Assembly Section

Clare House
303 Airport Road West
BT3 9ED
Tel No: 02890 816715
email: [redacted]@dfpni.gov.uk

Department of
Finance and
Personnel
www.dfpni.gov.uk

Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

11 November 2015

Dear Shane,

LEGISLATIVE CONSENT MOTION ON THE PROPOSED CAP ON PUBLIC SECTOR EXIT PAYMENTS

At its meeting on 4 November the Committee received briefing from Departmental Officials, after which the Committee wrote to request follow up detail on a number of points. Responses are set out below.

SPECIFIC ISSUES RAISED BY THE COMMITTEE

Examples of the types of payments that would be within scope or exempt

Under proposed DFP regulations, examples of the type of payments which could be within scope of the restriction include payments:

- on account of dismissal by reason of redundancy;
- made upon a voluntary exit from employment;
- to reduce or eliminate an actuarial reduction to a pension upon early retirement;
- made to extinguish any liability to pay money under a fixed term contract;

- made by way of shares consequent upon a loss of employment; and,

- any other payment made as a consequence of, in relation to, or conditional upon, loss of employment whether under a contract of employment or otherwise.

Examples of payments which would **not** be within scope of the restriction include:

- payments in respect of incapacity or death as a result of injury or illness;

- payments made under regulation 70 of the Firefighters' Pension Scheme Regulations (Northern Ireland) 2015 where the Northern Ireland Fire and Rescue Authority has determined that an individual should be retired with an authority initiated early retirement pension in accordance with the fitness provisions;

- payments made in respect of leave due under a contract of employment where that leave is not taken;

- bonus payments otherwise due under a contract of employment; and,

- payments made in compliance with an order of any court.

It should be noted that the cap does not affect any pension which an individual has already accrued and paid for by member contributions. What is proposed to be capped is any additional funding paid for by the employer as part of an exit package. This has **not** been paid for by the member. It is an additional cost that is met solely by that employer, and ultimately the tax payer.

Payments under a Compensation Scheme in the public sector are not predicated on membership of the pension scheme. For example a number of Civil Servants who were not members of the Civil Service Pension Schemes have exited under the recent Voluntary Exit Scheme and received a Compensation Payment.

Waiver process to 'relax' the restriction

Within the Northern Ireland context, under the Enterprise Bill, DFP will have a power to make regulations which may relax or waive the restriction. The facility to relax or waive the restriction may in turn be delegated to a relevant Northern Ireland Civil Service Department or Employing Authority.

This waiver may result in the cap not being applied at all or to a lesser degree to a group of staff or indeed to an individual. Circumstances in which the waiver may be applied include where there is clear evidence of a justified business need to disapply the cap in order to achieve a required restructuring outcome. Or, for example, it may be applied to a programme of reform which was already underway such as the Review of Public Administration.

The delegated power to relax the restriction must be exercised by employers in line with guidance which will be issued by DFP. Employers will also be required to maintain records of the exercise of any power which is delegated to them, specifying the reasons for its use. Employers will also be required to publish as part of their Annual Accounts details of the times the waiver has been exercised in the preceding 12 months.

Implications for TUPE protections

DFP proposes that regulations to be made under the Enterprise Bill will specify that the cap will not apply to an exit payment where an exit payee has an entitlement to that exit payment as a result of protection conferred by Transfer of Undertakings (Protection of Employment) Regulations.

Further reforms being considered by the UK Government in relation to the calculation of compensation terms and to employer –funded early retirement in circumstances of redundancy and steps taken by DFP to ensure a LCM is not required.

The Department notes that in its original consultation the UK government states that it is considering further reforms. DFP does not have any detail on these proposals.

The normal approach in public sector compensation arrangements has been to provide broadly equivalent arrangements in Northern Ireland as pertain in the rest of the public sector. It has also been the case that HM Treasury can propose a LCM where this is seen to represent appropriate action to maintain interoperability and implement a policy to broadly comparable timescales across the public sector, including in the devolved administrations. Ultimately the use of any LCM is subject to approval of Ministers in the Northern Ireland Executive and the Assembly.

CORRESPONDENCE TO COMMITTEE

Other issues

The Committee requested a DFP response on issues raised in correspondence received from trade unions and NILGOSC to the Committee on the LCM, and also on responses by FDA, NIPSA and FBU to the Treasury consultation on proposals for a public sector exit cap

Fire Brigades Union, FBU

In its correspondence to the Committee on 2 November FBU sought confirmation that exit payments to fire-fighters affected by “...certain fitness-related requirements.” would not be in scope of the exit payment restriction if the LCM is applied.

Departmental response

The Department is proposing that regulations made under the power conferred in the Enterprise Bill would specify that certain exit payments would **not** be in scope. These would include where the Northern Ireland Fire and Rescue Authority has determined that an individual should be retired with an Authority initiated early retirement pension, in accordance with its fitness provisions.

