



Restricting exit payments in the public sector

Central impact analysis



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1

Introduction

Impact analysis

Purpose

- 1.1 This impact analysis has been undertaken by HM Treasury to inform the implementation of regulations capping exit payments in the public sector at £95,000.
- 1.2 The government has considered the positive and negative impacts of the provisions that will apply across all public sector exit payments. This document assesses the fiscal impacts and social impacts of implementation on groups protected by the Equality Act 2010, which covers the protected characteristics of gender, age, disability, ethnicity, religion or belief, gender reassignment, pregnancy and maternity, sexual orientation and marital status/civil partnership.
- 1.3 The key elements of these regulations are:
 - They take precedence over existing contractual agreements, earlier regulations and other exit schemes
 - They do not impact statutory redundancy payments
 - They will apply to all public sector bodies listed in the Schedule
 - Applies to the total sum of payments outlined in regulation 5, including any severance payment, voluntary exit, and employer funded early access to pension
- 1.4 Where potential differential impacts have been identified we have assessed public service workforce data to establish causes and determine the level of impact. We have then considered whether the potential impacts are a result of the policy itself or factors not directly related to the policy design. Finally, we have considered whether alterations to the policy are necessary and appropriate considering identified impacts.
- 1.5 Consideration of impacts will continue to take place and, if necessary, further analysis may be conducted following implementation.

Scope

- 1.6 Sections 153A to 153C of the Small Business, Enterprise and Employment Act 2015 ('the 2015 Act') as amended by the Enterprise Act 2016 ('the 2016 Act') enable HM Treasury to make regulations capping public sector exit payments in the sum of £95,000.
- 1.7 The regulations define the types of payments subject to the cap, how the cap will operate, and the scope of the regulations. The exit payment cap will apply to all public sector bodies listed in the schedule to the regulations.

Data

- 1.8** Based on the available data a full and rigorous impact assessment has been undertaken. If necessary, further analysis may be conducted following implementation.
- 1.9** Where available, data showing the demographic of the highest earners in each public sector workforce has been used for comparison with characteristics protected under the Equality Act 2010 to identify whether there will be any differential impact. Where this data is not available, informed assumptions have been made considering the policy intention and the demographics of the wider public sector in line with characteristics protected under the Equality Act 2010.

Background

- 1.10** Exit payments associated with loss of employment, including redundancy, are important to employers' ability to reform, and an important source of support for employees as they find new employment, or as a bridge until retirement age. However, it is important that exit payments are proportionate and fair to the taxpayer.
- 1.11** The government is concerned about the number of exit payments made to public sector workers that come close to or exceed £100,000. According to the annually published Whole of Government Accounts, 1,347 exit payments exceeding £100,000 were made in the financial year 2017-18 which amounted to £200 million. The total sum of all public sector exits was £900 million in the same financial year.
- 1.12** Such payments amount to almost 6 times the maximum statutory redundancy entitlement and are far higher than the value of exit payments made to the majority of public sector workers. The government does not believe that such payments often provide value for money or are fair to the taxpayers who fund them.

Monitoring and evaluating

- 1.13** HM Treasury is committed to monitoring the impact of all its policies. We will therefore be developing plans for monitoring the actual impact of implementing the exit payment cap on those groups who share protected characteristics under the Equality Act 2010.
- 1.14** In order to update the schedule, the government will need to lay further regulations before Parliament. Through this process HM Treasury may review the impact of these regulations if necessary. There is not however any formal obligation to update this document.

Next Steps

- 1.15** Where appropriate, we will include any new information and update any relevant data to ensure that this analysis remains up to date especially on protected characteristics where data isn't held by the Labour Force Survey and the Annual Population Survey for comparison between the public sector and the working population.

