



HM Treasury

Consultation on Administrative Controls Process for Public Sector Exits

August 2022

Consultation on Administrative Control Process for Public Sector Exits



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Executive summary

The government believes that staff exits, and corresponding exit payments, have an important role to play in facilitating organisational changes in the public sector. However, it is vital that such exits are agreed through a rigorous process where value for taxpayers' money is considered, and alternatives robustly explored.

As set out in the draft guidance accompanying this consultation, we are proposing to introduce an expanded approvals process for employee exits and special severance payments, and additional reporting requirements, in relevant parts of the public sector. This is intended to allow for additional scrutiny and assurance of exit decisions, and to provide further insight on the use of exit payments. This will support Government's wider ambition to reduce the use of large exit payments in the public sector. The Government will keep this policy under review, and assess whether further legislation is needed in due course to deliver the stated policy goals of ensuring value for money for taxpayers.

Chapter 1

Introduction

Policy Background

- 1.1 Exit payments, which are payments made to employees upon leaving employment, have an important role to play in enabling public sector employers to make necessary organisational changes, and to support employees leaving employment. It is important, however, that such payments are fair and proportionate, and that the decision to offer or mandate an employee exit represents value for money. In recent years, the government has been concerned about the number of very large exit payments made to individuals, which may be several times larger than average annual earnings in the public sector, and has committed in recent election manifestos to limiting large exit payments, and making provisions for the recovery of exit payments in certain circumstances.
- 1.2 The government is considering a range of options to achieve these aims, including negotiating revisions to contractual exit payment terms, which are often the root cause of large exit payments. We believe that reform led by departments on a workforce-by-workforce basis will be the quickest, most effective, and proportionate way of achieving reform.
- 1.3 However, we also believe there is also a case for clearer guidance for public sector employers, and for additional controls to be administered, regarding how employee exits are agreed. It is in the interests of employers, employees and the taxpayer that there is robust process for the agreement of staff exits, and careful consideration of any alternatives to exit.
- 1.4 This consultation sets out the proposed new guidance from HM Treasury, on which the government welcomes comment.

Policy intent

- 1.5 The intent of this guidance is to introduce a new requirement for some exits to be approved by Secretaries of State, as well as strengthened and updated requirements around the agreement of special severance payments. The new approvals requirement will apply to decisions by employers to agree the exit of an individual where the payment to be made on exit, including relevant statutory, contractual, or discretionary payments, would be more than £95,000. It is appropriate that more costly decisions receive additional scrutiny, and setting the threshold at this level will achieve this, while ensuring that the additional administrative burdens of the process will only apply to a relatively small number of cases each year.

- 1.6 Additional reporting to HM Treasury will be required for any exit where all relevant payments total more than £95,000. This will ensure that HM Treasury has a clear understanding of where larger exit payments are being made and can consider further action.
- 1.7 The intention of the approvals processes for high value exits and special severance payments is to provide additional scrutiny on costly exits, to ensure that the decision to agree an exit will bring benefits to the taxpayer, that all alternatives have been robustly considered, and that any discretionary payments offered are appropriate and proportionate. The processes will also ensure a better understanding in HM Treasury of the circumstances under which large exit payments are being made. This will support the government's wider aim of ensuring that there is public confidence in the way exit payments are used in the public sector.
- 1.8 These processes will not serve to deprive any individual of payments to which they have a statutory or contractual entitlement upon leaving the public sector, as approvals will cover the decision by a body to offer or mandate an exit, or the amount of any discretionary payments. The new approvals process for high value exits will not serve as a way of capping large exit payments, as there will be circumstances where the confluence of accrued contractual entitlements and business needs will necessitate the approval of large exit payments. However, we expect that this process will enable us to offer greater guidance and challenge to the employers in scope, as part of a broader approach to reducing large exit payments in the public sector.
- 1.9 We are clear that additional scrutiny should not come at the cost of impeding larger scale organisational transformations, where multiple approvals may be needed. In such cases, bodies will be able to engage with Departments and HM Treasury to seek bulk approvals, or agree appropriate delegations, with CST approval.

