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sixty seconds

news summary

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Public Sector Exit Payment Cap: Draft Regulations Published

What's happening?

On 3 November 2015, the Treasury quietly published draft *Public Sector Exit Payment Regulations 2016* to implement its decision to impose a restriction on exit payments in the public sector.[1] These draft Regulations cannot be formally laid until the regulation-making power in primary legislation (the *Small Business, Enterprise and Employment Act 2015* in this case) comes into force. This regulation-making power will be added to the Act by the *Enterprise Bill 2015 – 16* that is currently before Parliament.[2]

Labelled as '*consequential and related provision*', tucked away at the end of the Bill, are further changes to the *Small Business, Enterprise and Employment Act 2015*, powers to amend public sector schemes, and changes to the *Local Government Pension Scheme Regulations 2013.* In particular, where an exit payment restriction would otherwise prevent immediate retirement on an unreduced pension on redundancy or efficiency, the LGPS Regulations will result in the *member* paying for the removal of this restriction. This could be either by paying the excess amount in full, suffering an ongoing reduction to their pension or a combination of the two (we assume the ongoing reduction will be calculated by reference to centralised Secretary of State guidance even if the employer strain cost calculation remains Fund specific). Interestingly there appears to be no additional option for a member to defer receipt of their LGPS benefits until a time of their choosing rather than paying the excess cost or suffering a permanent reduction to their LGPS pension to offset this excess cost.

The policy intention

In September 2015, the Government announced that it had decided to press ahead with its proposals for a £95,000 cap on the total value of payments made in connection with the termination of a public sector worker's employment. This cap will cover a broad range of circumstances, including both voluntary and compulsory termination of employment, and will affect most of the possible components of severance packages, including the cost of providing enhanced (unreduced) early retirement benefits.

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[1] <www.gov.uk/government/uploads/system/uploads/attachment_data/file/473606/Draft_public_sector_exit_cap_regs.pdf>.
[2] <http://services.parliament.uk/bills/2015-16/enterprise.html>

The Government said more than once that these changes will not affect accrued pension rights. In the Local Government Pension Scheme (LGPS), unlike other public service pension schemes, members are '*entitled to*' immediate, unreduced early retirement pensions if they are made redundant, or leave employment for business efficiency reasons, having reached age 55. We presume that, before deciding to proceed with this legislation, the Government received legal advice that applying the cap to early retirement pensions does not affect LGPS members' accrued rights.

Conclusion

The publication of draft Regulations before the primary legislation is in place is perhaps an indication that the Government wants to avoid the delays associated with the usual legislative procedure. So once the Bill receives Royal Assent and becomes an Act we don't expect there to be any further consultation on the proposed changes to the LGPS; they will simply come into effect on the passing of the relevant Commencement Order.