

ALACE Council

Item 13

5 October 2016

**ALACE COUNCIL MEETING, 5 OCTOBER 2016**

**PUBLIC SECTOR EXIT PAYMENTS**

**Exit payments cap**

1. As Council members will wearily recall, the government consulted at the end of July last year on a proposal to limit the total value of most public sector employees' exit packages to £95k (in England).

(See <https://www.gov.uk/government/consultations/consultation-on-a-public-sector-exit-payment-cap/consultation-on-a-public-sector-exit-payment-cap>) An urgent ALACE response was prepared, as the consultation period was set at a mere four weeks (and, what's more, during the holiday period). The ALACE response can be seen in the Consultation Responses section of the Members' Area of the website, [www.alace.org.uk](http://www.alace.org.uk).

2. With unseemly haste, the proposal resurfaced within weeks in the Enterprise Bill. No concession was made over the all-important matter of the inclusion of the value of early access to unreduced pensions.

3. Ian Miller promoted amendments to the Bill on ALACE's behalf through the LGA and a Shadow Minister contact on the relevant Commons Bill Committee; and ALACE made a written submission to the Committee, drawing on its formal response to the earlier consultation. The submission can be read at <http://www.publications.parliament.uk/pa/cm201516/cmpublic/enterprise/memo/ent60.htm> (and in the News section and Members' Area of the ALACE website). However, the Bill passed into law in May without the changes ALACE had pressed for.

4. With support from GMB, counsel's opinion was sought on the prospects of a legal challenge to the inclusion of the value of early access to unreduced pensions. The matter will hinge on the final regulations, and will be reviewed once they have emerged (only an incomplete set of draft regulations had been released by the Treasury at that stage).

5. After joint pressure in April (hinting at a legal challenge) from ALACE, FDA, GMB, UNISON, and MiP (organised by ALACE), the Treasury told ALACE at the end of August that it "plans to allow a reasonable period for comment over the autumn" on a "comprehensive draft of the proposed regulations and supporting guidance". This made it sound most unlikely that the cap would come into force as early as the 1 October date previously mentioned by the government as the earliest prospective date – and, indeed, nothing had appeared as this report was finalised.

## Exit payments recovery

6. In parallel with its proposals to cap public sector exit payments, the government also consulted (twice: in June 2014 and December 2015) on proposals to require the repayment of some or all exit payments received by most high-earning public sector workers, if they return to work in the public sector within a year of departure. (ALACE's responses can be seen in the Consultation Responses section of the Members' Area of the website, [www.alace.org.uk](http://www.alace.org.uk).)

7. The proposals have altered in detail over the course of 28 months. The latest (and expected final) position is that the recovery will apply where the individual earns more than £80k, and that it will catch a return within a year to any part of the public sector (as defined), not just local government. As draft regulations were published long since, only the final version is awaited. There has been some suggestion (not formally confirmed) that these can be expected to be in force before the end of the year.

## Further reforms to exit payments

8. Of course, the government has also consulted this year on yet further exit payment proposals, specifically on redundancy payments: <https://www.gov.uk/government/consultations/further-consultation-on-limiting-public-sector-exit-payments>. ALACE organised a joint response with the same set of public sector unions as before (as well as submitting its own separate response). These responses can be seen in the Consultation Responses section of Members' Area of the website, [www.alace.org.uk](http://www.alace.org.uk).

9. On 26 September, the Treasury published its response to its latest (ie February 2016) consultation on the subject, which had specifically focused on redundancy payments. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/555304/reforms\\_to\\_public\\_sector\\_exit\\_payments\\_consultation\\_response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555304/reforms_to_public_sector_exit_payments_consultation_response.pdf)

10. As predicted by many, the Treasury has shied away from imposing a completely standard approach to all public sector redundancy arrangements. So these latest proposals constitute a national framework within which government departments are expected to negotiate detailed arrangements with "their" individual workforces, ideally without the need for primary legislation. ***Each relevant department is expected to produce proposals to the Treasury by late December, for negotiation with the workforce and implementation by late June 2017.*** The proposals will apply only to England, unless a devolved administration decides otherwise.

11. The main February 2016 proposals are summarised below, along with the gist of ALACE's April 2016 response (*in italics*) and a summary of the government's September 2016 intentions (**in bold**).<sup>1</sup> Some departmental flexibility may be allowed to depart from the national framework (but who would be willing to bet on local government being top of the list for exemptions?).