Aims and Scope of the consultation

- 1.10 The government will consider the consultation responses and decide on how best to achieve its aims in relation to the questions and proposals set out in this document. Responses are particularly welcomed from:
- employing bodies within the scope of the proposed guidance
 - bodies representing public sector employers and employees
 - employees within the proposed scope of the guidance and their representative bodies
 - taxpayers and groups representing them
 - members of the academic community with expertise in this area
 - pay, pension, remuneration and HR professionals in both the private and public sectors
 - anyone else who may be impacted by this consultation

How to respond

- 1.11 This consultation will run for ten weeks and will close on 17th October 2022. Responses can be sent by email to: exitpaymentsconsultation@hmtreasury.gov.uk with the subject heading: Consultation on Administrative Control Process for Exits.
- 1.12 Alternatively, please send responses by post to:
- Workforce, Pay & Pensions Team,
HM Treasury,
1 Horse Guards Road,
London
SW1A 2HQ
- 1.13 When responding please say if you are a business, individual or representative body. In the case of representative bodies, please provide information on the number and nature of people you represent.

Consultation Principles

- 1.14 This consultation is being run in accordance with the government's [consultation principles](#).

Processing of personal data and confidentiality

- 1.15 This notice sets out how HM Treasury will use your personal data for the purposes of the consultation on Administrative Control Process for Public Sector Exits and explains your rights under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

Your data (Data Subject Categories)

- 1.16 The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

The data we collect

- 1.17 Information may include your name, address, email address, job title, and employer, as well as your opinions. It is possible that you will volunteer additional identifying information about yourself or third parties.

Legal basis of processing

- 1.18 The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good, effective government policies.

Special categories data

- 1.19 Any of the categories of special category data may be processed if such data is volunteered by the respondent.

Legal basis for processing special category data

- 1.20 Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: the processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.
- 1.21 This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

Purpose

- 1.22 The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Who we share your responses with

- 1.23 Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).
- 1.24 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.
- 1.25 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.
- 1.26 Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.
- 1.27 As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (Retention)

- 1.28 Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.
- 1.29 Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Your Rights

- you have the right to request information about how your personal data are processed and to request a copy of that personal data
- you have the right to request that any inaccuracies in your personal data are rectified without delay
- you have the right to request that your personal data are erased if there is no longer a justification for them to be processed
- you have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted
- you have the right to object to the processing of your personal data where it is processed for direct marketing purposes
- you have the right to data portability, which allows your data to be copied or transferred from one IT environment to another How to submit a Data Subject Access Request (DSAR)

1.30 To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit
G11 Orange
1 Horse Guards Road
London
SW1A 2HQ
dsar@hmtreasury.gov.uk

Complaints

1.31 If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk

1.32 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

1.33 Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the Courts.

Contact details

1.34 The data controller for any personal data collected as part of this consultation is HM Treasury, the contact details for which are:

HM Treasury
1 Horse Guards Road
London
SW1A 2HQ
London
020 7270 5000
public.enquiries@hmtreasury.gov.uk

1.35 The contact details for HM Treasury's Data Protection Officer (DPO) are:

The Data Protection Officer
Corporate Governance and Risk Assurance Team Area
2/15 1 Horse Guards Road
London S
W1A 2HQ
London privacy@hmtreasury.gov.uk

Chapter 2

Proposed Controls Process

- 2.1 The guidance attached sets out two separate but closely related control processes for exit payments. The first is a new control process for high value exits in central government, where approval from the relevant Secretary of State must be sought before an exit is agreed. The second is a modified version of the current system for the approval of special severance payments. For exits that exceed the high value threshold and include a special severance amount, both approval processes will apply.

Scope of bodies covered

- 2.2 The guidance is intended to apply to all bodies that are classified as 'Central Government' and/or bodies that do not have a specific right to make exit payments as set out in their Framework Document, Articles of Association, Board Terms of Reference or elsewhere. The intention is to have a broad scope for the process, but without prejudicing the legal prerogatives of any bodies:

Question 1: do you agree with the proposed scope of bodies covered? If not, please give reasons.

Question 2: (if responding on behalf of a particular body) Is it clear from the description above whether your body would be in scope of the guidance? If not, please explain why.

Process and Thresholds

- 2.3 Approval will be needed from the relevant Secretary of State for the agreement of any exit where the total exit payments on offer would exceed £95,000. This threshold has been selected to achieve a balance between introducing additional scrutiny for costly exits, without imposing the relatively larger administrative burdens that a lower threshold would entail.
- 2.4 The types of payments that would count towards this threshold are listed at paragraph 2.7-2.12 of the guidance. This approval would relate to the decision to offer or mandate an exit, wherein any statutory or contractual payments due upon exit will be understood as a fixed cost. The process should therefore not give rise to situations where individuals exit a body without receiving payments to which they are contractually entitled.
- 2.5 Approval would be sought by the relevant body through a business case, sent to the relevant Secretary of State after going through accounting officer clearance and any other existing clearance processes.

