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

March 2017 update

As part of its wider attack on the funding of public services and public sector workers, the Government has introduced a set of punitive 'reforms' to exit payments – including redundancy payments. The framework for these proposals has been outlined in previous updates (February briefing in eFocus and the March and September 2016 briefings for members and branches) and is outlined again in detail below.

In summary there are three sets of proposals.

1. **To recover exit payments given to anyone earning £80,000 or above at the time of exit if you return to a public sector job within 12 months**
2. **Cap exit payments to no more than £95,000 in total**
3. **Reform existing agreements to reduce the factors relating to calculating an exit payment**

All of the proposals fly in the face of local and national collective agreements, even those agreed at the highest levels of government very recently. They come at a time when our members are facing wide-scale redundancies and the erosion of their pay and conditions. Flexibility for employers to negotiate fair redundancy packages with recognised trade unions like UNISON is also absolutely necessary at this time.

Many public sector workers devote years of loyal service on low pay. The Government's own pay comparisons across sectors show that many working in the public sector could earn higher salaries for the same jobs in the private sector.

UNISON believes that the attack on exit payments is unjustified and will damage industrial relations, employees' morale and undermine employers' ability to respond to changes driven by the Government's own cuts. The likely savings to the Government are unlikely to compensate for the further upheaval and monetary loss felt by our members.

Some of the proposals could mean changes to regulations governing pension entitlements, which would breach the Government's previous commitment not to alter public sector pensions for 25 years.

Who do the Government's proposals apply to?

The proposed changes each have different impacts on different bodies and devolved administrations.

The government has recently stated that the **recovery** legislation applies to "those bodies where employment and remuneration practices are the direct responsibility of the UK government, the Northern Ireland Executive or the Welsh government." And that it will be for the Scottish government to determine if and how they want to take forward similar arrangements." We await the detail on which bodies this means will be affected.

On the **95K cap** they say that this legislation applies to England, Wales and Scotland. Government is currently drafting regulations to implement this in respect of "all of the bodies where employment and remuneration practices are the responsibility of the UK government" – this includes some bodies in devolved administrations which are not devolved functions. Which exact bodies are included will be clarified when the regulations are laid.

We understand that employees in housing associations, higher education and further education colleges are <u>excluded</u> from the proposals.

Clarification is being sought on other bodies. We have pressed government to give absolute clarity on this issue and have been told that this information will be clear within the final regulations. We will update on this issue when we have any new information.

The proposed **wider reforms** to existing agreements apply to "major employers" in the Public Sector in England. In practice this means NHS, Local Government, Civil service, Teachers, Police, Fire Fighters and armed Forces in England only.

What is UNISON doing?

UNISON is joining with other unions and the TUC to challenge these latest attacks on exit payments. We have had direct meetings with Treasury officials and responded robustly to all consultations (available on our website) as well as having meetings with, and writing briefings for, MP's and Lords as this legislation was being debated in parliament. We will be working hard to minimise the effect of these changes and to secure sufficient safeguards – such as waiver clauses – to prevent hardship for our members.

We will continue to give regular updates as and when we have any new information on departmental proposals and negotiations.

The proposed changes in detail – and what they mean for members

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 is included in exit payments?

Exit payments are those made to an employee leaving employment, or a third party on behalf of the employee, including:

- Redundancy payments
- Pensions top-ups which enable early retirement – sometimes known as 'strain payments'
- Any payment made as part of an agreed settlement between the employer and the employee
- Pension lump sums (received by you as part of your pension) are **not** included in the maximum cap of £95,000

NB: Clarification is being sought on the status of statutory redundancy payments and whether they can be automatically recovered or re-designated – UNISON's understanding is that they cannot.

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 the near future (before the Easter break) with an immediate implementation date.

Who is affected?

Anyone earning £80,000 or more at the point of leaving public sector employment, if they return to **any** job, **anywhere** in the public sector within twelve 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 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?

The current proposals do not take a reduced salary into account for recovery of exit payments.

Will my previous service be recognised if I return to another public sector job?

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 any future service-related entitlements will be dramatically reduced.

Do I have to return "top-up / strain payments" paid into my pension scheme as part of my exit package?

Yes. If a member takes early retirement, and receives his / her 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 reduction in the pension in payment.

What happens if I can't pay it back?

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

What if I come back as a consultant?

Any work paid for by the public sector – including consultancy - will still count as re-entry into the public sector for the purposes of this legislation.

Will there be any exceptions?

There is a waiver process whereby an employer can ask the relevant government department 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?

The Government intends to publish draft regulations for consultation before Easter. A deadline for implementation has been set for the end of June.

Who is affected?

