

# Public sector exit payments

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We have already alerted you to the fact that the Government has resurrected the idea of caps to public sector exit payments. However, since [our alert](#), the Government has published the draft Restriction of Public Sector Exit Payments Regulations 2020 giving more detail.

On 27 July 2020, the Government published draft Regulations (Restriction of Public Sector Exit Payments Regulations 2020 (“draft Regulations”) following its consultation on plans to introduce a cap on public sector exit payments. The draft Regulations provide that any *relevant authority* (as set out in the Schedule to the draft Regulations) must not make an *exit payment* to a person which exceeds the exit payment cap in respect of a relevant public sector exit. The exit payment cap is currently expected to be £95,000, although the Government has indicated that it intends to keep this figure under review.

The draft Regulations set out a number of possible payments which would give rise to the exit payment cap, including:

- any payment on account of dismissal by reason of redundancy;
- any payment to reduce or eliminate an actuarial reduction to a pension on early retirement;
- any payment pursuant to an award of compensation under a settlement or conciliation agreement;
- any severance or ex-gratia payment;
- any payment to extinguish any liability to pay money under a fixed term contract
- any payment on voluntary exit;
- any payment in lieu of notice under a contract of employment (that exceeds one quarter of the relevant person’s salary); and
- any other payment (contractual or otherwise) in consequence of termination of employment or loss of office.

One key exception is any statutory redundancy payment. Where an individual is due to receive any exit payment(s) in addition to a statutory redundancy payment, the exit payment cap should only be applied to the qualifying exit payments, not to the statutory redundancy payment.

Further exceptions include any payment: in respect of death in service; in respect of incapacity as a result of accident, injury or illness; in respect of accrued annual leave; any payment in compliance with an order of a court or tribunal; and any payment in lieu of notice under a contract of employment which does not exceed one-quarter of the relevant person’s salary.

The draft Regulations include the power to relax restrictions on the cap of any exit payment in exceptional circumstances by certain authorities or with consent of the Treasury. Where this power is exercised, the authority exercising this power must keep written records for three years detailing the decision made and the reasons for it. The authority must also publish details of any exercise of this power at the end of every financial year (if it has). Reporting obligations extend to the individual receiving a public sector exit payment benefitting from any relaxation to the exit payment cap.

The Government has also indicated that there will be a mandatory waiver of the public sector exit payment cap for discrimination and whistleblowing claims, and health and safety related detriment and unfair dismissal claims and a Treasury Direction is awaited on this point.

## WHAT DOES THIS MEAN FOR EMPLOYERS?

Whilst the draft Regulations are not currently in force, employers should be alive to the impact the draft Regulations, when in force, will have on any future exits, particularly of senior public sector workers. The exit payment cap may impact on the level and type of package which can be negotiated with an individual in the future. In the case of any redundancies, employers should ensure that the calculation of the cap on any exit payment excludes the statutory redundancy payment.

Employers who decide to seek approval to relax the restrictions on the cap should keep clear written records from the date the decision is made to relax the restrictions in order to comply with the mandatory reporting requirements.

[The Restriction of Public Sector Exit Payments Regulations 2020](#)

[Consultation Outcome](#)

[Consultation and response and other relevant documents](#)

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