- 2.6 For contractual exits, where multiple approvals are likely to be required, bodies will be able to engage with the relevant department and HM Treasury to agree delegations or bulk approvals as appropriate.
- 2.7 A further approval will be needed if any payments in excess of contractual obligations (i.e. special severance payments) are to be offered. Approval for special severance payments will be given by HM Treasury officials, unless the proposed payment is over £ 95,000 or the individual in question receives a salary above £150,000. This is a slightly reduced threshold for approval of special severance payments, intended to align with the new threshold for review of contractual exits, and other thresholds used in government.

Question 3: do you agree with the proposed categorisation of the types of exit payment? If not, please give reasons.

Question 4: do you agree with the proposed approval process for high value exit payments? If not, please give reasons.

Question 5: do you agree with the proposed approval process for special severance exit payments? If not, please give reasons.

Question 6: do you agree with the proposed £95,000 threshold for approval? If not, please give reasons.

Criteria for approval

- 2.8 The guidance sets out a range of criteria according to which business cases should be appraised. For all exits, it will be required to demonstrate that an exit is necessary to the body, that alternatives have been fully considered, that there is a value for money case for the exit, and that there are no undue risks attached. Further specific criteria will be applied to approval of special severance cases, including that a legal assessment is offered when necessary, and that a lessons learned exercise is undertaken where appropriate

Question 7: do you agree with the proposed criteria for approval of high value exits? If not, please give reasons.

Question 8: do you agree with the proposed criteria for approval of special severance payments? If not, please give reasons.

Enhanced reporting requirement

- 2.9 The guidance sets out an enhanced reporting requirement, whereby sponsoring bodies making decisions on exits would have to submit to HM Treasury a brief outline of any exits made where the total exit payment amount exceeds £95,000. This is intended to provide HM Treasury with additional insight about the circumstances where larger exit payments are being made in central government. The data received would be retained internally within HM Treasury. An example pro forma for the return is at annex B of the guidance.

Question 9: do you agree with the proposed enhanced reporting requirement? If not, please give reasons.

Exit Payment Recovery

- 2.10 In the 2019 General Election Manifesto, the Government committed to enabling the recovery of exit payments when some high paid officials move between jobs in the public sector. Ensuring that special severance payments made in central government can be recovered in certain circumstances is an important way of delivering this commitment, reflecting the underlying intent of ensuring that the use of large exit payments is fair and efficient. If an individual quickly finds new employment in the public sector, this may suggest that a solution other than a paid exit would have been appropriate.
- 2.11 As special severance payments are based on specific agreements rather than existing contractual or statutory requirements, we believe there is a sound legal basis for attaching clauses to these payments which make provision for repayment under certain circumstances. Special severance payments are made in a range of complex and often unique cases, and as such we would expect that the decision as to whether a repayment clause is appropriate, and the form such a clause might take, will reflect the individual circumstance. The attached guidance therefore set out guidelines on the circumstances where a recovery agreement might be made, the principles that should underlie such agreements, and some example terms. Our expectation is that bodies will use their discretion in designing and implementing repayment obligations in individual cases and will justify these decisions to HM Treasury.

Question 10: do you agree with the outline approach to repayment obligations for special severance payments? If not, please provide reasons.

Chapter 3

Guidance

- 3.1 The government welcomes comment on the attached guidance, which aims to provide plain English instructions to relevant bodies regarding how and when they should seek approval from HM Treasury for staff exits, and discretionary exit payments.

Question 11: does the guidance adequately support employers to follow the approvals process for exits and special severance payments? If not, please provide details.

Question 12: is the guidance sufficiently clear on how repayment obligations should be used for special severance payments? If not, please provide details.

Chapter 4

Impacts

Costs and benefits

- 4.1 We expect that the process will lead to additional scrutiny of high value exits; there should be greater public confidence in the use of exit payments in relevant parts of the public sector, and in some cases viable alternatives to staff exits will be identified, potentially generating savings. With greater guidance and scrutiny, bodies will seek to proactively ensure that their exit payment arrangements are fair and proportionate. There will be some increased administrative burden, however we have sought to minimise this.

