TSSA staff Reps Bulletin

Ref: EMP/122/Nov 2020

PUBLIC SECTOR EXIT PAYMENTS

1. Introduction

The Restriction of Public Sector Exit Payments Regulations 2020 (SI 2020/1122) came into force on 4 November 2020 and apply a cap currently set at £95,000 on exit payments made by most public sector bodies in England, Wales and Scotland.
The short notice of implementation seems to have caused an uproar between many of these affected bodies and HM government, particularly in relation to public sector pensions.

2. Background

The government recently published figures showing that exit packages of over £100,000 cost the it in excess of £200million in the financial year 2017/2018 with the total sum paid in exit packages apparently being in the region of £900million. With the introduction of the cap the government aims to reduce this significantly.
Final guidance and Treasury directions are awaited so more detailed, practical information will be available soon. However the main aspects are detailed below.

3. Bodies covered

The regulations specifically reference authorities and public offices caught by the regulations. A number of authorities in the transport sector are specifically included within the legislation, being the Department of Transport, Direct Rail Services Limited, High Speed Two (HS2) Limited, London Bus Services Limited, London Underground, Network Rail, Transport for London and Transport for Wales.
The Scottish government has also implemented the cap on exit payments for bodies where pay and terms are devolved by updating the Scottish Public Finance Manual.

4. Payments caught by the regulations

The regulations apply to payments made in relation to dismissal by reason of:

- Redundancy
- payments which aim to reduce or eliminate actuarial reductions to a pension
- compensation via ACAS agreements or settlement agreements
- severance payments
- ex-gratia payments, payment in the form of shares and share options
- voluntary exit payments
- payments in lieu of notice under a contract of employment (although notice pay is exempt if it does not exceed ¼ of the relevant person’s salary)

- payments which aim to extinguish liability under a fixed term contract
- any other payment arising as a consequence of termination of employment and/or loss of office.

5. Exempt payments

Payments which are specifically exempt are:

- those in respect of death in service
- those relating to incapacity or injury or illness (it appears including ‘injury to feelings payments’)
- a number of firefighter pension schemes
- service awards made to members of the judiciary
- unpaid or untaken annual leave
- payments made in compliance with an order of the court or tribunal.

6. Statutory redundancy and pensions

There is a restriction on reductions of statutory redundancy pay in most situations.
There are separate provisions for public sector pensions. Once we are provided with more detail a further reps bulletin will be issued.

7. Relaxation of the cap

The cap can be relaxed in ‘exceptional circumstances’. Again, more detail is awaited but it appears that in England it can only be relaxed either with Treasury ‘consent’ or subject to compliance with yet to be issued Treasury Directions. Wales and Scotland appear to have more freedom with their devolved powers. Again, once we have more detail it will be included in a further reps bulletin

8. Reps action

Not all members are affected by these changes. However, for reps in the organisations cited above, please ensure members in redundancy and other exit situations are made aware that these are government restrictions about which local reps are unable to negotiate.

Further Information

More information on this and other legal matters is available from:

- Val Stansfield, Employment Rights Adviser at stansfieldv@tssa.org.uk or 020 7529 8046
- the TSSA Helpdesk – 0800 328 2673

The information given here is for general guidance only and should not be regarded as an authoritative statement of the law.