2 Equalities and social impacts

General impact: Summary

- 2.1 The government does not consider that the implementation of the exit payment cap will result in any unjustified differential impact to individuals with the following protected characteristics: age, gender, disability, ethnicity, religion or belief, gender reassignment, pregnancy and maternity, sexual orientation and marriage/civil partnership.
- 2.2 Implementing a cap on exit payments will result in some individuals receiving a lower exit payment than they would receive under the current system. In most cases, the effects will partly depend on the amount of people and the earning levels of those who volunteer, or who are otherwise selected, for exit.
- 2.3 HM Treasury's expectation is that high earning individuals will be predominantly impacted by these regulations. This in itself is not a protected characteristic but as a consequence of the way exit payments are calculated, typically based on length of service, longer serving and in turn older workers are relatively more likely to be affected by these regulations. This is discussed in more depth at paragraph 2.10 – 2.19.

Equalities impact of the regulations

Method

- 2.4 To understand the equality impacts of imposing the cap we should look at the characteristics of the target scope of this policy, which is the high earners in the public sector workforce.
- 2.5 This policy will reduce exit payments to a subset of the total public sector workforce who are likely to be impacted by the introduction of the cap because they would expect to receive exit payments in excess of £95,000. With complete data, we would understand the protected characteristics of this subgroup, and then make the comparison with the subset of the public sector workforce who are not likely to be impacted by the introduction of the cap because they would not be expected to receive exit payments in excess of £95,000.
- 2.6 However, we cannot anticipate who will be made redundant. Since data on people who have received exit payments in the past (in the public and private sectors) is anonymised in accounts, it is not possible to use that data as a proxy. So, for the purpose of this impact assessment we have:
 - Identified data showing the demographics of high earning and senior individuals in each public sector workforce

- Where the data above is not available, we have compared data on the public sector workforce population to the UK population. Since the public sector is the target scope of this policy, this is a good proxy.
- Where we know that the characteristics of the subset of the total public sector workforce targeted by this policy is likely to differ to the total public sector workforce, we have given our best assessment in the absence of data.

2.7 We have used a combination of sources; the 2020 Q1 Labour Force Survey (LFS), and the Annual Population Survey (APS):

- In terms of impacts on groups protected under Equalities legislation, using data from the Labour Force Survey (LFS) , it is possible to break down the working age population by whether they work in the private or public sector – and by age, gender, ethnicity, disability and marital status.
- From the APS we can break down the working population by religion. APS has also been used to verify accuracy of other data if applicable, for example gender.

2.8 For most types of exit payments subject to the cap (for example redundancy), an individual's length of service and salary level will determine whether (in the absence of the cap) the amount of exit payment due will exceed £95,000. It is this subset who will be impacted by introduction of the cap. To assess whether the introduction of the cap disproportionately impacts any protected group, the protected characteristics of this subset will be compared to the protected characteristics of the subset whose exit payment due is not likely to exceed £95, 000 taking into account their length of service and amount of salary earned.

2.9 For exit payments such as ex gratia payments, it is not possible to determine who is more likely than not to receive such payments in order to assess disparate impact in terms of protected characteristics.

Gender Impact

2.10 Women are overrepresented in the public sector when comparing the figures to the UK population, as shown in Table 1. The demographics of different public sector workforces, however, are not equal. For example, the teaching workforce has historically been predominantly female whereas workforces such as the police force are historically predominately male.

2.11 The cap will predominantly impact high earners. The proportion of female high earners is relatively low in the public sector. 53.9% of the civil service workforce are female with women making up 45.2% of SCS grade in the civil service. Whilst data is not collected centrally, there has historically been a wider gender gap as you enter higher grades in the civil service. In the local government workforce, 46.8% of senior officers are female compared to 52.7% male¹.

2.12 For most of the types of exit payments the cap will apply to, the level of salary earned will be a relevant factor in calculating amount for exit payment, for example contractual redundancy payments. Data shows more men than women are at senior grades and therefore higher earners. Accordingly, men will be disproportionately affected by the cap. Any such disproportionate impact can be justified considering the

¹ <https://www.local.gov.uk/sites/default/files/documents/Workforce%20infographic%20-%20Fourth%20draft%20Jan%202020.pdf>

policy objectives described within the consultation document and which are a result of factors not directly related to the policy design. Those policy objectives are achieving value for money by the efficient and responsible use of public money in funding public sector exit payments and achieving fairness to the taxpayer.

