

EMAIL FROM NILGA IN RESPONSE TO LCM – CAP ON PUBLIC SECTOR EXIT PAYMENTS

From: [Karen Smyth](#)

Sent: 06/11/2015 15:32

To: [McAteer, Shane](#)

Cc: [Derek McCallan](#)

Subject: FW: Public Sector Exit Payments - cap at £95,000

Dear Mr McAteer

NILGA has recently been made aware that a recent HM Treasury consultation proposing legislation to cap the total value on public sector exit payments is going to be or may already have been dealt with in Northern Ireland using a Legislative Consent Motion. NILGA did not respond to the Treasury consultation as it did not seem to impact on councils in Northern Ireland.

Please see attached NILGOSC circular 16/2015 and government response to the consultation responses.

Our district councils are now querying the application to them, in that:

An RPA severance scheme was introduced to run until December 2019, to allow councils to manage their change management programmes and release staff in phases, so that not all experienced staff would be lost in one go.

The view has been expressed that bringing in a cap on redundancy payments runs contrary to assurances given to staff in the Public Service Commission's guiding principles and will affect a severance scheme which has been agreed by both the Employers and Trade Unions. Staff releases have begun, with a planned phased approach over the next few years. Introduction of this cap is likely to create a major issue, potential equal pay claims or compulsory redundancies in the case of staff scheduled to leave, cancelling their requests. Councils are requesting that if this cap is approved for Northern Ireland that it is delayed for local government until January 2020 to allow completion of the RPA severance scheme.

I'm quite alarmed to hear that the LCM may have already passed through the DFP Committee without comment from members or information being given to councils that the discussion was taking place. I would be grateful for any further information or clarification you may be able to give in relation to the application of this legislation in Northern Ireland, proposed timescales and the impact on councils.

Best Regards

Karen Smyth



Karen Smyth
Head of Policy
NILGA
Bradford Court
Upper Galwally
Castlereagh
BT8 6RB

Tel: [REDACTED]

Email: [REDACTED] [@nilga.org](mailto:[REDACTED]@nilga.org) www.nilga.org

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To: Human Resources
Pension Contacts

Circular 16/2015
12 October 2015

At: All Employing Authorities

Dear Colleagues

Government Proposal to Cap Severance Costs at £95,000

This Circular is relevant to you if your organisation plans to operate a severance scheme or make redundancies from 2016 onwards.

On 31 July 2015 HM Treasury issued a consultation proposing legislation to cap the total value on exit payments in public sector employment. The consultation is now closed and the Government has set out its intention to proceed with legislation. The Government's response can be read at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/464367/Public_sector_exit_payments_response.pdf

The legislation made by Westminster will not automatically apply to Northern Ireland however it is likely that DFP will seek the agreement of the NI Executive for a Legislative Consent Motion (LCM) to adopt the Westminster legislation in Northern Ireland.

The proposed cap of £95,000 applies not only to a severance payment received by an exiting employee but also includes any payment which you may make to NILGOSC for the early payment of pension. If a scheme member is made redundant and is aged 55 or over, they will be entitled to receive a redundancy pension. This may result in a 'strain-cost' which must be paid by the employer to NILGOSC and is included in the total cost limited by the proposed cap. For example, the strain cost for a female with 35 years' service, made redundant at age 55, would breach the cap if she earned £27,053 or more. This example does not take into account any severance payment also received, which would mean that an individual could earn less and still breach the cap. In other words it is clearly not just senior staff that would be affected by the cap.

If you feel that such a cap would inhibit your organisation's plans to reduce staff numbers in the foreseeable future you may wish to alert your own parent Department to the problems the legislation would cause you. NILGOSC has alerted its Minister, the Minister of the Environment, to the complications that would be caused by the legislation and the range of employers it will affect across the public sector.

