



Committee report

Committee	ISLE OF WIGHT PENSION FUND COMMITTEE
Date	25 NOVEMBER 2020
Title	SCHEME CHANGES – EXIT PAYMENTS CAP
Report of	TECHNICAL FINANCE MANAGER

EXECUTIVE SUMMARY

1. This report provides members with information about the recent legislative changes in respect of restricting local government exit payments and the implications for the pension fund.
2. The committee is asked to note the changes and agree the process by which the fund will implement the changes.

BACKGROUND

3. This matter was introduced to the committee at the meeting on 2 September 2020. Since then there has been a large amount of activity in respect of this subject, much of which is causing difficulties for local government pension scheme (LGPS) administering authorities.
4. This impacts on those employers listed in the schedule to the new regulations (specifically local authorities, town and parish councils and academies) and staff being made redundant who are over 55 and members of the LGPS.
5. The government first announced plans to cap exit payments in the public sector in 2015. On 10 April 2019 HM Treasury (HMT) launched a consultation on draft regulations, guidance and Directions to implement the cap. HMT published its response to the consultation on 21 July 2020.
6. The [Restriction of Public Sector Exit Payments Regulations 2020](#), the legislation implementing the £95k cap on exit payments, was signed on 14 October 2020, and came into force on 4 November 2020.
7. In addition to the £95k exit payment cap, the Ministry of Housing, Communities and Local Government (MHCLG) has launched a [consultation](#) on changes to the Local Government Pension Scheme (LGPS) and Discretionary Compensation Regulations. That consultation proposes changes to the LGPS regulations in order to

accommodate the £95k exit payment cap. It also proposes a limit on cash severance payments and for the strain cost to be reduced by the value of any statutory redundancy payment made. The consultation on the process closed on 9 November 2020, but the deadline for comments on the draft regulations themselves has been extended to 18 December 2020.

8. The Local Government Scheme Advisory Board (SAB) have made both HM Treasury and MHCLG aware of the predicament this puts local government employers and LGPS administering authorities in, in the interim period between the enforcement of the HMT regulations on 4 November 2020 and the amendment to the LGPS regulations, unlikely to be implemented until Spring 2021.
9. Under Regulation 30(7) of the Local Government Pension Scheme Regulations 2013 employees aged 55 or more who are members of the LGPS are currently entitled to immediate access to unreduced pension where:
 - The member is dismissed from an employment on redundancy or business efficiency grounds, or
 - The employment is terminated by mutual consent on business efficiency grounds.
10. An employer participating in LGPS which provides early unreduced payment of pension benefits has to make additional payments to the relevant pension fund to make up the resulting shortfall in the pension funding. This is because provision for early exits is not included in their standard employer contributions. This extra payment is also known as the pension strain cost.
11. The HMT regulations require that the total of all exit payments in respect of an individual employee should not exceed £95,000. The regulations state that any pension strain cost must be included within the cap.
12. The SAB sought legal advice as to the risk of challenge to LGPS authorities during this period, in respect of the apparent discrepancy between the obligations on scheme employers under the HMT Regulations to limit strain cost payments, and the requirement for administering authorities to pay unreduced pensions to qualifying scheme members under existing LGPS regulations.
13. On 28 October 2020, the Minister for Regional Growth and Local Government, Luke Hall MP, sent a [letter](#) to all chief executives setting out his expectation that LGPS administering authorities must comply with the provisions of the new HMT regulations despite their inconsistencies with the existing LGPS regulations. (This was circulated to committee members on 2 November 2020)
14. The Minister states that LGPS members impacted by the £95k cap should be offered either an immediate but fully reduced pension or a deferred pension (payable at normal pension age) plus a lump sum (from the employer) equivalent to the capped strain cost.
15. For clarity, those members whose total exit payment does not breach the £95k cap retain their entitlement to an immediate unreduced pension.

