What's happening to Exit Payments in the public sector?

September 2016 update

These proposals are now confirmed as applying to England only

As part of its attack on public sector workers, the government has introduced a set of reforms to exit payments (including redundancy payments) in the public sector – each set of proposals goes further than the last. All fly in the face of local, and even national, collective agreements, some agreed at the highest levels of government. Some of the proposals will mean re-opening regulations on pension entitlements, breaching the commitment not to alter public sector pensions for 25 years.

We outline below the proposed changes and what they mean for members' terms and conditions of service. There are three main sets of proposals on exit payments:-

1. Recovery of exit payments if you return to the public sector within 12 months
2. Absolute cap on the value of any exit payment set at a maximum of £95,000
3. New reduced limits on calculating all exit payments.

What does this mean for UNISON Members

What Can I do?

We have had clarification that Housing Associations, Higher Education and Further Education bodies will not count as public sector for the purposes of these changes and so will not be affected. Clarity on other bodies is still being sought.

Note: The government's intention is that, as a matter of Employment Law, it is a 'reserved matter', meaning they intend these changes to cover the whole of the UK. This may well be challenged by the devolved nations.

1. Recovery of exit payments if you return to the public sector within 12 months

When does it come into force?

We are now expecting final regulations to be passed in early October with an immediate implementation date.

Who is affected?

Anyone earning over £80,000pa when they were paid to exit public sector employment, if they return to a job ANYWHERE in the public sector within 12 months.

Up to 100% of the exit payment will be recovered by the old employer, or by the government if the old employer no longer exists.

What payments will it cover?

Payments made to an exiting employee, or a third party on behalf of the employee, including:

- Redundancy payments,
- Any pension top-up to enable early retirement
- Any payment made as part of an agreed exit settlement between the employer and the employee

What if I return part time?

The recovery will take that into account and there will be only partial recovery on a pro-rata basis.

What if I return on a lower salary?

This is not taken into account in the current proposals.

What happens to recognition of my previous service?

Treasury guidance MAY encourage new employers to consider lost service entitlement – it will not automatically be recognised. This means that if the member is made redundant, again their future service related entitlements will be dramatically reduced.

How can I return money given to my pension scheme as part of my exit package?

If a member took early retirement, and was in receipt of their pension, there would need to be special arrangements to recover the pension top up given to the scheme by the previous employer. The details of this have yet to be agreed other than a vague mention of "abatement" which would mean a longer term recovery in the form of a reduced pension in payment.

What if I can't pay it back?

There will be a new requirement placed on prospective employers to withdraw any new job offer if recovery cannot be established.

What if I come back as a consultant?

Being paid to perform work in the service of the public sector will still count as re-entry into the public sector for the purposes of this legislation.

Are there any exceptions?

There is a waiver process whereby employers can ask the relevant government for an individual exemption from recovery. Waivers will be dealt with on an individual basis. It is anticipated that settlements made as a result of whistleblowing would be likely to receive such an exemption.

2. Absolute cap on the value of any exit payment set at a maximum of £95,000

When does it come into force?

We are now expecting consultation on the draft regulations (small print) to be published by early October – implementation is now expected in early 2017.

Who is affected?

Anyone working in the public sector who gets an exit/redundancy/early retirement settlement. It will mostly affect high earners, but despite previous government promises, it will also affect moderate earners if they have long service such as nurses, social workers, paramedics and librarians – particularly if they were previously entitled to access early retirement as an alternative to being made redundant.

What does it cover?

Payments made to an exiting employee, or a third party on behalf of the employee, including:

- Redundancy payments,
- Any pension top-up to enable early retirement,
- Any payment made as part of an agreed exit settlement between the employer and the employee

I'm not a high earner - how could this affect me?

If you have long service, you may have earned redundancy entitlements that mean you will exceed this cap. In the NHS, the maximum exit payment allowable is currently set at 24 months of current salary. For a nurse working in central London, doing night shifts, this could easily mean that long service would mean an exit payment would breach the £95k cap.

In local government, where anyone made redundant after age 55 is currently automatically entitled to early retirement instead of redundancy, someone earning as little as £25,000 could be affected, because an early retirement settlement (made directly to the pension scheme to compensate for taking current entitlements earlier than expected) is often much larger than a straightforward redundancy settlement. In other words, the £95,000 cap applies to the whole settlement, even the part of it which is paid to the pension scheme – not just the part which the individual receives.

What do I do if my exit payment is no longer enough to cover my entitlement to an early retirement??

The government is clear that the member would have three choices:

- Take a straight redundancy payment instead of early retirement or
- Make up the difference themselves (find part of the lump sum to pay the pension scheme) or
- Accept a partly reduced pension.

