

Public sector exit pay cap update

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The £95k cap

- First proposed in 2015, approved by both houses of Parliament in October 2020
- The cap came into force 4 November 2020
- Restricted the total value of an exit to £95k, including pension 'strain' costs for those aged 55 and over
- Complex waiver process proposed for local authorities

MHCLG consultation on further reform

- MHCLG consultation closed 9 November 2020 (18 December 2020 for draft regulations)
- Expected implementation was early 2021
- Proposed changes to the LGPS and Discretionary Compensation Regulations
- Changes would have accommodated the £95k cap and introduced wider exit payment reform for local government bodies

Employers in scope

- Local authorities would have been in scope for both the exit payment cap and wider reform
- Other employers may not have been in scope of the cap or wider reforms
- Will concentrate on local authorities today

Issues during the period of the cap

- Understandable confusion for employers between the cap and further reform proposals
- As expected (and previously communicated to HMT) mid-range long serving staff hit by cap due to pension strain
- Significant legal uncertainty over the pensions of capped employees and the payment of ‘cash alternatives’ (MHCLG letter October 2020)
- Judicial Review process started (LGA named as interested party)

All stop (for now)

- 12th February 2021 HMT Directions ‘disapply’ the cap, without notice
- 26th February 2021 Cap Regulations are revoked (not retrospectively) wef 19th March 2021
- Employers are obliged under Revocation Regulations to ‘pay the amount of the difference [between the capped and uncapped entitlement]plus interest’
- 4th March 2021 MHJCLG withdraws the letter of October 2020 and announces that there will be no further reform without another consultation

What next?

- HMT have started that they will legislate again to ‘tackle unjustified exit payments’ and will do so ‘at pace’
- It is our understanding that ‘at pace’ means it will happen within this calendar year
- New legislation may also include the clawback provisions for those earning £80k or more first consulted on in late 2015
- It remains MHCLG’s intention to also introduce some form of further reform to exits

MHCLG data request

- Letter of 9th April requesting annualised data on exit payments since 2014-15
- Comments on template by 26th April with data wanted by end of May
- We have communicated concerns to MHCLG on timescale, clarity and confidentiality issues

LGA concerns remain as before

- Restriction on councils' ability to manage workforce
- Impact on lower and mid range employees
- Complexity of any waiver process
- Potential for employees to make the 'wrong' choice of benefits
- Administrative burden on employers and LGPS authorities
- Possibility of legal challenge