NILGOSC

In its correspondence to the Committee on 29 October NILGOSC highlighted potential implications of a public sector exit cap for members of the Local Government Pension Scheme in Northern Ireland. In particular NILGOSC has concerns over effects of a cap for employer funded early pensions which are currently a feature of the rules of the local government schemes, and believes these costs should be exempted for that reason.

Departmental response

The purpose of the exit cap is to end excessive payments in the various forms they are made. To exempt employer funded redundancy costs for Local Government schemes on the basis that those scheme rules do not provide an option for members to buy out the actuarial costs for access to an unreduced pension where they choose to have it paid early would be unfair to members of those other schemes who already take those personal decisions on whether or not to finance early payment of an unreduced pension. The Enterprise Bill will contain consequential amending provisions so that a Local Government pension scheme member may in future have the option to elect to pay the appropriate amount in respect of all or part of any extra cost over and above the £95,000 that can be provided by the employer, in order to access an unreduced pension. £95,000 remains a substantial exit payment and a significant employer contribution to the costs that come with early access to an unreduced pension where this is an employee's choice for their exit package. It is nearly four times the public sector average and almost six times the maximum available under statutory redundancy terms.

The Department does not agree that where the cost of providing early access to an unreduced pension, which is of a greater value than the individual would otherwise be entitled to, exceeds the £95,000 cap that the additional cost should be met by public sector employers, and ultimately taxpayers. However, in circumstances where it can be deemed justified to disapply the cap for a particular payment this can be accommodated in DFP regulations which will contain the flexibility to relax the restriction. DFP regulations can provide that the power contained in the Enterprise Bill to relax the restriction may be delegated to a Northern Ireland Department or Employing Authority.

TUS responses to the HM Treasury consultation

Policy to restrict exit payments

TUS responses to the HM Treasury consultation questioned the need for a general policy to cap redundancy payments in the public sector.

Departmental response

The policy is intended to safeguard public finances by ensuring that exit payments across the public sector are fair, proportionate and seen to represent value for taxpayers' money. As the proposal seeks to represent value for money for tax payers as a whole it is appropriate that Northern Ireland public servants should be treated in the same way as the rest of the public sector.

The policy will introduce some consistency across the disparate arrangements which exist in the public sector. It will establish a fair and reasonable baseline of £95,000 and introduce a protocol whereby proposals to exceed or relax that threshold will be subject to appropriate additional scrutiny and be measured against the principles for value for money and fairness. Those who are affected by the cap will be those with the higher exit packages. In the vast majority of cases it will have no effect on the exit package an individual can receive.

Use of the LCM

TUS responses opposed the use of a LCM to implement the cap.

Departmental response

While public service pension and compensation arrangements are a transferred matter, under the convention of parity in this area the normal approach is to implement broad changes in pension policy in Northern Ireland schemes in line with changes for the equivalent schemes across the public sector as a whole.

It is clear an Assembly Bill to effect this policy could not be enacted in a comparable timeframe to the Enterprise Bill, which is expected to become an Act in April/May 2016. If the Assembly wishes to legislate on this matter it is extremely unlikely this could be achieved before its dissolution in March 2016 for elections planned for May, thus resulting in the policy being implemented to a much later timescale for public service employees in Northern Ireland.

Legislative consent will therefore ensure that public servants in Northern Ireland within scope of the policy are not treated more generously than the rest of the public sector on this matter, which would incur a cost to the public purse and a likely partial diversion of existing funding available to Northern Ireland away from other important public services here.

Legislative consent would also represent consistency with the approach already taken on the policy for recovery of exit payments where public servants are re-employed. This policy is already a feature of the Small Business, Enterprise and Employment Act 2015 and one which the Assembly agreed legislative consent for in January 2015.

In summary the Department's view is that the LCM represents the most effective means to ensure public servants in Northern Ireland are not treated more favourably than the rest of the public sector for the purposes of exit payments, and at a cost to available public funds in Northern Ireland. However, ultimately the decision to use any LCM is a matter for Ministers in the Northern Ireland Executive and the Assembly.

Exemptions to the cap

There were concerns raised across TUS on exemptions to the cap proposed by HM Treasury for certain public sector authorities, specifically certain financial, banking or broadcasting organisations.

Departmental response

The Department notes that in its response to the consultation HM Treasury has emphasised it expects that those organisations introduce a commensurate cap on exit payments and to do so no later than when the exit payment cap is legislated for in the Enterprise Bill. The Department would also comment that DFP has not proposed that any devolved public authority be provided with a general exemption from the cap.

Consultation

Some Northern Ireland TUS responses expressed concern at the timing of the HM Treasury consultation on the policy.

Departmental response

HM Treasury consulted on the proposed public sector exit cap between 31 July and 27 August 2015. It received over 4,000 responses to the consultation. The Department is not disposed to comment on HM Treasury arrangements for its consultations. DFP publicised details of the consultation to relevant Northern Ireland stakeholders, including TUS and Northern Ireland Departments and employers. DFP has also engaged with public sector trade unions on this policy at the Collective Consultation Working Group which is the recognised interdepartmental forum for consultation with TUS on public sector pension reform issues.

The Department would point out that under the proposed LCM, DFP regulations made under the Enterprise Bill to give effect to the policy in the Northern Ireland public sector will be subject to the affirmative resolution procedure in the Assembly. The affirmative process provides a further enhanced level of scrutiny on the detail of the policy and further opportunity for TUS to make application to Assembly members should it wish to do so.

Early payment of unreduced pension

TUS responses to the HM Treasury consultation raised concerns on the scope of exit payments which the cap could impact. In particular TUS was opposed to the inclusion of exit payments where they are used to buy out part or all an actuarial reduction which would otherwise be applied to a public sector pension in the circumstances where a scheme member elects for early payment of an unreduced pension.

Departmental response

A fundamental principle for applying the cap is that it should apply to the wide range of payments related to exit, including cash compensation payments, and the cost to employers of early access to pensions, where either of these exceeds the £95,000 threshold. This approach will ensure the cap is fairly implemented and is not subject to avoidance through individuals taking early retirement or being offered other forms of payment.

It is important to be clear that the cap does not impact on any accrued entitlement an individual has built up and paid for in pension contributions to the scheme. Any individual who did not take immediate payment of an unreduced pension owing to the operation of the cap would still receive their accrued pension, and any applicable lump sum, exactly as they were entitled at their normal pension age.

Where an individual who leaves public service under an exit scheme elects for payment of an unreduced pension that option will remain open to them and the provisions in the Enterprise Bill will not impede on their right to buy out an unreduced pension if that is their choice. However, the provisions will ensure that the employer contribution to reduce the actuarial reduction that would otherwise have been applied for early payment is within the limits of the cap. Many scheme members will not wish to opt for early payment of an unreduced pension as an alternative to a compensation lump sum. This approach ensures that all individuals are treated fairly and will not be disadvantaged regardless of the options they choose for an exit package.

'Waiver' power to relax the cap

TUS responses to the HM Treasury consultation raised concerns that the operation of the proposed waiver power to relax the restriction could be complicated and problematic, and could result in different approaches being taken across public sector employments.

Departmental response

A waiver power to relax the cap has been proposed in recognition that there may be particular, exceptional, circumstances and difficult cases where it would be right for a payment to be made of a greater value than the cap. The Department would reiterate that the power to relax the restriction must be exercised in line with guidance issued by DFP so that the correct level of scrutiny will be given to such large payments, and within a transparent framework.

The thrust of DFP guidelines will be to ensure each proposal to exceed the cap would be subject to robust analysis and approval by the relevant Minister or responsible Employing Authority, operated in a fair and unequivocal manner, and seen to deliver value for money. To this end there will therefore be a requirement to maintain extensive records of the exercise of the power, the reasons for its use, and a requirement that details of its use be published in their Annual Accounts.

Section 75 impacts

TUS has raised issues of potential unlawful discrimination contrary to Section 75 of the Northern Ireland Act 1998.

Departmental response

In line with its Equality Scheme the Department has conducted an equality screening exercise on the policy which concludes there are no unlawful or discriminatory impacts for section 75 groups. The screening exercise is available at: https://www.dfpni.gov.uk/publications/policy-screening-%E2%80%93-cap-exit-payments-made-public-sector-workers-%E2%80%93-legislative-consent

Public sector terms and conditions of employment and 25 year guarantee

Some TUS responses raised concerns that the operation of the cap impinges terms and conditions and also on the commitment in the Public Service Pensions Act (Northern Ireland) 2014 that (outside the operation of new scheme cost control mechanisms) structural reforms to public service pension arrangements should not be required for 25 years.

Departmental response

The cap does not interfere with any individual's accrued rights or engage the 25 year guarantee around pension rights. An individual who did not take immediate payment of an unreduced pension owing to the operation of the cap would still receive their accrued pension, and any applicable lump sum, exactly as they were entitled at their normal pension age. Payments made in respect of leave due under a contract of employment where that leave is not taken are not within the scope of the restriction. Also, the reform does not remove the right to take an employer funded early retirement. What is being capped by this reform is any additional funding paid by a public sector employer, i.e. public funds, as part of an exit package. Even after the application of the cap an individual will still receive a generous exit package of £95,000.

You may wish to bring this update to the attention of the Committee.

Yours sincerely

GEAROID CASSIDY
Departmental Assembly Liaison Officer