Table 1: Gender demographics (public sector compared to population)

Gender	Working population	Public sector population
Male	49%	34%
Female	51%	66%

Source: LFS Q1 2020

Age Impact

2.13 The age demographic of the UK compared to the public sector workforce is broadly aligned and no age group is disproportionately represented in the public sector.

2.14 A considerable proportion of the public sector workforce is over 35 years of age (just over 70%). Our assumption is that those aged 35-64 are likely to be earning more and therefore more likely to be affected by the exit payment cap than those 34 and under.

Table 2: Total Membership by age (public sector compared to population)

Age	Working population	Public sector population
16 - 17	1%	0%
18 -24	11%	5%
25 - 34	23%	24%
35 - 49	33%	40%
50 - 64	28%	30%
65 plus	4%	1%

Source: LFS Q1 2020

2.15 Workforce data published by the NHS², Local Government³, Civil Service⁴, suggest that senior grades are made up largely of people in the 45-60 age range. The median age of headteachers was 48 in 2016⁵. This suggest that older workers are more likely to be impacted as they make up a higher percentage of senior grades in public sector workforces. We believe however, justification for any disproportionate impact can be justified by the policy aims.

² <https://www.nhsemployers.org/-/media/Employers/Documents/Plan/DIVERSITY-AND-INCLUSION/EQW19/Age-in-the-NHS-infographic.pdf>

³ Page 6 <https://www.local.gov.uk/sites/default/files/documents/Workforce%20infographic%20-%20Fourth%20draft%20Jan%202020.pdf>

⁴ <https://www.gov.uk/government/publications/civil-service-diversity-inclusion-dashboard/civil-service-diversity-and-inclusion-dashboard>

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725118/Leadership_Analysis_2018.pdf

- 2.16** In addition, since most exit payments are calculated based on years of service, it is also possible that some longer serving, and therefore older employees, may be more significantly impacted by these regulations. This could particularly impact those who are close, but not at, the normal pension scheme access age.
- 2.17** As currently designed, employees in the Local Government Pension Scheme are entitled to an unreduced pension if they are made redundant after the age of 55. Since employer funded early access to pensions are within scope of the cap, employees with these characteristics in Local Government workforces are likely to be disproportionately affected. Similarly, early access to pension is a feature in other pensions schemes such as the Civil Service and Teachers Pension Schemes; however, the payments are made on a discretionary basis.
- 2.18** The impact on older employees and possible mitigation has been considered. Exempting employees based on age is likely to amount to unjustified age discrimination especially if this would involve creating a cliff edge for employees approaching the prescribed age. A similar issue would arise with an earnings threshold mechanism, whereby employees earning under a prescribed amount would be exempt from these regulations.
- 2.19** Employer funded early access to pension, or 'pension top-up payments' will be kept in scope of the cap. This fulfils the policy intention as these payments are ultimately a cost to the taxpayer. Further adjustments will be made to pension schemes to provide more options for employers and employees.
- 2.20** HMT does accept there needs to be some flexibility available to employers when implementing the cap. Accordingly in exceptional cases, a waiver system has been designed which would allow an exit payment in excess of the cap to be made with HMT consent or in compliance with the HMT Directions. Under the directions, the circumstances when waiver must or may apply includes the cap being waived on a mandatory basis where a payment is made to avoid employment tribunal litigation in relation to a complaint of discrimination under the Equality Act 2010.

Ethnicity, religion, disability and marital status impact

- 2.21** The LFS collects data on ethnicity, religion, disability and marital status at a public sector level. The APS has also been used for data on religion as it can be broken down into public sector level too.
- 2.22** Where they are publicly available, diversity reports from main public sector workforces have been analysed on ethnicity, age, and gender. However, this data is not always up to date. Tables 3-5 and Graph 1 show the distribution of the total population compared to the public sector population.
- 2.23** Table 3 indicates that the breakdown of ethnicity within the public sector is broadly consistent with the UK population although there is a slightly greater percentage of Black/African/Caribbean individuals in the public sector population compared to the UK population.
- 2.24** The implementation of the exit payment cap will have the largest impact on white individuals compared to non-white individuals because data shows the former group is more likely to be at senior grades and high earners. For example, White British

people accounted for 92.9% of headteachers⁶, 91.9% of staff at Senior Civil Service (“SCS”) level⁷, and 57% of senior doctors⁸. We believe however, any disproportionate impact can be justified by the policy aims.

