Committee(s)	Dated:
Establishment Committee	14 February 2017
Subject: Developments in Employment Legislation	**Public**
Joint Report of: Director of HR and the Comptroller and City Solicitor	**For Information**
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Summary

The purpose of this report is to update Members on recent developments in employment and trade union law and to advise on how those developments will affect the City of London Corporation.

The main areas of change include:

- Reform of exit payments for public sector employees. This includes the introduction of a cap of £95,000 on exit payments, repayment in case of a move to another public sector employer for senior officers within certain time limits and a framework for calculating exit payments.

- The introduction of annual gender pay gap reporting.

- The introduction of minimum thresholds for ballots for industrial action.

- Limitation of salary sacrifice arrangements.

Recommendation(s)

Members are asked to note the report.

Main Report

1. Public sector exit arrangements

1.1 The government undertook consultation in early 2016 on public sector exit payments with the aim of securing greater consistency between public sector redundancy compensation schemes and value for money for the taxpayer.

Alongside a number of high value pay-outs attracting damaging publicity, there have also been notable examples of former senior officials returning very quickly to public service in other roles or as consultants. The government has adopted a three pronged approach to addressing this.

1.2 The first is a cap on all public sector exit payments at £95,000. Section 41 of the Enterprise Act 2016, in force from 1 February 2017, amends the Small Business, Enterprise and Employment Act 2015 by giving the Secretary of State the power to issue regulations capping exit payments made to public sector workers on leaving employment. The Regulations will specify which payments are in scope. These could include payments made by reason of redundancy, any payment on voluntary exit, the cost of awarding added years on early retirement and payments made in lieu of contractual benefits. If mandatory and discretionary payments towards premature retirement compensation are to be included in the calculation of the exit payment, the impact of the cap is likely to extend to junior staff.

1.3 The Government has also committed to provisions for 'clawback' of redundancy compensation when a highly-paid individual returns to the public sector shortly after receiving an exit payment. Draft Regulations set out a requirement that employees with annual earnings above £80,000 repay exit payments if they return to work in the public sector within one year, including those who return 'off-payroll', as an individual consultant or as an employee of a consultancy firm. There are also draft provisions for the application of waivers in limited circumstances.

1.4 Lastly, there will be a framework for determining an appropriate level for exit payments made to employees leaving public sector jobs, whether on a mutually agreed or voluntary basis due, for example, to an impending redundancy situation, or through compulsory redundancy. This will extend beyond employees in local government to encompass civil servants, NHS staff, teachers, armed forces personnel, police officers and firefighters.

1.5 Government departments have been tasked with producing proposals for reform for each workforce, which will need to be consistent with the framework, which incorporates the following terms:

- a maximum tariff for calculating exit payments of three weeks' pay per year of service

- a ceiling of 15 months on the maximum number of months' salary that can be paid as a redundancy payment
- a maximum salary of £80,000 (to include any contractual bonus payments) on which an exit payment can be based
- a taper on the amount of lump sum compensation an individual is entitled to receive as they get closer to their normal pension retirement age (ranging from 65 – 67 depending upon date of birth)
- action to limit or end employer-funded early access to pension as an exit term.

1.6 It is understood that Government departments are expected to produce proposals promptly, with the aim of having full implementation by the end of June 2017.

1.7 We will report back with the implications on our current arrangements as soon as the detail is known.

2 Gender pay gap reporting

2.1 The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 are due to come into force on 31st March 2017. These have the effect of extending the duty to publish annual gender pay gap data to public sector employers with over 250 employees.

2.2 Obligations include the publication of:

- The mean and median gender pay gap.
- The difference in bonus payments paid to male and female staff.
- The proportion of male and female staff who receive a bonus.
- The number of female and male staff in each quartile of the employer's pay distribution

2.3 The data is to be based on a pay period containing a specific date, which is 31st March for the public sector, each year. This is known as the 'snapshot date'. The first calculation date is 31st March 2017. The data must be published on the employer's website by 30th March 2018, remaining there for three years.

2.4 The Regulations also formalise publication requirements, with all public bodies now required, by 30th March 2018, to prepare and publish its equality objectives. This should comprise one or more objectives it thinks it should achieve in order to exercise its functions in accordance with its Public Sector

Equality Duty. More specifically, the matters set out at s149(1) Equality Act 2010, which include eliminating discrimination, advancing equality of opportunity and fostering good relations in the course of exercising public sector functions.

3 Minimum threshold - ballots for industrial action

3.1 The Trade Union Act 2016 amended the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") so as to introduce thresholds that must be satisfied in ballots for industrial action. These provision in the Act are not yet in force, but are expected to come into force on 1 March 2017.

3.2 Once in force, these provisions will require a vote for industrial action to have:-

- a 50% turnout from those members of the trade union who are eligible to vote; and,
- if the strike will affect "important public services", then at least 40% of those eligible to vote must vote in favour.

3.3 Six separate areas have been identified as 'important public services' and draft statutory instruments have been issued for five of the six. These include health, fire, transport, education and border security. The direct effect on the Corporation will be limited, in the main, to the education sector in the event of any ballots for industrial action by teaching staff in a maintained school.

3.4 It had been expected that restrictions on the deduction of trade union subscriptions from wages ("check off") would come into force this year. Section 15 of the Act provides for such restrictions on public sector employers, but this remains in abeyance for the time being.

4. Salary Sacrifice Limitation

4.1 The government plans to legislate in the Finance Bill 2017 to remove the Income Tax and employer NICs advantages of certain salary sacrifice schemes. Schemes for pensions saving, employer provided pensions advice, childcare and Cycle to Work are unaffected.

4.2 Some Corporation staff currently benefit from salary sacrifice arrangements for school fees. This group of staff will be affected by the change, which is due to take effect from 6 April 2017. There is limited protection for staff who

are already in salary sacrifice arrangements at that date: the new rules will not take effect for those staff until the earlier of an end, change, modification or renewal of their salary sacrifice arrangement or 6 April 2021.

5. Corporate & Strategic Implications

5.1 There remain a number of unknowns regarding public sector exit payments and the Trade Union Act. In particular the impact of the exit payments cap could have significant impact and as soon as the detail is confirmed a further report will be made to the Committee. The gender pay gap reporting requirement is unlikely to change significantly and work is already in hand to trial the requirement in advance of formally reporting.

6. Conclusion

6.1 This report outlines the forthcoming legislation that will have varying impact on us as an employer. The exit payments cap will impact on individuals particularly but not exclusively on higher earners. The gender pay gap reporting will enable us to have useful benchmarking data and will inform talent management and succession planning. Given that we have a history of generally good employee relations with our recognised trade unions, balloting requirements for industrial action is likely to have less immediate impact but will provide clarity about the proposed new voting requirements.

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