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Sixty second summary

Consultation on exit payments in local government – Impact on LGPS early retirement pensions

- Proposed changes (taking effect in January 2021?*) will affect local government employers (mainly, but not exclusively, councils and academy trusts).
- English LGPS funds and employers should take urgent action to liaise with HR colleagues regarding any potential early retirement packages being prepared for issue in this calendar year.
- BREAKING NEWS – proposals (unexpectedly) will also affect redundancy payments.

More than five years after being originally mooted, MHCLG issued its latest consultation on Monday 7 September 2020, on the above topic. These proposals relate to public sector employers which are under the responsibility of the UK Government, not the devolved administrations. In practical LGPS terms this means they apply in the first place to England only: we await details of how these will apply in Wales, Scotland[1] and Northern Ireland.

What do I need to do with this right now?

In essence the main two actions for English Funds and local government employers (mainly, but not exclusively, councils and academy trusts) are:

a) Liaise with HR colleagues immediately to ensure that any potential early retirement & redundancy packages being prepared are suitably caveated. In particular, there are risks if retirement quotes are being issued this calendar year where the retirement may not occur until after these new Regulations take place: the quotes may be invalidated with the benefits and/or redundancy pay requiring revision;
b) Consider completing your own response to the consultation: this closes on 9 November (see point below).

Why is this happening?

In 2015 the Government first announced its proposals to prohibit six-figure exit packages from the public sector, by imposing a £95,000 cap on such packages. This consultation had a very short run (four weeks), following which the Government response was to confirm it would proceed as proposed. Our view at that time was that the proposals would have a number of unintended consequences flowing from them for the LGPS.

Over the past five years, however, these proposals have (like much Government business) fallen victim to a couple of major distractions of which we are all well aware, so the proposals remained on the shelf. However, they are now off the shelf and being put into effect.

Will Hymans Robertson be preparing a response to this consultation?

Yes, and we aim to share this with you well ahead of the 9 November deadline, to allow you to refer to this when preparing your own response if you wish.

[1] The exit cap was introduced into the Scottish Public Finance Manual in September 2019. While not applicable to local government it should be noted from this manual that pension strain costs appear to have been excluded for the wider Scottish public sector application of this cap. It will be interesting to see if this divergence with England continues in any Scottish consultation for local government.

How is the LGPS affected by these proposals?

The overall legislation applies to public sector exit packages generally and raises some interesting challenges for impacted employers. In particular, employers will need to design overall compensation policies in future that comply with the proposed restrictions while still providing exit packages that work for employees.

In this note we focus on the LGPS specific topic of early retirement benefits payable to members on or after age 55, although employers will need to fully appreciate the interdependencies that may exist with their wider compensation policies. In essence, where someone retires due to redundancy or business efficiency aged 55 or over, they currently must receive their LGPS benefits in full and with immediate effect. That unreduced immediate payment has an added "strain" cost to the employer over and above what the fund had assumed would be payable to the member. The original proposals stated that such a strain cost must be counted towards the £95k cap.

The current proposals confirm that position, and now provide some detail on the practicalities. In brief:

- The amount of strain cost will be determined using standardised actuarial factors**, rather than fund-specific factors already in place;

- If the overall package is below £95,000 then benefits can, as now, be paid in full, but only if the member chooses in effect to give up their redundancy pay;

- If the overall package exceeds the cap then the strain cost needs to be addressed, with the member having various options, including:
  (a) LGPS benefits still being paid immediately but on a reduced basis, with no additional compensation;
  (b) LGPS benefits being paid in full, with the member choosing to take less lump sum compensation;
  (c) LGPS benefits being deferred until normal pension age, where they would be paid unreduced and the individual instead receiving lump sum compensation within the cap limits.

- Regardless of whether the exit cap applies or not, the member is in effect forced to choose which of the following they wish to give up (they cannot have all three as they do now): Statutory Redundancy Pay, full pension[2], and immediate payment. If they take SRP they must either have a reduced pension or defer pension until normal pension age; if they wish immediate full pension they must give up SRP.

*When will this take effect?

The consultation does not indicate a timescale for the Regulations to take effect. However, we understand from previous briefings that the intention is for these to be implemented by the start of 2021. Whilst they will not be backdated, they will potentially disrupt workforce planning discussions currently underway that might not come into effect until after the exit cap restrictions are introduced.

This is the reason for quickly ensuring that HR colleagues at councils, academy schools and other public sector employers are aware of these proposals.

**What else is not confirmed yet?

The key element we await, other than implementation date, is the actuarial methodology and factors underpinning the standardised approach for calculating the strain cost, and calculating the reduction in pension if the member wishes to take SRP. The consultation states that "the Secretary of State has asked the Government Actuary's Department to provide actuarial guidance on this for funds to follow. We will consult on this actuarial guidance in due course".

The issue here is that the exact choice of methodology and assumptions will affect the trade-off between SRP and pension. In the absence of this information it is currently impossible for funds to quote meaningful pension and SRP figures to members. We would ask MHCLG to make such methodology and assumptions available as a matter of urgency, and indeed we would have hoped that these had been prepared during the past five years.

[2] It is possible that the strain cost does exceed the exit cap and so the pension would require a corresponding reduction in any case.