Table 3: Total and public sector population by ethnicity

Ethnicity	Working population	Public sector population
White	88%	88%
Mixed	1%	1%
Indian	3%	2%
Pakistani	2%	1%
Bangladeshi	1%	1%
Chinese	0%	0%
Black/African/Caribbean	3%	4%
Other ethnic groups	3%	1%

Source: LFS Q1 2020

2.25 Table 4 shows the distribution of those with disabilities as defined under the Equality Act 2010. It suggests that individuals with disabilities are overrepresented in the public sector compared to the UK population. Disabled staff are disproportionately less likely to be at SCS level⁹ and higher earners. The implementation of this policy is not likely to have a disproportionate impact on individuals with disabilities as a result of policy design.

Table 4: Total and public sector population by disability

Disability	Working population	Public sector population
Equality Act disabled	14%	16%
Not Equality Act disabled	86%	84%

Source: LFS Q1 2020

2.26 Graph 1 shows a visual representation of the public sector workforce compared to the total population. This shows that all religions are underrepresented by the public sector relative to the UK population. Within public funded systems like the NHS have a

⁶ <https://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/school-teacher-workforce/latest#by-ethnicity-and-role>

⁷ <https://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/civil-service-workforce/latest#by-ethnicity-and-grade>

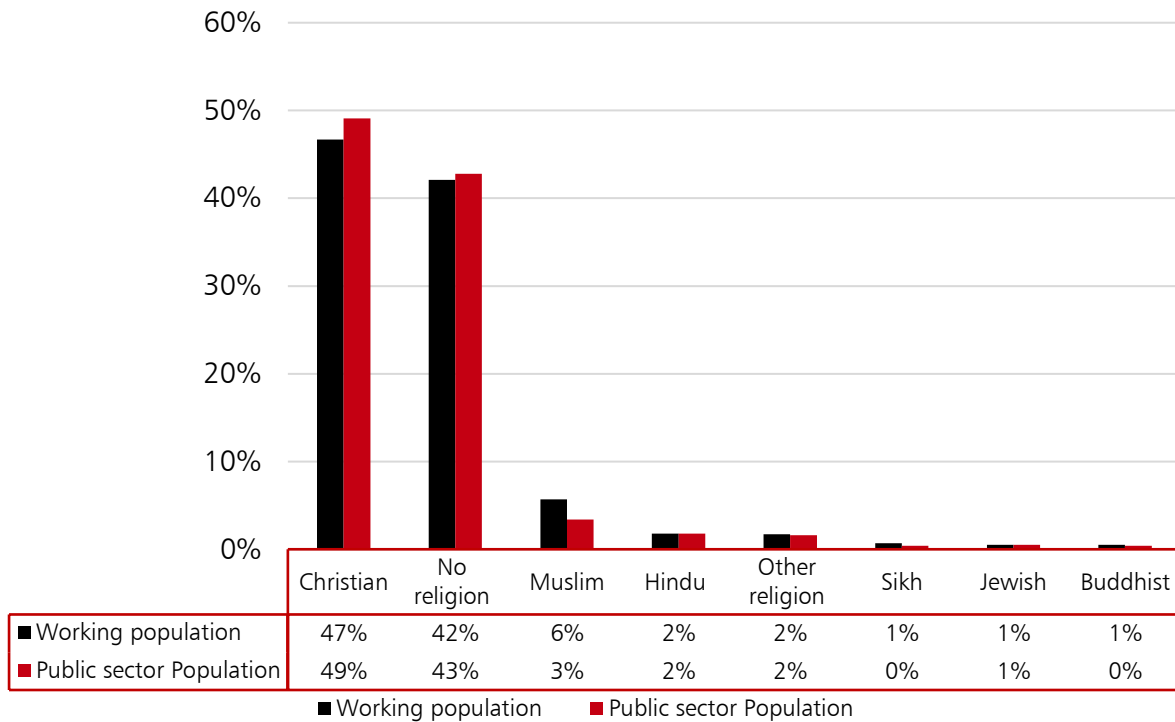
⁸ <https://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/nhs-workforce/latest#by-ethnicity-and-grade-medical-staff>