16. Commentary on the legal advice received, which included consideration of the letter from the Minister, was published on the SAB website on 30 October 2020.
17. The SAB commentary on the legal advice acknowledges that there is not risk-free solution for LGPS Administering authorities in the period between the HMT regulations coming into force and the revised LGPS regulations being implemented, as they “appear to be in the position of not acting in accordance with either the government's view or the LGPS Regulations”.
18. SAB suggests that LGPS administering authorities will need to assess the level of risk of successful challenge it could face, while acknowledging that clarity on such risk may only be achieved once a challenge has been resolved through the courts.
19. The SAB commentary on the legal advice is presented as appendix 1 to this report, and includes the considerations for administering authorities and scheme employers in respect of this matter, including the risks of challenge and the potential mitigations.
20. The SAB's opinion, following its legal advice, is that the course of action presenting least risk to both LGPS administering authorities and scheme employers is for the:
 - LGPS administering authority to offer the member the opportunity to take a deferred benefit under LGPS regulation 6 or a fully actuarially reduced pension under LGPS regulation 30(5)
 - Scheme employer to delay the payment of a cash alternative under regulation 8 of the Exit Cap Regulations.
21. In the view of the Board this scenario allows for the maximum flexibility for both the LGPS administering authority and the scheme employer to minimise the financial risk which will result from the inevitable challenge from the scheme member denied what would appear to be their right to an unreduced pension under LGPS regulation 30(7).
22. The SAB have advised that they are in conversation with the Pensions Ombudsman to consider the process by which the inevitable challenges can be received, reviewed and actioned.
23. On 5 November and 9 November respectively, the Local Government Association (LGA) issued information for employers and administering authorities in respect of the implementation of the exit cap. This information was shared with committee members on 10 November.
24. The council as scheme employer, has considered the information provided for employers and has reviewed its existing restructuring proposals to determine whether there are any immediate cases which could breach the exit cap.
25. While no such cases have been identified, a working group has been convened to review the council's existing policies and processes to implement the exit cap. This work is being led by the Director of Corporate Resources.

26. In conjunction with other pension funds in the ACCESS pool, the fund is seeking legal advice from Squire Patton Boggs on the implementation of the exit cap in the interim period before the introduction of the new LGPS regulations. It is expected this advice will be received before the pension committee meeting – members will be updated at the meeting.
27. Subject to the outcome of the legal advice it is proposed that the Isle of Wight Council Pension Fund follows the course of action suggested by the SAB, in that it:
 - (a) offers the impacted member the opportunity to take a deferred benefit under LGPS regulation 6 or a fully actuarially reduced pension under LGPS regulation 30(5); and
 - (b) recommends to scheme employers to delay the payment of a cash alternative under regulation 8 of the Exit Cap Regulations.
28. The fund continues to develop its communication to impacted employers and to scheme members. This communication will also include a review of the fund's complaints and internal dispute resolution process (IDRP) policy to ensure there is a suitable process for any impacted members to lodge their challenge.

RECOMMENDATION

29. The committee notes the ongoing developments in respect of the implementation of the exit cap.
30. Subject to the outcome of its legal advice, the Isle of Wight Council Pension Fund:
 - (a) offers impacted members the opportunity to take a deferred benefit under LGPS regulation 6 or a fully actuarially reduced pension under LGPS regulation 30(5); and
 - (b) recommends to scheme employers to delay the payment of a cash alternative under regulation 8 of the Exit Cap Regulations.

APPENDICES ATTACHED

31. Appendix 1 – Local Government Pension Scheme Advisory Board commentary on legal advice.

BACKGROUND PAPERS

32. Scheme Changes in the LGPS – Isle of Wight Pension Fund Committee 2 September 2020, paper F
<https://www.iow.gov.uk/Meetings/committees/IW%20Pension%20Fund/2-9-20/PAPERF.pdf>
33. Scheme Advisory Board, Public Sector Exit Payments cap – summary
<http://www.lgpsboard.org/index.php/structure-reform/public-sector-exit-payments>

34. Local Government Association, Position Statement: Reform of Local Government Exit Payments
<https://www.local.gov.uk/reform-local-government-exit-payments>

Contact Point: Jo Thistlewood, Technical Finance Manager, ☎ 821000
e-mail jo.thistlewood@iow.gov.uk

CHRIS WARD
*Director of Finance
and Section 151 Officer*

COUNCILLOR ADRIAN AXFORD
*Chairman of the Isle of Wight
Pension Fund Committee*