Yours sincerely



David Murphy
Chief Executive

Public Sector Exit Payments: response to the consultation

Public Sector Exit Payments: response to the consultation



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1

Summary

1.1 The government announced on 23 May 2015 that it intended to end six-figure exit payments for public sector workers.

1.2 On 31 July 2015 the government published a consultation document asking for respondents' views on the details of the policy. The consultation closed on 27 August 2015.

1.3 The core elements of the proposal were to:

- Apply a £95,000 cap on the total value of exit payments made to employees in the public sector
- Apply the cap to all forms of exit payment, including cash lump sums, early access to an unreduced pension, payments in lieu of notice and non-financial and other benefits
- Apply the cap to all types of arrangements for determining exit payments
- Establish a waiver process for exceptional circumstances
- Apply the policy to all public sector bodies, with a small number of bodies granted an exemption from the policy

1.4 The [consultation document can be seen on Gov.uk](#):

1.5 Over 4,000 responses to the consultation were received. While a significant number were not in favour of a cap given other reforms to public sector terms and conditions, or had objections to the cap applying to the organisation they worked for, few representations set out a different proposition to address six-figure payouts in the public sector. A number of responses supported limiting the amount that individuals could receive on exit to under £100,000, and applying a cap across the public sector.

1.6 Having considered the responses to the consultation, the government proposes to continue to legislate to introduce a cap on exit payments.

1.7 The government will take forward these proposals by taking powers in primary legislation as part of the Enterprise Bill. The detail of the measure will be implemented through secondary legislation.

1.8 A number of respondents raised detailed technical issues connected with the implementation of the cap. These will inform the government's thinking as it develops the legislation to deliver the cap.

2

Outline of government proposals

Who is in Scope?	
Which employees	<ul style="list-style-type: none"> • Current and future public sector employees and office holders. Ministers and Special Advisers
Bodies in Scope	<ul style="list-style-type: none"> • All entities classified within central and local government and non-financial public corporation sectors as determined by the Office for National Statistics for National Account purposes, with a small number of exemptions. • The government is intending to exempt exit payments made by the following bodies from the cap: <ul style="list-style-type: none"> ○ The following public financial corporations and subsidiaries: <ul style="list-style-type: none"> ▪ The Royal Bank of Scotland ▪ UK Asset Resolution ▪ Northern Rock ▪ Bradford and Bingley ▪ Pension Protection Fund ▪ The London Authorities Mutual Limited ▪ National Employment Savings Trust Corporation (NEST) ▪ Financial Conduct Authority ▪ Financial Ombudsman Service Ltd. ▪ First Rate Exchange Services Holdings Limited ▪ First Rate Exchange Services Limited ▪ Guaranteed Export Finance Corporation PLC (GEFCo) ▪ Northern Ireland Central Investment Fund for Charities ▪ Prudential Regulation Authority ○ Armed Forces ○ National Museums ○ The Commissioners for Irish Lights ○ Public broadcasters: BBC, Ch4 and S4C ○ Bank of England • The government's strong expectation is that bodies that are proposed to be outside of the scope of the cap on exit payments will come forward with their own, commensurate cap on exit payments.
How will it work?	
Policy proposal	<ul style="list-style-type: none"> • Cap the total cost of exit payments available to individuals leaving employment to £95,000. • Apply the cap to all types of arrangement for determining exit payments.

