Firefighters' Pension Scheme

Technical Note: Restricting exit payments in the public sector

Introduction

This technical note has been prepared to give guidance to Fire and Rescue Authorities (FRAs) on the implications of the government consultation to introduce a cap on exit payments in the public sector with regards to payments in relation to the Firefighters' Pension Scheme only.

Guidance for green book staff who are members of the Local Government Pension Scheme (LGPS) is available in the LGPS library[1]

Background

In 2015 the government first announced plans to introduce a cap on exit payments in the public sector. The cap includes any pension strain cost. The cap was legislated for in the Enterprise Act 2016, which amends the Small Business, Enterprise and Employment Act 2015, but required secondary legislation to be introduced.

On 10 April 2019, HM Treasury opened a consultation on draft regulations, Directions, and guidance to implement the exit cap. The consultation will run for 12 weeks and closes on 3 July 2019.

This consultation sets out the proposed method of implementing the cap, including which bodies should be in scope. This consultation sets out the proposed draft regulations, schedule to the regulations, accompanying guidance and directions. It seeks comments on the draft regulations.

Please find the consultation at: https://www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector

What is the level of the cap?

The exit payment cap is set at £95,000. Although regulation 153A(9) of the Small Business, Enterprise and Employment Act 2015 allows for Regulations to be introduced which change the cap, under the proposed Regulations there is no provision for the cap to be index-linked.

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1 http://lgpslibrary.org/assets/cons/nonscheme/20190410_95K_BR.pdf

Power to relax the restriction on exit payments

Power is given to an FRA to relax the restriction on exit payments by virtue of regulation 11[2]. Under the draft treasury directions[3] the FRA as decision maker can relax restrictions imposed by the regulations where the decision maker is satisfied –

a. that not exercising the power would cause undue hardship
b. that not exercising the power would significantly inhibit workforce reform
c. i) that an agreement to exit was made before the coming into force of the Regulations;
ii) that it was the intention of both parties that the exit would occur before that date; and
iii) that any delay to the date of exit was not attributable to the employee or office holder as applicable.

However in order to exercise that power the FRA would need to seek consent of HM Treasury.

Where that power is exercised under regulation 13[4] the FRA must keep a written record in accordance with the regulations.

Exit Payments in relation to the Firefighters' Pension Scheme

In respect of pension related payments in the Firefighters' Pension Scheme (FPS), there are two types of employer payments with regards to exit that could be subject to the cap, these are:

1. **FPS 1992 Enhanced commutation**

   The ability for an FRA to enhance the commutation payment to a firefighter with over 25 years' service and over age 50 to the full quarter rate commutation [Rule B7(5)].

   Under [Rule LA2 (10)] the authority is required to pay the difference between the restricted commutation and enhanced commutation from its operating account into the FPS notional pension fund.

   A factsheet giving more information on this enhancement and the cost to the FRA is available here.

2
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791417/draft_SI_the_restriction_of_public_sector_exit_payments_regulations_2019.pdf.
3
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/794150/mandatory_HMT_directions_exit_payments.pdf
4
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791417/draft_SI_the_restriction_of_public_sector_exit_payments_regulations_2019.pdf

Unless the exit cap regulations allowed for an exemption this payment would be deemed as an employer payment to facilitate early exit and would have had to be measured under the cap.

- **Exemptions**

The current draft exit cap regulations [7 (ci)] exempt this payment from the exit cap.

- **Implications for FRAs**

As an exempted payment there would be no implication for FRAs choosing to enhance commutation for eligible members. However, if the exemption were removed authorities would need to measure any enhanced payment made to the notional pension fund against the £95k cap.

2. FPS 2006 & FPS 2015 Authority Initiated Early Retirement (AIER)

In FPS 2006 & FPS 2015, FRAs can allow firefighters to retire from age 55 with a unreduced pension under Part 3, Paragraph 6 (FPS2006) and Regulation 62 (FPS2015).

The FRA is required to pay the difference between the unreduced and reduced pension into the FPS notional pension fund for each year the pension is in payment. This payment is deemed as an employer payment to facilitate early exit and would have to be measured under the cap.

A factsheet giving further information on Authority Initiated Early Retirement and the cost to FRAs is available here.

- **Exemptions**

The current draft exit cap regulations exempt this payment from the exit cap [7 (cii & iv)] where the FRA has agreed to put into payment an AIER retirement pension having regard to above rules for a firefighter who is unable to maintain operational fitness through no fault of their own.

