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

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 in England 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 HMT Directions have been published that disapply the Cap until the Regulations have been revoked."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 Guidance does not address pensions directly. However, the Guidance confirms that HMT expects employers to pay the additional sums that would have been paid, had the exit cap not applied in respect of employees who left between 4 November 2020 and 11 February 2021.

If the exit cap had not applied, the employer would have paid the full strain cost requested by the administering authority in these cases.

HMT has stated that the Directions do not apply to exit payments made by devolved Welsh authorities. Welsh authorities should contact the Welsh Government for confirmation.

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 their 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

At present it is unclear if the 2020 Regulations will be revoked retrospectively and whether the letter from MHCLG to LGPS administering authorities dated 28 October 2020 will be withdrawn. In this document we have assumed that it is Government's intention that administering authorities can pay unreduced benefits to qualifying members who left during this period. However, administering authorities may wish to come to their own view. We will update this document as soon as we receive further clarification.

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.

In a letter from MHCLG to LGPS administering authorities dated 28 October 2020, MHCLG recommended that, where the exit cap meant that an employer could not pay the full strain cost:

- administering authorities should not pay unreduced benefits, and
- employers should pay a cash alternative to the member in accordance with regulation 8 of the 2020 Regulations.

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.

You can read more about the exit cap, the legal advice and proposals for further reform on the Public Sector Exit Payments page of the SAB website.

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
- employer paid a cash alternative.

Administering authority offered reduced or deferred benefits

This section covers the next steps an administering authority should take if they offered ‘capped’ members a choice between reduced and deferred benefits.

1. Identify any exits between 4 November 2020 and 11 February 2021 where a member who left due to redundancy or efficiency was offered a choice of deferred or fully reduced benefits.

2. Check with the employer whether they have paid a cash alternative to or on behalf of the member.

3. If the employer has not paid a cash alternative, you can bring into effect the provisions of regulation 30(7). You can:

    - calculate the member’s unreduced benefits which are payable from the day after leaving, and

- request the full strain cost from the employer.

4. In their letter dated 28 October 2020, MHCLG recommended that employers should pay cash alternatives. The SAB recommended that employers delay such payments in order to avoid the risk of 'paying twice' for the benefits. This risk has now been realised. The Guidance does not cover whether an administering authority should pay an unreduced pension if the employer has already paid a cash alternative.

   The SAB is urgently seeking legal advice on what approach employers and administering authorities should take in cases where the employer has made a cash alternative payment. We will share that advice with you as soon as it is available. You may choose to pause the payment of unreduced pensions in these cases until the position is clarified.

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.

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 has confirmed that it 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 changes necessary 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 do not know when these changes will take effect. 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.

Disclaimer

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