Payments in scope	<ul style="list-style-type: none"> • The proposal is the cap will cover payments made in relation to leaving employment, including: <ul style="list-style-type: none"> ○ Voluntary and compulsory exits ○ Other voluntary exits with compensation packages ○ Ex gratia payments and special severance payments ○ Other benefits granted as part of the exit process that are not payments in relation to employment ○ Employer costs of providing early unreduced access to pension ○ Payments or compensation in lieu of notice and payments relating to the cashing up of outstanding entitlements • Where a number of payments are made they will be aggregated together to be measured against the cap. <p>It is proposed the following will not be in scope:</p> <ul style="list-style-type: none"> • Compensation payments in respect of death or injury attributable to the employment, serious ill health and ill health retirement and certain fitness-related requirements. • Payments made following litigation for breach of contract or unfair dismissal.
Waiver process	<ul style="list-style-type: none"> • The default position will be that any waiver of the cap would require consent from the relevant Minister, subject to Treasury controls and delegations to departments. • The Full Council to take the decision whether to grant a waiver of the cap in cases involving Local Authorities and for local government bodies within their delegated powers. • Public corporations will require Treasury approval in the same way as bodies covered by Managing Public Money.
Devolution	<ul style="list-style-type: none"> • Policy extends to all of the bodies where employment and remuneration practices are the responsibility of the UK Government. • Scottish government, Welsh government and Northern Ireland Executive to determine if and how they want to take forward similar arrangements in relation to devolved bodies and workforces.
Compliance and transparency	<ul style="list-style-type: none"> • Require bodies to maintain records and publish annual details of all exit payments made within a financial year.

3

Introduction

3.1 The government has committed to address six-figure exit payments in the public sector, and has consulted on the policy detail of a cap on exit payments that forms the basis of the legislation in the Enterprise Bill.

3.2 There were more than 4,000 responses to the consultation. Those organisations that responded are listed in Annex A. Officials also engaged with a range of stakeholders outside of the formal consultation process.

3.3 This document forms the government's response to the consultation.

3.4 Section 1 of Chapter 4 addresses responses to Questions 2 and 5 in the consultation document on the level of a cap.

3.5 Section 2 of Chapter 4 looks at responses to consultation document questions 1,3,4,6 and 7 which covered relevant forms of exit costs within the scope of the cap, and sought respondents' views on the proposed approach of limiting early retirement benefits with reference to the cost to the employer.

3.6 Section 3 of Chapter 4 explores responses to consultation questions 8-10, which asked for views on the scope of the policy, including how the cap will operate under TUPE rules, and the proposed waiver process and associated transparency arrangements.

4

An exit payment cap in the public sector

The government has set out its intention to end six-figure exit payments for public sector workers, implementing the manifesto commitment made in April 2015. While exit payments provide important support for employees as they find new employment, it is important these are proportionate and provide value for money to the taxpayer. Funding exit payments represents a substantial cost to the taxpayer, with £1.8 billion of exit payments made in 2013-14.

Section 1: Level of a cap

4.1 The consultation set out that the government was considering a cap set at £95,000 on exit payments made in event of redundancy that would apply both to existing and future employees of public sector organisations.

4.2 The cap of £95,000 would apply before tax and the level of the cap would be subject to review by government. The consultation noted that the cap at this level was intended to affect those individuals in receipt of the highest payouts, and leave employers with some flexibility to make small numbers of payments towards the cap limit where these were necessary for pursuing workforce reforms.

4.3 The consultation confirmed that the government would continue to expect employers to ensure exit payments provide value for money when a cap was in place.

Summary of responses

4.4 The majority of responses did not comment on the level of the cap, except to state that the sum presented appeared arbitrary.

4.5 A number of responses questioned the need for a blanket cap, citing a few high profile cases that they perceived this measure was designed to address. A significant number referenced reforms that had already taken place to limit exit payments and assurances that had been given on the longevity of these reforms without further change.

4.6 Other responses noted exit payments were usually determined based on salary, experience and length of service and a flat cap did not allow account to be made for different employee characteristics.

Government response

4.7 The government has consulted on a £95,000 level for the cap given the commitment to end six-figure payouts in the public sector. Given there were few responses suggesting an alternative cap level, the government will pursue a £95,000 cap on payouts in legislation as it believes this best meets the policy intention of ending six-figure exit payments in the public sector. Individual schemes will have the flexibility to set a lower limit where it is more appropriate to do so.

4.8 The government's intention is to keep the level of the cap under review and retain the flexibility to make changes in response to changing circumstances to ensure that the impacts of the cap remain proportionate.

