

Record of decision taken under delegated powers by a council officer



Title:	Local Government Exit Cap
Divisions Affected:	Surrey Pension Fund
Key Decision:	Yes
Reason Key:	Conflict in legislation
Decision taken under delegation by virtue of:	Scheme of Delegation Part 3 – Specific Delegation to Officers FIN 16

Summary

On 4th November 2020, the government activated the legislation to introduce an exit cap for public sector termination payments. This has been enacted before the supporting legislation is in place and the Local Government Pension Scheme (LGPS) regulations have been amended.

Although the exit cap is in force, the other provisions are still being consulted on and are unlikely to be implemented until the new year. This has the effect of existing scheme regulations conflicting with the exit cap in key areas.

The main area of conflict concerns members who are aged 55 and over and this obliges the fund to find pragmatic solutions until the situation is resolved. This guidance only applies to terminations where the effective date is after 3rd November 2020 and the employer is subject of the exit cap.

These conflicts require the Administering Authority to balance the different requirements of competing legislation.

Decision made

Decision made:

It was AGREED that:

1. The Surrey Pension Fund provide the option of either a deferred pension under regulation 6(1) or an immediate reduced pension under regulation 30(5) in line with the Government's recommendations.

Reasons for Decision:

The decision follows the principle of a prudent approach, on the basis of potentially paying an additional balance rather than seeking to recover an overpayment.

Regulation 30(7) of the LGPS requires the pension fund to pay unreduced pensions to members aged 55 and over who leave on the grounds of redundancy, business efficiency or mutual consent on grounds of business efficiency (compromise agreements). The immediate payment of pensions generates strain costs that can be considerable and may exceed the £95K cap. This creates a dilemma because the pension fund is forced to navigate a pragmatic course between two conflicting pieces of legislation.

If the alternative option, to pay an unreduced pension, in line with regulation 30(7) is decided upon, there is a risk that:

- i) the pension fund could end up in the position of having to try and recover monies from the employer and/or the member;
- ii) the pension fund will not be able to obtain the whole strain cost from the employer;
- iii) the employer will be restricted to a maximum of £95k for all exit payments

In reaching this decision regard has been taken of the legal advice obtained by the Scheme Advisory Board (SAB). Regard is also taken of the letter from MHCLG to LGPS administering authorities dated 28 October 2020.

Decision taken by:	Leigh Whitehouse (Executive Director of Resources) Paul Evans (Director of Law and Governance)
Decision taken on:	9 November 2020
To be implemented on:	16 November 2020

Alternative options considered

1. Pay an unreduced pension in line with regulation 30(7)

Summary of any financial implications

Offering a deferred or reduced pension risks challenge from the member seeking to enforce their rights under regulation 30(7). Regardless of the outcome of any challenge, this approach should result in the member receiving additional monies as:

- i) an unreduced pension, or
- ii) a cash alternative payment to the member, or

iii) a cash alternative paid to you to provide additional pension under regulation 31 or waive reductions under regulation 30(8).

Declarations of conflicts of interest

None

Consultation/Process Followed

Officer decision made after consultation with Councillor Tim Evans, Chairman of the Pension Fund Committee.

Background Documents

Exempt:

Local Government Association Exit cap information for LGPS administering authorities

<http://lgpslibrary.org/assets/gas/ew/Exit%20Cap%20AA%20v1.0.pdf>



This page is intentionally left blank