- **Implications for Fire Authorities**

For FRAs who allow an AIER for reasons other than fitness, further guidance will be needed in the following areas:

i. **To measure the annual cost to the Fire Authority against the £95k cap**

The FPS regulations state that the cost to the FRA to allow early retirement with an unreduced pension is made by an annual payment to the notional pension fund representing the difference between the unreduced and reduced pension that would be paid to the member.

The regulations do not specify how to measure this annual cost of early retirement against the cap of £95k.

Guidance would be needed from the Home Office on how to measure the annual payment against the cap.

An alternative would be for Home Office to allow the early retirement cost to be paid as a capital cost on exit rather than annually.

ii. Amendment to the pension regulations to allow partial reduction

If, on measurement, the early retirement cost would exceed the £95k cap, then the regulations would need to be changed to consider:

- How the member's benefits would be reduced to such a level that the exit payment cap is not breached.
- Whether the member would have the option of paying extra to buy-out some or all of the reduction.

The proposed regulation changes do not introduce the option to defer payment of pension benefits in the event of a FPS member who is over age 55 being made redundant or leaving on the grounds of business efficiency. As the regulations currently stand, an FPS member whose exit payment has been capped would be forced to accept a reduced pension.

In order to implement partial reduction in the FPS, guidance from the Government Actuary's Department (GAD) on partial reductions and on the cost of buying out those reductions would be required. Detailed information concerning the method of calculating the partial reduction to benefits, the method and calculation for buying out the reduction – particularly the calculation to work out the applicable reduction where some but not all of the reduction has been bought out – and the deadline that applies to an election to make such a payment, would be required.

It is likely that changes to the FPS regulations and new statutory guidance would be required to effect this change.

Devolved administrations

Wales
The exit payment Regulations apply to Fire and Rescue Authorities in Wales.

Scotland
The Regulations do not apply to exit payments made by the Scottish Fire and Rescue Service.

Northern Ireland
The Regulations do not apply to exit payments made by Northern Ireland Fire and Rescue Service

Further Information

Guidance for green book staff who are members of the Local Government Pension Scheme (LGPS) is available in the LGPS library[5]

HMT Consultation documents

1. **Consultation document - 'Restricting exit payments in the public sector: consultation on implementation of regulations'[6]**

   The consultation document sets out what types of public sector exit payments the regulations apply to, summarises the proposed regulations and the reasons for introducing these regulations. Details of how to respond are included, and information concerning how respondents' data will be processed.

2. **Draft regulations - 'Annex A: The Restriction of Public Sector Exit Payments Regulations 2019'[7]**

   'The Regulations' include:

   - the bodies whose exit payments are covered by the cap
   - what constitutes an exit payment and what is exempt
   - the requirement for individuals and public sector bodies to report and record information about exit payments and
   - the circumstances in which the cap must be relaxed and the process for approval in situations where the cap may be relaxed.

3. **Schedule – 'Annex B: £95k cap on exit payments in the public sector schedule (draft)'[8]**

   'The Schedule' sets out public sector authorities and public sector offices that may be affected by the exit payment cap. There are circumstances where the cap must or may be waived. Where relevant, the Schedule specifies what body is the sponsoring department who would be responsible for approving the relaxation of the cap.

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5 http://lgpslibrary.org/assets/cons/nonscheme/20190410_95K_BR.pdf

6 https://www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector/restricting-exit-payments-in-the-public-sector-consultation-on-implementation-of-regulations

7 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791417/draft_SI_the_restriction_of_public_sector_exit_payments_regulations_2019.pdf

8 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791420/95k_cap_schedule_draft.pdf

4. **Guidance – 'Annex C: Restriction of public sector exit payments: guidance on the 2019 regulations'[9]**

   'The Guidance' sets out more information on how the legislation should be implemented, and particularly gives more information about the process to follow when a public sector body wishes to relax the restriction.

5. **HMT Direction – 'Mandatory HM Treasury directions'[10]**

   'The Directions' describe when the exit payment cap must be relaxed, in what circumstances it can be relaxed and when HMT approval is required.

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9 https://www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector/annex-c-restriction-of-public-sector-exit-payments-guidance-on-the-2019-regulations

10 https://www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector/annex-c-restriction-of-public-sector-exit-payments-guidance-on-the-2019-regulations

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