How will this affect Tribunal settlements?

Currently, all settlements including settlements agreed as part of the mandatory ACAS pre-Tribunal early conciliation process will be included.

By law, a settlement at Tribunal cannot be capped in this way. This would contradict previous government legislation mandating an attempt to settle cases before a tribunal hearing through ACAS, as under these proposals there would be less incentive to settle pre-tribunal where the new cap would apply.

Are there any exceptions?

There is a waiver process whereby employers can ask the relevant government minister for an individual exemption from recovery. Waivers will be dealt with on an individual basis. It is anticipated that settlements made as a result of whistleblowing would be likely to receive such an exemption.

For local authority employees, an exception can be made by a vote of the full council, though the detailed guidance on which circumstances might be acceptable for an exception to be granted has not yet been published.

3. New reduced limits on calculating all exit payments

When does it come into force?

The government have now published their response to the consultation on these changes.

They have outlined an expectation that employers will have arough outline of their own proposals ready within 3 months and final implementation of any agreed proposals will be accepted by the treasury team and in place within 9 months.

There is no legal backing to ensure these dates or any particular changes are met, however, the government is clear that once the consultation period is over, legislation may be issued for implementing any new proposals if changes cannot be achieved through negotiation.

Who is affected?

All workers in the public sector in England.

What is proposed?

Our understanding is that the proposals are not meant as a "reference scheme" and it is not expected that every public sector exit payment agreement will look the same. It is expected that all areas of the public sector look to reform or revise their scheme to consider making savings and to specifically consider the following three broad areas:

1. New maximum redundancy / exit entitlements (see below)
2. Reducing entitlements as people near retirement
3. Reducing, or eliminating, access to early retirement options.

The suggested maximum limits on redundancy entitlements being proposed are

- Maximum of 3 weeks' pay for each year of service
- Maximum of 15 months' pay in total and possibly less for compulsory redundancies (to encourage people to take exit packages earlier)
- Maximum salary for calculating an exit payment set at £80,000
- A tapered reduction in exit package the closer someone is to retirement

Proposals for amending access to Employer funded pension "top-ups" to enable older workers to access an unreduced early retirement in lieu of a redundancy payment are as follows (and appear to be a choice rather than expecting all three to be implemented);

- A cap on the amount of employer funded pension “top-up” to no more than the amount of redundancy settlement that would otherwise be used.
- Removing the ability of employers to make pension “top-ups” altogether
- Increase the minimum age at which an employee is able to receive a pension “top-up”.

Please note: These are not necessarily the expected outcomes of individual reviews and negotiations, but are expected to be considered as part of a review of exit package policies.

What does this mean for UNISON members?

In light of the extent of public service budget cuts and the proposed future cuts, these new proposals to cap exit payments in the public sector are entirely punitive, representing yet another attack on public sector workers and the services they provide.

This initiative tears up collective agreements and negotiated settlements, many of which are still in the process of being agreed directly with government departments, at a time when the flexibility required by employers to negotiate redundancies with recognised trade unions could not be more acute.

It is clear that the proposals, as they stand, will not only affect high earners but will also impact on moderate earners such as nurses, midwives, social workers and librarians with long service in public services.

Whilst it may be that some sectors will be able to negotiate on some of the areas under threat, it cannot be ignored that some employers will take this opportunity to seek to reduce terms and conditions in all areas and treat the proposed areas of reform as the new baseline.

Public service workers often devote years of loyal service: the government’s own evidence on sector comparisons makes it clear that many professionals working in the public sector could earn greater salaries in the private sector.

UNISON believes that the local and national damage done to industrial relations, and the impact on staff morale and the employers’ ability to facilitate necessary change, is too high a price to pay for what may amount – at most - to very moderate savings to the government purse. This will be especially true when you take into account the cost of the sub-standard reorganisations that may result from these restrictions.

UNISON will be advising negotiators on how best to deal with these new proposals on a sector by sector basis.

Currently each sector scheme (s) are structured very differently and negations for how far each scheme will need to match all elements of these proposals will vary. For instance in Local Government the tariffs are already very low in many schemes so there may be room to prioritise protecting the status quo on access to Early retirement. Whereas in Health there is already no access to an unreduced pension on early retirement so there may be more leeway on tariffs.

Please look out for individual updates for each scheme.

In the mean time, UNISON is joining with other unions and the TUC to challenge the detail of these new attacks on exit payments and will be working hard to ensure there are sufficient safeguards in the detail such as a waiver process for the proposed absolute cap that can be applied in cases of individual hardship.

For queries please contact Michelle Singleton, Policy Unit, at policy@unison.co.uk