Meeting:	Pension Board
Date:	22/02/2021
Title:	Public Sector Exit Payment Regulations 2020
Purpose:	For information
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1. Introduction

The Restriction of Public Sector Exit Payments Regulations 2020 came into force on 4 November 2020. The regulations have a considerable impact on public sector exit arrangements for those public bodies listed in the schedule to the regulations.

The legislation stems from an initiative in 2015, where the then government sought to reduce the cost of public sector redundancy payments to the taxpayer.

Please see the following link for a copy of the full regulation:

https://www.legislation.gov.uk/ukdsi/2020/9780348210170/contents

2. What is the public sector exit cap and who is affected?

Under the cap, the Government has introduced a limit on the amount of money a public sector employer can pay when an employee leaves their employment.

The exit cap is most likely to affect members of the Pension Fund if they are a public sector employee aged 55 or over and they are made redundant or they leave their employment due to business efficiency. This is because the amount the employer pays to the pension fund so that the member can receive their pension early is included in the exit cap calculation.

For Gwynedd Pension Fund the following employer types are affected:

- A community council in Wales established under Part II of the Local Government Act 1972
- A county and county borough council established under section 20 of the Local Government Act 1972
- A National Park Authority established by an order under section 63 of the Environment Act 1995 / National Park Authorities (Wales) Order
- Careers Choices Dewis Gyrfa Limited (Trading as Careers Wales)

The employer can apply to the Government for the cap not to apply in some limited circumstances such as genuine hardship. For Welsh employer, the circumstances for the cap not to apply may be different. The Welsh Government is working on this at the moment - further information will follow.

3. Why has the exit cap been introduced?

The Government is concerned about the number and the amount of exit payments made to public sector workers. The exit cap, as well as other planned changes, are meant to ensure better use of public money and ensure that workers across the public sector are treated in a similar way.

4. How much is the exit cap and what payments are included in the calculation of the exit cap?

The exit payment cap is set at a total of £95,000 which will not be index-linked. Exit payments include:

- Redundancy/severance payments (including statutory redundancy payments)
- pension strain costs that arise when an LGPS pension is paid unreduced before a member's normal pension age, and
- other payments made as a result of termination of employment.

Any lump sum paid to a member from the pension fund, sometimes referred to as a retirement grant, does not count towards the calculation of the exit cap.

5. Further Ministry of Housing, Communities & Local Government (MHCLG) reforms

In addition to the exit cap, MHCLG have proposed further reforms.

On 7 September 2020, the Ministry of Housing, Communities and Local Government (MHCLG) published a consultation on restricting exit payments in local government in England and Wales. This consultation has wider implications than the £95k cap and draft regulations have been published as part of the consultation. These proposals will affect all local government workers and propose to change the automatic entitlement to unreduced pension benefits for those over age 55 who leave the scheme at the request of their employer because of redundancy/efficiency. The exit payment reform consultation closed for responses on 9 November 2020.

It was hoped that the exit cap and MHCLG reforms would have come into force together, however we are currently still waiting for the MHCLG reform to go through Parliament.

The MHCLG proposals will limit the payments made to, or in relation to, employees of the relevant employers' in addition to statutory entitlement as follows:

- The actual pay used in severance calculations will be limited to £80,000;
- The maximum severance (including statutory redundancy pay) will be limited to 3 weeks' pay per year of service or 15 months' pay, whichever is the lower;
- No severance will be payable if the member receives an immediate pension with a payment by the employer to cover the cost of early release of pension – the strain cost – except in the case of the severance amount exceeding the strain cost in which case the excess would be payable;
- The amount available for any strain cost will be reduced by the statutory redundancy payment.

Please see the following link to see a copy of the draft regulations:

https://lgpslibrary.org/assets/cons/lgpsew/20200907_DR.pdf

Until these further reforms come in, there is currently a conflict between the exit cap regulations and the LGPS regulations when a scheme member aged 55 or over is made redundant and the total exit payment exceeds £95,000. The LGPS regulations require the member to take payment of an unreduced pension, but the exit cap regulations prevent the employer from paying the full strain cost.

Until the LGPS regulations are amended we have decided to pay reduced benefits to members.
After receiving advice from Hymans Robertson we have also changed the early retiremet factors and methodology to calculate the strain cost. We have adopt the factors and calculation methodology consistent with GAD's draft guidance. The benefit of this option is that these factors are expected to apply in the future once the LGPS Regulations are updated, so the calculations would be consistent over time. However, the Fund's admin software system cannot currently carry out these calculations, so we are currently calcuating these costs manually.

6. Applying the cap and further reform in the LGPS

The major impact of the regulations will be on LGPS members aged 55 or over who currently qualify for an unreduced pension because of redundancy or efficiency retirement as well as a severance payment under The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006.

Once both the cap and further reforms are in place for members whose employers are both capped and subject to further reform the effect of the proposals will be significant as they would receive one of the following options:

- have a fully unreduced pension paid immediately alongside the statutory redundancy payment but only if the employee tops up the strain cost, which will have been reduced by the value of their statutory redundancy pay;
- have a partially reduced pension (i.e. not reduced due to early payment, but reduced on account of the statutory redundancy payment reducing the strain cost) paid immediately alongside the statutory redundancy payment;
- have a fully reduced pension paid immediately alongside the statutory redundancy payment plus any entitlement to a discretionary redundancy payment and discretionary additional lump sum payment;
- defer the pension to normal pension age (i.e. not take it immediately) and have the statutory redundancy payment plus any entitlement to a discretionary redundancy payment and discretionary additional lump sum payment.

The above assumes the employer is both a capped and reform employer, the exact impact on members will depend on whether they fit under both or either definitions.

It is expected that the MHCLG reforms will come into force Spring 2021.

Currently our software provider, Aquila Heywood, are working on updating the system in order for it to calculate all the new options. In the meantime we will have to perform these complex calculations manually.