

Exit payments in the Public Sector

As previously reported there are three separate areas that have been consulted on

On 24 January, HM Treasury issued [SI2017/70](#), the Enterprise Act 2016 (Commencement No. 2) Regulations 2017, effective from 1 February 2017. The regulations commence certain parts of the Enterprise Act 2016 including changes to the Small Business, Enterprise and Employment Act 2015, which enables the £95k exit payment cap to be introduced. However, the commencement order does not itself bring the exit payment cap into effect, but merely allows the Government to make regulations providing for the introduction of the cap.

Set out below is an update covering the current understanding, though this may be subject to change:

1) Exit payment recovery : where an individual earning £80,000 or more leaves a relevant public service employment, and becomes re-employed in a further relevant public service employment within 12 months of leaving

We are waiting for HMT to enact recovery over-riding regulations, which will not require an amendment to the LGPS regulations to be effective. We understand that these regulations will be enacted by way of the 'affirmative' procedure, which will commence 'soon'.

For the recovery regulations to apply the individual must have both left and become re-employed in relevant public service employments on or after the effective date of the recovery regulations (i.e. the regulations will not be retrospectively applied).

Once the recovery regulations are enacted changes will need to be made to both leaving and recruitment communications. This to be largely driven by the Scheme employer as it will be the responsibility of the employer to whom the member leaves employment, to undertake any assessment (on the whole termination package, including strain on the fund cost) and recover any overpayment which will take the form of an employee debt.

2) Exit payment CAP

It is expected that HMT are shortly to issue a further set of draft regulations covering the £95,000 CAP. Once the consultation has finished, the understanding is that these regulations will be enacted by way of the 'affirmative' procedure.

The CAP regulations will apply to individuals who leave public service employment on or after the effective date of these regulations. Though it is understood that there may be a waiver in situations whereby a leave date has been agreed and this date is delayed due to unforeseen circumstances.

It is expected that these regulations are to set out what will be included in the CAP, situations by when the CAP will be triggered and conversely by when the CAP will not be triggered. There will also be guidance, setting out the prescriptive circumstances by when the £95,000 CAP may be waived. Of particular interest to funds will be how any 'strain on the fund' cost is calculated. Discussions are ongoing in this area.

3) Exit payment further reform

Further reform is looking at the overall severance package for individuals and DCLG are expected to shortly publish a consultation addressing this area. No further details as to the content are available at the time of writing this update (24 February 2017).