⁹

<https://public.tableau.com/profile/cabinet.office.diversity.and.inclusion#!/vizhome/CivilServiceDiversityandInclusiondashboard/Introduction?publish=yes>

higher proportion of people who are Hindu (2.15%) and Sikh (1.02%)¹⁰ than the rest of the public sector, we can expect that they will see a slightly higher proportion of those affected by the implementation of the exit payment cap than the public sector more widely.

Graph 1: Total and Public sector population by religion



Source: APS 2019

2.27 Using data from the 2019 Civil Service statistics¹¹ a breakdown of religion by grade at SCS level helps us identify those who will be impacted more by this cap. 50% of members in the SCS are Christian compared to 0% Buddhist, 1% Hindu, 1% Jewish, 1% Muslim, 1% Sikh, 3% other religion and 42% no religion. We believe however, any disproportionate impact can be justified by the policy aims.

2.28 Table 5 shows that people who are married, cohabiting or in a civil partnership are overrepresented in the public sector. Those who are not married are underrepresented in the public sector compared to the working population. Data is not available showing the proportion of people in these groups at senior levels. However, in the event any particular group consists of a disproportionate number of high earners as compared to their relevant comparators, any such disparate treatment can be justified on the policy objectives described within the consultation document

Table 5: Total and public sector population by marital status

¹⁰ <https://digital.nhs.uk/about-nhs-digital/corporate-information-and-documents/how-we-support-diversity-and-inclusion/our-workforce-demographics-2019/religion>

¹¹ 2019 Civil service statistics:
<https://public.tableau.com/profile/cabinet.office.diversity.and.inclusion#!/vizhome/CivilServiceDiversityandInclusiondashboard/Introduction?publish=yes>

Marital status	Working population	Public sector population
Married, cohabiting or in a civil partnership	56%	64%
Not married	44%	34%

Source: LFS Q1 2020

2.29 Data on sexual orientation, gender reassignment, pregnancy and maternity (other groups covered by the Equality Act 2010) is not available from LFS or APS. However, in the event any particular group consists of a disproportionate number of high earners as compared to their relevant comparators, any such disparate treatment can be justified on the policy objectives described within the consultation document

Limitations

2.30 The table below shows the data collected and used for comparison with public sector data. It must be noted that all data is from a specific snapshot in time. This is not necessarily the point in time at which the exit payment cap applies; however, we are assuming for the purposes of this analysis that the percentages calculated here will be the same for the basis of our equality's analysis.

2.31 As shown in the below table, data for religion and marital status is based on the England and Wales population. However, data from the 2011 census and Northern Ireland's and Scotland's respective datasets is available for religion and marital status as footnoted in the table. This has been used to verify the accuracy of using the England and Wales data to base our equalities analysis.

Data used for the public sector comparison:

Protected characteristic	Data collected	Data style	Country
Gender	<p>Male: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/mgsa/lms</p> <p>Female: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/mgsb/lms</p>	LFS 2020 Q1	UK
Ethnicity	https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusbyethnicgroupa09	LFS 2020 Q1	UK
Age	https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/employmentunemploymentandeconomicinactivitybyagegroupnotseasonallyadjusteda05nsa	LFS 2020 Q1	UK

Religion	https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/datasets/religioneducationandworkinenglandandwales	APS 2019	England and Wales ¹²
Marital status	https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesbymaritalstatusandlivingarrangements	LFS 2020 Q1	England and Wales ¹³
Disability	https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusofdisabledpeoplea08	LFS 2020 Q1	UK
Sexual orientation	Data unavailable		
Gender reassignment	Data unavailable		
Pregnancy and maternity	Data unavailable		

2.32 The Labour Force Survey is the largest regular household survey in the UK. The survey covers people resident in private households, National Health Service (NHS) accommodation and student halls of residence. However, it does not cover any other communal establishments. A nationally representative sample of approximately 100,000 people aged 16 and over in around 40,000 households are interviewed for the LFS. The survey may pose some limitations to our analysis as explored below.

