension to the administering authority
- you must not make a cash alternative payment to the member nor to the administering authority on behalf of the member.

**You must not make a cash alternative payment in respect of any redundancy or business efficiency exits that take place on or after 12 February 2021.**

## 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.