Restriction of Exit Payments in the Public Sector - Interim Policy

Background

The Restriction of Public Sector Exit Payment Regulations 2020 (the Exit Cap Regulations) came into force with effect from 4 November 2020. These place a £95,000 cap on the total of exit payments that employers can incur when employees leave, including when employees are made redundant or leave for reasons of business efficiency.

A full list of employers in scope of the Exit Cap Regulations and details of the types of exit payments in scope of the exit payment cap are set out the regulations. Employers are encouraged to review this information for all exits.

Regulatory Conflict

The Ministry of Housing, Communities and Local Government (MHCLG) has opened a consultation seeking views on proposals for further reforming exit payments. MHCLG's proposals will affect all employers participating in the Local Government Pension Scheme (LGPS). The consultation proposes changes to the LGPS Regulations including to accommodate the £95,000 exit payment cap. This consultation closes on 18 December 2020, with the amending regulations coming into force early in 2021.

This means the Exit Cap Regulations and the LGPS Regulations are in conflict in situations where an employee, aged 55 or over, is leaving on redundancy, is entitled to an unreduced pension but where total exit payments due, are more than the Exit cap of £95,000.

Employers should note that, as we have briefed previously, the MHCLG consultation proposes more far reaching changes to benefits payable on redundancy or efficiency for those aged 55 or over which will amend both the LGPS Regulations and the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006.

Administering Authority Interim Policy

Given the legal uncertainty, Cheshire West and Chester Council as administering authority for the Cheshire Pension Fund sets out below its policy for the payments of benefits related to redundancy and business efficiency exits, that occur from 4 November 2020, until such time that the regulatory position is clarified.

This policy applies to members who are aged 55 and over at date of leaving and employed by an employer who is subject to the Restriction of Public Sector Exit Payments Regulations (commonly known as the "£95k cap", or "exit cap")

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These employers include Councils, Police and Fire Authorities and Academies but employers should check their own position.

Having regard to the view provided by LGPS Scheme Advisory Board, and having taken its own legal and actuarial advice, the Administering Authority's proposed approach to the release of certain pension benefits, pending resolution of the regulatory conflict, is as follows:

1. For all employers in the Cheshire Pension Fund this interim policy will apply to the release of certain pension benefits to members leaving from 4 November 2020 (when the Exit Cap Regulations came into force).

2. For employers in scope of the Exit Cap Regulations, whose scheme members, aged 55 or over, are leaving on the grounds of redundancy, business efficiency or employer waiver of pension reduction: -

    a) Where the employer certifies that total exit payments in relation to that scheme member do not exceed the exit payments cap, payment of unreduced pension will take place in accordance with current LGPS Regulations;

       OR

    b) Where the employer certifies that total exit payments in relation to that scheme member do exceed the exit payments cap, the member will be offered either

        i. a deferred pension under regulation 6(1); OR

        ii. an immediate fully actuarially reduced pension under regulation 30(5)

3. For the avoidance of doubt, scheme members whose employers are not in scope of the Exit Cap Regulations will receive their benefits in line with current LGPS regulations.

4. For all employers and for consistency, the Administering Authority will adopt the new Government Actuary's Departments factors for the calculation of pension strain costs for all exits due to redundancy, business efficiency and employer waiver of reductions.