4.9 Should the government decide to change the level of the cap, Regulations will be made following an affirmative procedure to allow for full parliamentary scrutiny of the potential impact.

4.10 The cap does not replace other arrangements for determining the level of exit payments in the public sector where these are below the level of the cap. Where other criteria or methods are used to cap exit payments, such as a maximum salary for the purpose of calculating compensation, these will remain unaffected, and the cap will apply after any other reductions.

4.11 Finally, legislation will extend to contractual compensation arrangements to ensure all forms of public sector exit payments fall under the scope of this measure.

Section 2: Payments included in a cap

4.12 The consultation set out that the government considers the following payments should be within the scope of the cap:

- Payments related to voluntary and compulsory redundancies
- Payments related to other voluntary exits
- The cost to the employer of offering early access to unreduced pensions in place of, or in combination with, other exit payments
- Special severance payments and ex gratia payments related to exit from employment
- The monetary value of any extra leave, allowances or other benefits granted as part of the exit process which are not payments in relation to employment
- Payments or compensation in lieu of notice and payments relating to the cashing up of outstanding entitlements (such as outstanding leave or allowances that are cashed up and added to the value of the sum)

4.13 The consultation set out that where a number of different payments are made they would be aggregated together to be measured against the cap. Payments would be in scope of the cap whether they were paid as part of a standing compensation scheme, a one-off arrangement or under the terms of an individual contract of employment, whether open-ended or fixed-term.

Summary of responses

4.14 Respondents did not generally argue against the government list of exit payments available in the public sector, or propose other significant payments that should be in scope of the cap.

4.15 On the specific types of payment to be included in the cap, a significant number of responses argued that payments for untaken annual leave should not be included in the scope of the cap, arguing these payments represent pay for work carried out. There were also concerns that including them within the cap may result in an individual taking leave

before exiting, which may not be in the organisation's interest. Some also argued that the proposal to include any additional paid leave granted as part of an exit package could limit employers' flexibility.

4.16 Respondents made similar points with regard to payments in lieu of notice (PILON). Some respondents argued that it should not be included in the cap as it formed a contractual entitlement of employment and could be a useful tool for employers in managing exits.

4.17 Many respondents also expressed concerns about the inclusion of special severance payments within the proposed cap. They thought that this would limit the flexibility of employers to settle litigation claims early where this was judged to provide value for money.

4.18 A significant number of respondents disagreed with government's intention to include early access to unreduced pensions within the scope of the cap. In particular they argued that this could mean the cap would affect those on more moderate salaries who have long service. Some argued that this would therefore be discriminatory towards older workers. Others argued that this represented a breach of the 25 year guarantee on pension reform made by the government in the last Parliament.

4.19 Respondents did not generally disagree with the government's proposal that compensation payments in respect of death or injury attributable to employment, serious ill health and ill health retirement should be excluded from the scope of the cap.

Government response

4.20 The government believes that the cap should apply to the wide range of payments related to exit, including cash compensation payments, the cost to employers of early access to pensions and other payments. This approach will ensure the cap is fair and is not subject to avoidance through individuals taking early retirement or being offered other forms of payment. The government does not accept that this approach is contrary to the 25 year guarantee, and emphasises that these changes will have no impact on individuals' accrued pension rights.

4.21 The government does however accept the arguments made by respondents that it would be disproportionate and potentially counter-productive to include payments for untaken annual leave within the scope of the cap. These will therefore be excluded from the cap.

4.22 However the government does not believe the same arguments apply where employers grant additional paid leave. The government believes it is necessary to include this in the cap to ensure that the granting of excessive additional leave cannot be used to circumvent the cap.

4.23 Similarly the government believes that it is necessary to include PILON to ensure that the cap is not circumvented by excessive notice periods which are then paid in addition to any exit payment. PILON can in some instances form a substantial part of the compensation paid to an individual leaving employment or office.