Impact on employees

- 4.2 Employees should not face undue adverse impacts from the new approvals process for high value exits. In some cases, the proposed exit will be approved, in which case employees would receive any payments to which they are contractually entitled, and any special payments agreed. Rejection of cases will rely on viable, fair alternatives to exit being identified, including continued employment or redeployment. Employees may benefit from the additional scrutiny applied to the decisions of the employer.

Devolution

- 4.3 The control process will not apply to bodies under the devolved administrations. Where central government bodies working on reserved functions, which are normally subject to other kinds of administrative control from HM Treasury such as the controls on senior pay, have roles located within the devolved administrations, these roles will be in scope of the process.

Equalities

- 4.4 The impact of this policy will be on central government employees and and/or employees of bodies that do not have a specific right to make exit payments as set out in its Framework Document, Articles of Association, Board Terms of Reference or elsewhere. The largest workforces in this scope include the NHS, the Civil Service and Academies. Using these three workforces as a guide, we can predict that some groups will be more likely to have their cases pass through this process.
- 4.5 In general, women are overrepresented in the three largest workforces in scope of the guidance (54% of the Civil Service, 77% of the NHS and 76% of teachers) so we may expect to see a higher portion of women have their

cases assessed through this process. It also follows that as women are over-represented there is potential for pregnant women to also be affected.

- 4.6 The new process will cover larger exit payments. Contractual entitlements to exit payments generally relate to salary level and length of service. That means that higher earners and older workers are most likely to be in scope and therefore have their cases assessed. As men are slightly over-represented in senior positions in the Civil Service and some other relevant workforces, we may see a higher proportion of cases relating to men, despite the overall larger number of women in these workforces. Pension strain arrangements also mean that larger exit payments may accrue to individuals nearing retirement age and therefore make their cases more likely to be assessed.
- 4.7 One use of special severance payments is to settle employment tribunal claims, which themselves may relate to discrimination based on protected characteristics. We therefore expect there is an increased likelihood that proposed payments will relate to individuals with protected characteristics.
- 4.8 However, while individuals in these groups may be more likely to have cases which are reviewed under the proposed processes, we think it is unlikely that there will be undue negative consequences. All cases will be rigorously assessed against the stated criteria, and there will be no pre-judgement of the outcome in any individual cases. For the approval of high value exit decisions, the impact of the new process will likely be to challenge decisions to offer or mandate an employee exit. The altered outcome for individuals relative to the status quo, therefore, will likely be continued employment, which is not likely to be a detriment. In relation to discretionary payments, this guidance largely preserves the status quo, as such payments already require scrutiny and HM Treasury approval under managing public money, given their potentially novel, contentious and repercussive nature.
- 4.9 Our expectation, therefore, is that the equalities impact of this policy will be minimal. However, we invite consultation responses on this issue, in order that we can consider any impacts further.

Question 13: are there any additional impacts which you would highlight in relation to the proposals above, including equality impacts? Please give details.

Question 14: are you able to provide information and data in relation to the impacts set out above?

Chapter 5

Summary of Questions

Question 1: do you agree with the proposed scope of bodies covered? If not, please give reasons.

Question 2: (if responding on behalf of a particular body) Is it clear from the description above whether your body would be in scope of the guidance? If not, please explain why.

Question 3: do you agree with the proposed categorisation of the types of exit payment? If not, please give reasons.

Question 4: do you agree with the proposed approval process for high value exit payments? If not, please give reasons.

Question 5: do you agree with the proposed approval process for special severance exit payments? If not, please give reasons.

Question 6: do you agree with the proposed £95,000 threshold for approval? If not, please give reasons.

Question 7: do you agree with the proposed criteria for approval of high value exits? If not, please give reasons.

Question 8: do you agree with the proposed criteria for approval of special severance payments? If not, please give reasons.

Question 9: do you agree with the proposed enhanced reporting requirement? If not, please give reasons.

Question 10: do you agree with the outline approach to repayment obligations for special severance payments? If not, please provide reasons.

Question 11: does the guidance adequately support employers to follow the approvals process for exits and special severance payments? If not, please provide details.

Question 12: is the guidance sufficiently clear on how repayment obligations should be used for special severance payments? If not, please provide details.

Question 13: are there any additional impacts which you would highlight in relation to the proposals above, including equality impacts? Please give details.

Question 14: are you able to provide information and data in relation to the impacts set out above?

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

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HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk