



'Stronger Together'

The Restriction of Public Sector Exit Payments Regulations 2020

Briefing note for Parliamentarians

Introduction

These Regulations will be considered by the Third Delegated Legislation Committee of the House of Commons on Monday 21 September and a motion to approve is before the House of Lords on Wednesday 23 September 2020.

ALACE recommends that Members of Parliament and Members of the House of Lords DO NOT SUPPORT the regulations as laid.

This briefing sets out our main concerns with the regulations and their unacceptable implications for public sector workers, particularly those in local government, many of whom have been at the forefront of the fight against coronavirus in our communities. The regulations do not affect only the highest paid staff. They also erode the decision-making role of elected councillors. We share the concerns raised by the Local Government Association, TUC and others about the regulations.

Our main concerns

ALACE raised these in its response to the Treasury's consultation (April to July 2019) but the Treasury has not acted on them:

- **Pension-strain payments should not be included in the cap.** The Treasury's approach ensures that key workers in local government will be caught by the cap if they are made redundant.
- Changes are required to the local government pension scheme if the Treasury's regulations are made. **The two sets of regulations must come into force at the same time to avoid council staff being compelled to receive a significantly reduced pension for life.** The Ministry of Housing, Communities and Local Government is consulting on changes but the consultation does not close until 9 November, and any regulations will not be made until some time after then.
- **The Treasury has failed to publish the updated equality impact assessment,** yet Parliament is being asked to approve the regulations without information on the equality impacts, which ALACE believes to be significant.
- Because no information has been published about proposed changes to the full range of public sector pension and compensation schemes, **it is impossible to know whether or not local government staff are treated equitably compared to staff in other parts of the public sector.** The Government should provide full information to Parliament to demonstrate that the approach for all public sector workforces is broadly equivalent.
- **The regulations unnecessarily erode the decision-making powers of directly-elected councils in respect of their workforces.** A council could be required to obtain

the Treasury's consent to waive the £95k limit even if the decision to do so had been taken by full council. This is inconsistent with the Government's approach to devolution.

Pension-strain payments should not be included in the cap.

Key workers in local government will be caught by the cap if they are made redundant. For many decades, employees have had the guarantee as part of the local government pension scheme (LGPS) that, if made redundant above a certain age, they would receive their accrued pension immediately and in full. Usually, if someone decides to take his or her pension before normal retirement age, the pension is reduced, to reflect the fact that the pension is being paid early, over a greater number of years. This actuarial reduction as it is known can be very significant: a 40% cut in pension for someone aged 55 whose normal retirement age is 67 and 22% even for someone aged 62.

At the moment, if someone is made redundant over the age of 55, the employer makes a payment to the pension fund so that the actuarial reduction does not happen: this is "pension strain" and the cost can easily run into six figures, even for staff in modestly paid roles. It is not money in the pocket of the individual as he or she leaves employment but a payment to the pension fund. This is why ALACE and others have argued that the payment cap should bite only on cash payments made to an individual, such as redundancy payments.

Access to an unreduced pension if made redundant between the ages of 55 and normal pension age forms a key part of the agreement reached following negotiations with unions and employers on the LGPS. The regulations seem to bring an end to the 25-year guarantee of no change to public sector pension schemes that was enshrined in the Public Service Pensions Act 2013.

In 2019, we showed the Treasury how including pension strain within the cap would affect long-serving staff earning well under £40,000. The pension strain for staff in their mid- to-late 50s in one council, with service in the range of 35 to 39 years and earning between £31,000 and £34,000 would exceed £100,000 if made redundant. The redundancy payments in each case would be well under £20,000. The regulations would mean that they would all suffer a reduced pension, for the rest of their lives.

These regulations could affect staff in a range of front line and supervisory and junior management roles – the people who have been the key workers in responding to COVID-19, such as senior environmental health officers who have been working on test and trace or enforcing restrictions in restaurants and shops; social workers who work with the NHS to ensure that elderly people are discharged swiftly from hospital; housing officers who found temporary accommodation to move homeless people from the streets; and revenues and benefits supervisors who have processed thousands of grants and rates reliefs for businesses and payments to recipients of council tax reduction support.

The Treasury regulations and regulations to make changes to the LGPS must come into force at the same time, to avoid council staff being compelled to receive a significantly reduced pension for life.

On 7 September, the Ministry of Housing, Communities and Local Government began consulting on changes to the LGPS to deal with the consequences of the exit payment cap regulations. The consultation "Reforming local government exit pay" does not close until 9

November, and any regulations will not be made until sometime after then. There must not be a gap between the two sets of regulations.

The MHCLG is seeking comments on amendments to the local government pension scheme that would avoid staff being forced to take a cut in their pension as a consequence of the Treasury regulations, as part of flexibilities that might give greater choice to individuals. In ALACE's view, such amendments are essential and we will call for the widest range of flexibilities for affected individuals.

It is unacceptable that the Treasury regulations, if approved by both Houses of Parliament, might come into force before the MHCLG has even finished its consultation. This could leave staff whose redundancy has already been agreed with effect from, say, 31 October in a financial and administrative "no man's land". They could have a statutory entitlement to immediate payment of unreduced pension but with a payment by their employer to cover pension strain being wholly or partly illegal.

The Government should be pressed for an absolute assurance that the coming into force of the two sets of regulations will be aligned.

The waiver process in regulations 10 and 11 is not the answer to the problem that would be created by the potential misalignment of regulations: the waiver process is overly bureaucratic for reasons explained below.

