

Exit Payment Reform Nov 2020

- £95k cap in force as of 4 November
- Implementation of MHCLG further exit payment reforms due early 2021

£95k cap

- First proposed in 2015, approved by both houses of parliament in October
- The cap came into force 4 November
- Restricts the total value of an exit to £95k, including pension 'strain' costs for those aged 55 and over

MHCLG consultation

- MHCLG consultation closes 9 November (18 December for draft regulations)
- Expected implementation early 2021
- Proposes changes to the LGPS and Compensation regulations
- Changes will accommodate the £95k cap and introduce wider exit payment reform

Employers in scope

- Local authorities will be in scope for both the exit payment cap and wider reform
- Other LGPS employers may not be in scope of the cap or wider reforms

Today's webinar only covers **local authorities**

£95k cap now in force

Redundancy – position before 4 Nov

Not entitled to immediate payment of an LGPS pension

Employees not in the LGPS receive:

- Statutory redundancy pay (SRP)
- Discretionary compensation of up to 104 weeks' pay. Employer may substitute member's actual weekly pay if this is more than the statutory maximum

Employees in the LGPS and under age 55 will also qualify for deferred benefits. Paid between age 55 and 75, and adjusted for early / late payment if taken before / after State pension age

Redundancy – exit cap position

Not entitled to immediate payment of an LGPS pension

Employees not in the LGPS receive:

- Statutory redundancy pay (SRP)
- Discretionary compensation of up to 104 weeks' pay. Employer may substitute member's actual weekly pay if this is more than the statutory maximum
- Total capped at £95,000

Employees in the LGPS and under age 55 will also qualify for deferred benefits. Paid between age 55 and 75, and adjusted for early / late payment if taken before / after State pension age

Redundancy – position before 4 Nov

LGPS members over age 55 on leaving date

- Statutory redundancy payment
- Discretionary compensation in line with employer policy
- Immediate payment of LGPS pension with no reduction for early payment
- Employer funds early payment of pension. Calculation of 'strain cost' set locally by each LGPS administering authority

Redundancy – exit cap position

LGPS members over age 55 on leaving date

- If member not capped **no change in benefits**
- If member is capped there is legal uncertainty for both LGPS administering authority and scheme employer
- Potentially several months where LGPS says individuals **must** receive an unreduced pension and cap rules say the employer can't fund it

Employer responsibilities

LGPS members over age 55 on leaving date

- Check if the member is capped based on total of usual exit payments including strain cost
- If yes, is a discretionary or mandatory waiver applicable?
- If not, can any payments be reduced to bring total (including at least pension strain, SRP and other payments you are obliged to make) below £95k?
- You must inform your LGPS administering authority of the member's status under the cap to ensure a full pension can be paid to members who are not capped
- Failure to check and inform could result in a breach of the cap

Employer responsibilities

LGPS members over age 55 on leaving date

If the member is capped employer should determine if they will pay a cash alternative under the exit cap regulation 8. Consider:

- Capped members may end up with a full pension through a claim or a decision by administering authority
- If capped member gets full pension you may end up paying for those benefits as well as paying a cash alternative
- Cash alternative attracts income tax and employer's NI (>£30k)
- If capped member loses a claim they may prefer the cash to be used for extra pension
- Prudent course may be to delay paying a cash alternative

Waiving the cap

£95k cap has two waiver options:

Mandatory

- Payment relates to whistleblowing, health and safety and discrimination cases which an ET could consider (covers settlement agreement payments)
- TUPE Regulations obligations

Mandatory waiver process

- Full council approval
- MHCLG Accounting Officer (Permanent Secretary)
- MHCLG Minister
- If concerns a whistleblowing case etc legal advice should be made available
- Wales: power to waive with Welsh Ministers

Discretionary Waiver

An option in cases:

- of undue hardship
- where workforce reform would be inhibited
- written agreement was made before 4 Nov that employee/office holder was due to go before then and delay in exit not attributable to the employee or office holder

Discretionary Waiver Process

- Full council approval
- MHCLG Accounting Officer (Permanent Secretary) and MHCLG Minister
- HMT
 - If all approve the use of the waiver, the cap does not apply
- Wales: power to waive with Welsh Ministers

Discretionary Waiver Process

- MHCLG guidance due
- Sets out arrangements on how to apply for a waiver
- Gives guidance on information to be included
- Expected to try and streamline the process where possible

LGA Concerns

- HMT did not engage on the Directions and Guidance that accompany the Regulations and set out how the waiver should operate
- Waiver process challenges local autonomy and adds cost and delay to exits
- MHCLG waiver guidance not available in advance of regulations

MHCLG further reforms

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Redundancy – exit cap position

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Redundancy – proposed position

Not entitled to immediate payment of an LGPS pension

Employees not in the LGPS receive:

- Statutory redundancy pay (SRP)
 - Discretionary compensation limited to:
 - Maximum of three weeks' pay per year of service
 - 15 months' pay
 - Annual salary of £80,000
- Capped at £95,000

Employees in the LGPS and under age 55 will also qualify for deferred benefits. Paid between age 55 and 75, and adjusted for early / late payment if taken before / after State pension age

Redundancy – position before 4 Nov

LGPS members over age 55 on leaving date

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- Immediate payment of LGPS pension with no adjustment for early payment
- Employer funds early payment of pension. Calculation of 'strain cost' set locally by each LGPS fund

Redundancy - proposed position

LGPS members over age 55 on leaving date

- Standard strain cost across all LGPS funds

Total cost of an exit limited to the greater of:

- Strain cost (maximum £95,000)
- Discretionary compensation, with the new limits on weeks per year, total weeks and annual pay (maximum £95,000)

Wider reforms – member options

Strain cost is under £95,000

Option 1

Employee receives SRP and

LGPS pension reduced based on SRP amount

OR employee gives up SRP in exchange for unreduced LGPS pension

Rarely: strain cost < enhanced severance

In these cases the employee will be entitled to an additional cash payment

Wider reforms – member options

Strain cost is under £95,000

Option 2 – Employee receives:

- Statutory redundancy payment
- Discretionary compensation, with the new limits on weeks, weekly pay and annual pay (maximum £95,000)
- No employer strain cost
- Deferred LGPS pension payable in full at SPa

Wider reforms – member options

Strain cost is under £95,000

- **Option 3 – Employee receives:**
- Statutory redundancy payment
- Discretionary compensation, with the new limits on weeks, weekly pay and annual pay (maximum £95,000)
- No employer strain cost
- LGPS pension paid immediately, reduced based on standard factors

Wider reforms – member options

Strain cost > £95,000 – Option 1

Employee receives

- Statutory redundancy payment (SRP)
- Immediate pension reduced so that:
 strain cost = £95,000 less SRP
- Employee option to give up SRP and use their own funds to lower the reductions applied to their LGPS benefits

Wider reforms – member options

Strain cost > £95,000 – Options 2 and 3

Same as an employee who did not exceed the cap:

- Statutory redundancy payment
- Discretionary compensation, with the same limits on weeks, weekly pay and annual pay (maximum £95,000)
- No employer strain cost
- Deferred LGPS pension payable in full at SPa OR paid immediately reduced based on standard factors

LGA concerns

- Further reforms cannot be waived
- Reduction of strain cost by SRP is complex and hits low paid, part-time members
- Employee understanding of their options and the default position
- Complex calculations performed manually while software updates are developed
- Greater liaison between employer and pension fund to arrange employee payments