- We have excluded those individuals who have answered “I don’t know” to whether you are economically active or inactive. The individuals we have excluded represent 4% of the LFS. These have been excluded from the equality’s analysis to ensure public sector level data isn’t skewed.
- We have also excluded those who are economically inactive (20% of the LFS) as this would of gave us a misrepresentation of the working population for the public sector workforce from the LFS. So, there may be limitations in using this as public sector level data as the proportion of economically inactive may be higher/lower but for the purposes of our analysis we assume the proportion we have calculated applies to the public service workforce.
- Data from the LFS for the working population on Gender, Ethnicity, Age, Martial status and Disability are based on the proportion of individuals who are economically active. These individuals are aged 16 and over and are either in employment or unemployed. The unemployed in this instance are defined as those aged 16 and over, who are without work but have actively sought work in the last 4 weeks and are available to start work in the next 2 weeks.
- Additionally, as the LFS is survey data, it provides estimates of population characteristics rather than exact figures. Confidence intervals are used to present the sampling variability. For the LFS the confidence interval is 95%, so it is

¹² Data for religion for NI: <https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/2011-census-results-key-statistics-northern-ireland-report-11-december-2012.pdf> page 19 and Scotland: <https://www.scotlandscensus.gov.uk/ods-analyser/jsf/tableView/tableView.xhtml>

¹³ Data for marital status for NI: <https://www.nisra.gov.uk/publications/registrar-general-annual-report-2018-marriages> and Scotland: <https://www.scotlandscensus.gov.uk/ods-analyser/jsf/tableView/tableView.xhtml>

expected that in 95% of the survey samples, the resulting confidence interval will contain the true value of surveying the whole population.

2.33 The Annual Population Survey is compiled from interviews for the Labour Force Survey along with additional regional samples. The APS comprises the main variables from the LFS, with a much larger sample size. Consequently, the APS supports more detailed breakdowns than can be reliably produced from the LFS. This survey has been used for religion and to check consistency across the other protected characteristics which the limitations have been explored below.

- Data for Religion is based on the APS for England and Wales, this also includes those who are economically inactive, i.e. those without a job who have not actively sought work in the last four weeks, and/or are not available to start work in the next two weeks. This means we are not comparing the same populations between characteristics, as these percentages include the 20% of the population who are economically inactive.
- However, when we compared the APS to our public sector level data there wasn't much dispersion. For example, 0.4% of the public sector identify as Jewish compared to 0.5% of the England and Wales population. We therefore think these percentages are robust enough to use as proxies in our analysis, but we will keep monitoring and evaluating this.

3 Other impacts

Fiscal impacts

- 3.1 It is estimated that the fiscal impacts of this policy will be positive for the exchequer. By imposing a cap, the government will spend less money on exit payments. The administrative costs of accommodating and applying the cap, for some organisations with specific circumstances, could be significant. However, since implementation costs will be short-term and the benefits will run into perpetuity, our assessment is that the long-term benefits of the policy will outweigh the costs
- 3.2 It is difficult to estimate potential future redundancies as this depends on various factors including future government policy and the wider economy. However, the policy will significantly reduce the £200 million spent on exit payments at or over £100,000 in 2017-18 going forward.
- 3.3 Savings that result from implementing a cap will fall to and remain with employers.

Regulatory impacts

- 3.4 Under the Small Business, Enterprise and Employment Act 2015 these regulations do not qualify as a regulatory provision.

Environmental impacts

- 3.5 We estimate this policy will have no tangible environmental impacts.