---

<sup>1</sup> ALACE also organised a joint response with FDA, GMB, MiP(Health), and UNISON – as well as submitting its own separate response. These responses can be seen in the Consultation Responses section of Members' Area of the website, [alace.org.uk](http://alace.org.uk).

- (a) A maximum tariff for calculating exit payments would be set, at perhaps three weeks' pay per year of service. *ALACE did not oppose this level. The government has reaffirmed its intention of implementing it as a maximum.*
- (b) The maximum number of months' salary that could be used when calculating redundancy payments would be capped, perhaps at 15 months. *ALACE did not oppose this level. The government has reaffirmed its intention of implementing it as a maximum.*
- (c) A maximum salary would be set for the calculation of exit payments – potentially £80k, as currently in the NHS. *ALACE opposed any such maximum salary level, but the government has reaffirmed its intention of implementing it at £80k.*
- (d) The amount of lump sum compensation an individual was entitled to receive would be tapered as they got close to the normal pension age (NPA). *ALACE opposed this as directly discriminatory, but the government has reaffirmed its intention of implementing it.*
- (e) The cost of employer-funded pension top-up payments would be reduced, with three options mooted (including removing access to pension top-ups altogether). *ALACE opposed this in the strongest terms, not least in relation to actuarial reductions in pensions, but the government has reaffirmed its intention of implementing one or other form of reduction.*
- (f) The government would consider the case for transitional protection for exits formally agreed before the new maxima took effect, but not more generally for individuals based on age or closeness to pension age. *ALACE argued for both, but the government has reaffirmed its intention of implementing the former form of transitional protection but not the latter.*

12. ALACE also made general comments in April as follows (with detailed justification provided in each case).

- (i) *We did not believe there was reasonable justification for further reform of exit payments. While accepting that there had indeed been a number of changes in recent years, the government has reasserted its contrary view.*
- (ii) *We did not believe that the Government's proposals would result in fairer, more modern, and more consistent compensation terms (the government's stated aims). The government has reasserted its contrary view.*
- (iii) *The Government needed to do a better job in spelling out why the current arrangements needed to be reduced for reasons of affordability. The government has not risen to this challenge!*
- (iv) *The financial impact assessment was not fit for purpose. The government has not risen to this challenge!*
- (v) *We looked forward to learning of the Government's justification for treating certain groups of staff with protected characteristics (including those below a certain age compared with those who had left employment in recent years) less favourably than other groups both indirectly and directly (as conceded by the government), and to the publication of a full equality impact assessment. We were particularly concerned about human rights aspects, and were exploring relevant provisions of EU law carefully. The government has asserted that it believes any direct or indirect discriminatory impact on*

**employees in particular groups to be justified (in part by remedying past over-generosity towards those age groups), but left it to departments to undertake equality impact assessments workforce by workforce!**

13. The ALACE Council is **recommended** to:

- (a) note the government's response, and the lack of concessions
- (b) decide its negotiating priorities and "red lines"
- (c) authorise the Honorary Officers to negotiate with DCLG within those, in conjunction with the other public sector trade unions if appropriate
- (d) ask Roger Morris to revisit the prospects of a legal challenge, in conjunction with the other trade unions and if appropriate with further advice from the learned counsel from whom the previous opinion was received.

### **Taxation of exit payments**

14. The unwelcome news is that, following a consultation last year (to which ALACE responded – again, see the Consultation Responses section of the Members' Area of the website, [www.alace.org.uk](http://www.alace.org.uk)), the government has decided to subject all payments in lieu of notice (PILON payments) to income tax and employee National Insurance contributions – even those payments that currently would escape such treatment. The welcome news is that it has decided to leave the first £30k of termination payments free of income tax, and all termination payments (even those above £30k) free of employee National Insurance contributions.

15. Further details can be found at

<https://www.gov.uk/government/consultations/simplification-of-the-tax-and-national-insurance-treatment-of-termination-payments-consultation-on-draft-legislation> .

The government consultation on how to put the changes into effect ends on the day of the Council meeting. It was decided that ALACE had no value to add to this further consultation on implementation details.

16. Members have been kept in the picture on the above topics via news items on the website and (where appropriate) email alerts from the Honorary Secretary steering them to the website.

### **Recommendation**

17. The ALACE Council is recommended to note the latest position statement on the four related issues, and to discuss negotiating priorities and other steps on changes to exit payments in local government, as set out in paragraph 13 above.

John Schultz  
Consultant, September 2016