4.24 It is important to recognise that some employers, like the NHS, expect individuals to serve out their notice period and do not permit PILON as a matter of policy. However, the cap does not affect the existing flexibility employers have to agree PILON where it is justified and necessary for the normal operation of the organisation.

4.25 The government also believes it is necessary to include special severance payments to prevent these being used avoid the cap. However the government believes (as some

respondents acknowledge) that the proposed waiver system will provide important flexibility in cases where it can be demonstrated that such severance payments will provide value for money.

Section 3: Public sector scope of the cap

4.26 The consultation set out that the government was minded for the cap to apply to entities that were classified as public sector, based on the ONS classification. A similar approach was taken for the clawback reforms in the Small Business, Enterprise and Employment Act 2015.

4.27 It also set down a small number of organisations that the government was minded to initially exempt from the measure, and the government's intention to take powers to add and remove public bodies from those in scope, to respond to future changes to the public sector. The consultation noted the government's strong expectation that bodies who were proposed to be exempt would introduce a commensurate cap on exit payments at least equivalent to the arrangements proposed.

4.28 The consultation confirmed the government would request Legislative Consent Motions from the Devolved Administrations where appropriate, however it would be for the Devolved Administrations to decide the approach they wish to take to this measure.

4.29 It also confirmed there would be the ability to waive the cap in exceptional circumstances for both individuals and public bodies, subject to Ministerial, Treasury or Full Council approval depending on the nature of the organisation.

Summary of responses

4.30 Few representations proposed an alternative to the ONS list for purposes of defining the public sector. The more substantial number of responses related to issues with the organisations in scope of the measure and proposed exemptions.

4.31 A number of responses noted the measure should apply across the public sector without exceptions, questioning why broadcasters, banks and MPs were out of scope. The more substantial number of representations related to cases for additional exemptions for particular bodies related to the government role in the organisation, or the contractual nature of the relationship between the individuals and their employers.

4.32 Those respondents who commented on the question on how to approach those individuals with TUPE terms that could lead to a future entitlement to an exit payment in excess of the cap, were in support of protecting existing TUPE terms rather than the legislation overriding them.

4.33 Respondents did not disagree with the principle of a waiver system, though some argued either against the principle of a cap in the first place, or expressed concerns that a waiver could result in widespread exemptions being made.

Government response

4.34 The government recognises that these reforms are wide ranging in their impact in the public sector. However, the government commitment made was to end six-figure payouts in the public sector, and for the measure to apply across the public sector with few exceptions.

4.35 The government does not believe there is a case for excluding individuals by the sole virtue that they work for organisations that are outside of central and local government. Nor that some public sector organisations should be exempt based on criteria relating to

the degree of day-to-day government involvement with these organisations (over statutory independence), which would lead to a set of public sector organisations exempt from this measure inconsistent with the manifesto commitment.

4.36 The government therefore intends to continue to legislate on the basis of the scope set down in the consultation, and to have powers to add and remove bodies from the scope on a case by case basis. The main set of secondary regulations that set down the detailed scope of this measure will be subject to affirmative procedure in Parliament.

4.37 The government wishes to reinforce its expectation that organisations proposed to be exempt will introduce a commensurate cap and introduce this no later than the exit payment cap. It will be engaging with these organisations on this basis, and the exemptions will be kept under review. The government is currently minded not to include those individuals with protected TUPE terms in scope of the cap.

4.38 IPSA is responsible for MPs pay and conditions, and the government does not intend to change this position in relation to exit payments. IPSA is now implementing reforms, including limits to the payments to MPs on exits, below the level of the cap.

4.39 There will be no change to the intention to have a waiver system in place to enable decisions to be taken on individual cases where there may be exceptional circumstances that justify that the cap should be relaxed, covering both individuals or public organisations. This would be subject, as proposed, to strong scrutiny and approval by the relevant Minister or responsible authority, supported by clear transparency requirements.