Anyone working in the areas of the public sector covered by these proposals who gets an exit payment (as outlined above) will be affected. The proposals will hit high earners hardest, but could also affect moderate earners if they have long service such as nurses, social workers, paramedics and librarians. They will be particularly affected they are entitled to access early retirement as an alternative to being made redundant.

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

You could be affected if you have long service and a moderate income, but those earning less than £30,000 are generally unlikely to be affected.

In the NHS, the maximum permitted exit payment is currently set at 24 months of current salary. A nurse with long service, working night shifts in central London, could breach the £95,000 cap.

In local government, each local authority has its own redundancy scheme, with wide variations in entitlements. A survey of almost 100 agreements showed that most payments are based on actual salary, with most maximum payments being above 60 weeks.

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 happens if my exit payment is no longer enough to cover my entitlement to an early retirement??

At present we don't know the answer to this. However, the Government has suggested that an employee in this situation could have three choices to:

- 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 from elsewhere) or
- Accept a partly reduced pension.

How will this affect settlement agreements (such as tribunal or pre-tribunal settlements)?

Currently, all settlements will be included in the cap – including those reached through the ACAS early conciliation process.

UNISON believes that a Tribunal settlement cannot be capped in this way. Attempts to do so would conflict with existing legislation requiring an attempt to settle cases via ACAS before a hearing. These proposals would create a disincentive to settle before a hearing if any settlement were included in the £95,000 cap.

Will there be any exceptions to the £95k cap?

There will be 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?

In February 2016 the government published a consultation document on proposals to limit or reduce exit payment s in the public sector. UNISON responded along with many other organisations and in September 2016 the government published their response to the consultation.

In their response they made it clear that they expected employers in each area of the public sector covered by the proposals to make a preliminary response to the Treasury by the end of December and for final implementation by June 17. It is clear that these deadlines have already slipped and are likely to be extended.

There is no legal backing proposed 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 sufficient changes cannot be achieved through negotiation.

Who is affected?

All workers in the public sector in England – However, only the “large” employers are being actively pursued.

What is proposed?

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.

In local government, individual authorities each have their own redundancy agreements rather than one agreed scheme.

However, the government is expecting all parts of the public sector covered by the proposals to ‘reform’ their schemes covering exit payments in order to make savings. They are being asked to specifically consider the following:

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 following maximum limits on redundancy entitlements are being proposed

- 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 to the exit package the closer someone is to retirement

The government has also suggested options for changing access to pension “top-ups” which enable older workers to access an unreduced pension in lieu of a redundancy payment. (In the case of members of the Local Government Pension Scheme, there is no currently no choice but to take a pension if a member is made redundant at the age of 55 or above.) The proposed options are:

- Capping the 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 proposals are expected to be considered as part of reviews and negotiations over exit payments but are NOT regarded as the necessary outcomes of them.

Update by sector

Civil Service Changes to the Civil Service Exit Payment Scheme have already been negotiated and implemented and improve significantly on these proposals in many areas (indicated by *).

- Voluntary Exit capped at 18 months’ salary*;
- Voluntary Redundancy capped at 18 months’ salary*
- Compulsory Redundancy capped at nine months’ salary);
- To allow employer-funded top-up to pension from age 55 and for this minimum age to track 10 years behind state pension age;
- To offer a partial buy-out option for employees above minimum pension age where the cash value of the exit payment is insufficient to fully buy out the actuarial reduction, or where the full exit payment is otherwise affected by restrictions in legislation (e.g. the introduction of the £95,000 exit cap);
- Maximum salary cap for calculations is set at £150,000*
- Increase the lower paid underpin to £24,500 (no exit package is calculated as a lower salary than this floor amount)*;
- A revised Protocol for Avoiding Redundancies.

NHS Employers have just recently invited the core unions to negotiate on this issue

Local government/LGPS members: No formal negotiations have yet taken place with the LGA. However, the Department for Communities and Local Government (DCLG) has decided to consult on proposals which are expected before Easter. The content of the proposals is not known. They are likely to have implications for employees in other sectors who are members of the LGPS.

Police Staff: Some initial discussion has taken place at the Police Staffs Council, but there have been no formal negotiations to date.

Police Officers: While UNISON has no police officer members, it is interesting to note that an exit package with a maximum salary of **£149,000** to be used for the calculation of exit payments has been agreed with the Police Federation.

We will keep you updated as formal proposals and negotiations within each sector develop. In the meantime, please make as many members as possible aware of the Government’s proposals.

Please look out for scheme specific updates for each scheme

In the meantime, 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.

Organise and recruit

The attack on public sector exit payments is just the latest in a long series of attacks on our members doing vital jobs for the public. It means that every public service worker should be in a trade union – and UNISON wherever appropriate. Please talk to non-members in your workplace about what is happening and get them to join.

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