The Treasury has failed to publish the updated equality impact assessment.

Paragraph 3.35 of the Treasury's document of 21 July 2020 said "An updated assessment has been conducted based on the final regulations amended in line with this consultation response. This updated impact assessment will be published with the final guidance alongside the regulations coming into force."

The impact assessment for the regulations must be in its final form because the regulations cannot be amended by Parliament. ALACE's freedom of information request for release of the document has been rejected and the result of the internal review is awaited. However Parliament is being asked to approve the regulations without information on the equality impacts, which ALACE believes to be significant in respect of age and probably gender.

As a minimum, the Government should be pressed to release the equality impact assessment now.

It is impossible to know whether or not local government staff are treated equitably compared to staff in other parts of the public sector.

Apart from the MHCLG consultation, no information has been published about proposed changes to the full range of public sector pension and compensation schemes. MHCLG has not yet made available the proposed Government Actuary's tables for a common approach to calculating pension strain in local government but, even if it had done so, there does not appear to be equivalent information available in respect of the NHS, teachers or civil servants. The Government should provide full information to Parliament to demonstrate that the approach for all public sector workforces is broadly equivalent.

It is the Treasury's decision that the regulations will not apply to all parts of the public sector. The armed forces and security service will be exempt. Rear admirals, air vice marshals and lieutenant generals at desk jobs in the Ministry of Defence typically earn £120k-£150k or even more, may well be in their mid to late 50s and will not see any reduction in their exit payments when they leave their senior management roles. The banks which are in public

ownership following the financial crash of 2008 will be exempt – the organisations that created the financial austerity of the last decade will still be able to make massive exit payments to their staff. The irony is not lost on public sector staff whose jobs continue to be vulnerable to redundancy and whose pensions, if they are made redundant, could suffer as a result of these regulations.

The regulations unnecessarily erode the decision-making powers of directly-elected councils in respect of their workforces.

Regulation 11 constitutes an unprecedented assault on decision-making about employment matters by directly-elected councils. The full council can vote to waive the £95k cap under regulation 10. But it can do so only if it complies with Treasury directions (which have still not been published in their final form) and, if it proposes to depart from the Treasury directions, it has to obtain the Treasury's consent. This is an unparalleled interference in decision-making by councils as autonomous employers. No other decision that they make on employment matters has to be signed off by central Government. This is inconsistent with the Government's approach to devolution.

If a full council is prepared to support a decision in respect of the financial cost of terminating someone's employment, that should suffice for democratic scrutiny and accountability. Full councils do not need Whitehall second-guessing the business case for changes that they wish to make to their workforce. It will add bureaucracy and delay and will create uncertainty: where will it leave staff whose exit has been agreed by their full council but the terms of their exit are then rejected by the Treasury?

Regulation 11 is inconsistent with Government documents before and during passage of the primary legislation. The Government repeatedly made clear in 2015 and 2016 that full councils would have the power to relax the cap. The consultation paper in July 2015 proposed:

“the Full Council to take the decision whether to grant a waiver of the cap in cases involving Local Authorities and for local government bodies within their delegated powers”.

There was no mention of any need for further consent or approval. That was the effect of the draft regulations tabled during the progress of what became the Enterprise Act 2016: regulation 10(2) of “the Public Sector Exit Payment Regulations 2016” provided that the power under section 153C(1) is “exercisable...by the full council of a local authority, in relation to payments made by that local authority”. There was no requirement for Treasury consent in the 2016 regulations.

During passage of the Bill, the Minister, Baroness Neville Rolfe, informed the House of Lords, on 30 November 2015:

“Turning to Amendment 73A, the potential inappropriate use of settlement agreements and exit payments more widely is precisely why our clause requires approval by a Minister of the Crown, rather than the employer, when relaxing the cap. Ministerial **or full council approval** means that the power will be exercised objectively and only in exceptional circumstances, set down in guidance, to prevent circumvention and misuse. The power will be discretionary to allow for unique and novel situations. Regulations, as opposed to guidance, stipulating what such situations would be would limit flexibility. The multifaceted consideration that would be needed would not lend itself to the structure and prescriptive nature of regulations.” ((columns 981 and 982; emphasis added)

Thus Parliament was informed that full council approval would be sufficient to waive the cap, subject only to having regard to the guidance. There was no mention of a Treasury consent regime.

ALACE has repeatedly called for transitional arrangements if long-standing conventions in the LGPS are being abandoned. The exit cap regulations do not provide any transition, which is unprecedented when major changes are being made to the pensions that people might receive. The regulations result in a cliff edge: individuals whose exit happens the day before the regulations come into force are unaffected whereas those whose exit happens a day later could face significant reductions in their pension, for life. They have had no time to plan for this change, for example by making additional savings.

This is also true of colleagues who will lose their jobs because of the reorganisation in Northamptonshire in April 2021. Parliament approved the legislation in February 2020, long before the Treasury tabled its regulations. This was not a reorganisation that councils or their staff decided or imposed. Without appropriate transitional arrangements, those who lose their jobs because of the reorganisation can be caught by the £95k cap when staff who lost their jobs because of similar, recent reorganisations in Buckinghamshire and Dorset received their pensions in full.

Examples such as these provide further reasons why, if the Government is not prepared to implement appropriate transitional arrangements, councils need flexibility to take their own decisions.

About ALACE

The Association of Local Authority Chief Executives and Senior Managers (ALACE) is a non-aligned trade union that represents only senior managers in local government. Our members in England and Wales are directly affected by these regulations. www.alace.org.uk

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