A

List of respondents

A.1 The following organisations submitted responses to the consultation:

Association of Revenue and Customs FDA Northern Ireland Public Service Alliance Prospect Public and Commercial Services Union The Union for Borders, Immigration & Customs Trade Union Congress UNISON Unite	National Association of Schoolmasters Union of Women Teachers National Union of Teachers North West Regional College Northern Ireland Further Education Colleges Universities & Colleges Employers Association
Association of Policing and Crime Chief Executives Cumbria Office of the Police & Crime Commissioner Metropolitan Police Service National Police Chiefs' Council Norfolk Constabulary North Yorkshire Police & Crime Commissioner Police and Crime Commissioner for Thames Valley Police and Crime Commissioners Treasurers' Society Police Federation of England & Wales Police Superintendents' Association of England & Wales Sussex Police & Crime Commissioner West Yorkshire Police	Association of Principal Fire Officers Buckinghamshire and Milton Keynes Fire & Rescue Authority County Durham and Darlington Fire & rescue Authority Derbyshire Fire & Rescue Service East Sussex Fire Authority Essex County Fire & Rescue Service Fire Brigades Union Kent Fire & Rescue Service Lancashire Fire & Rescue Service Mayor's Office for Policing and Crime North Yorkshire Fire and Rescue Authority Nottinghamshire Fire and Rescue Authority Stoke-on-Trent and Staffordshire Fire & Rescue Authority West Midlands Fire and Rescue Authority Wiltshire Fire & Rescue Service
British Dental Association British Medical Association Managers In Partnership National Institute for Health and Care Excellence NHS Joint Staff Council Trade Unions NHS Sandwell & West Birmingham North of England Commissioning Support Unit Public Health England Royal College of Midwives	Transport for London Network Rail
Association of Teachers and Lecturers National Association of Head Teachers	Amey Services Limited Commonwealth War Graves Commission Hymans Robertson LLP Mercer Society of Personnel and Development Scotland Tees Active Limited Trust Development Authority Valuation Tribunal Service
	Association of Local Authority Chief Executives and Senior Managers East of England Local Government Association

Local Government Association
Sefton Labour Group of Councils
Society of Local Authority Chief Executives
and Senior Managers
Welsh Local Government Association
Northern Ireland Local Government Officers'
Superannuation Committee
Local Government Staff Commission for NI
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Authority
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Northern Ireland Library Authority
Lake District National Park
Yorkshire Dales National Park

Antrim and Newtonabbey Borough Council
Ashford Borough Council
Barnsley Metropolitan Borough Council
Bath and North East Somerset Council
Birmingham City Council
Blackburn with Darwen Borough Council
Blackpool Council
Borough of Poole Council
Braintree District Council
Bury Council
Canterbury City Council
Cheshire West and Chester Council
Cornwall Council
Cumbria County Council
Devon County Council
East Sussex Council
Edlington Town Council
Fareham Borough Council
Fife Council
Gedling Borough Council
Gravesham Borough Council
Gwynedd Council
Hampshire County Council
Hartlepool Borough Council
Kent County Council
Kettering Borough Council
Kirklees Council
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Solihull Metropolitan Borough Council
Southampton City Council
Southend Borough Council
Staffordshire County Council
Stockton-on-Tees Borough Council
Stoke-on-Trent City Council
Swale Borough Council
Tamworth Borough Council
Teignbridge District Council
Test Valley Borough Council
Thanet District Council
Tonbridge & Malling Borough Council
Trafford Council
Wakefield Council
Warwickshire County Council
West Suffolk Council
West Sussex County Council
Wiltshire Council
Wyre Council
Wyre Forest District Council

Essex Pension Fund
Greater Manchester Pension Fund
Norfolk Pension Fund
North Yorkshire Pension Fund
South Yorkshire Pensions Authority
Wiltshire Pension Fund

HM Treasury contacts

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If you require this information in an alternative
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HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gsi.gov.uk