

2016 No. XXX

EMPLOYMENT

**DRAFT The Repayment of Public Sector Exit Payments
Regulations 2016**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - ***

The Treasury make the following Regulations in exercise of the power conferred upon them by section 154(1) of the Small Business, Enterprise and Employment Act 2015(a).

PART 1

Citation, Commencement, Application and Interpretation

Citation and commencement

1.—(1) These Regulations may be cited as the Repayment of Public Sector Exit Payments Regulations 2016.

(2) These Regulations come into force on XXX.

Application

2. These Regulations apply where a qualifying exit payment(b) is made—

- (a) by a public sector authority listed in Part 1 of the Schedule; or
- (b) to a holder or former holder of an office listed in Part 2 of the Schedule.

Interpretation

3.—(1) In these Regulations—

- (a) “the SBEE” means the Small Business, Employment and Enterprise Act 2015;
- (b) “hiring authority”, in relation to an exit payee, means an authority that would be a subsequent authority upon the exit payee’s return to the public sector
- (c) “local authority” has the meaning set out in section 1 of the Local Government Act 2000(c);

(a) 2015 c. 26.
(b) For definition of ‘qualifying exit payment’ see regulation 3.
(c) 2000 c. 22.

- (d) “Minister of the Crown” has the meaning set out in section 8 of the Ministers of the Crown Act 1975(a);
- (e) “redundancy” has the meaning set out in section 139 of the Employment Rights Act 1996(b);
- (f) “relevant arrangements” means a written agreement between the exit payee and the responsible authority to repay the repayment amount(c). Relevant arrangements may include an agreement to repay the repayment amount—
 - (i) by lump sum;
 - (ii) by instalment; or
 - (iii) by any other method the responsible authority considers to be reasonable.
- (g) “relevant contract for services” means a contract for services under which an exit payee provides services to a hiring authority—
 - (i) as the employee of another person; or
 - (ii) as a self-employed person;
 and the time spent providing the service to the hiring authority accounts for more than 50% of the exit payee’s employment or self-employment;
- (h) “relevant transfer” has the meaning set out in regulation 3 of the Transfer of Undertaking (Protection of Employment) Regulations 2006(d);
- (i) “remuneration” means any salary, wages or fee for services provided;
- (j) “standard weekly hours” means the number of hours the exit payee is required to work under a contract of employment, or the terms of the exit payee’s appointment to an office, in a week in which the exit payee has no absences from work and does not work any overtime or, where the number of such hours varies, the mean number of hours that are required to be worked in a week calculated over a four week period.

(2) Except where provided otherwise, any expression used in these Regulations which is used in sections 154 and 155 of the SBEE has the meaning which is given in those sections.

(3) For the purposes of these Regulations a person returns to the public sector when that person—

- (a) becomes an employee (other than by virtue of a relevant transfer) or enters into a relevant contract for services with a public sector authority listed in Part 1 of the Schedule; or
- (b) becomes a holder of an office which is appointed by a public sector authority listed in Part 1 of the Schedule;
- (c) becomes a holder of an office listed in Part 2 of the Schedule.

and references to a return to the public sector shall be construed accordingly.

(4) Subject to paragraph (5), for the purposes of these Regulations, a qualifying exit payment is an exit payment by the responsible authority—

- (a) on account of dismissal by reason of redundancy;
- (b) made consequently upon a voluntary exit from employment;
- (c) to reduce or eliminate an actuarial reduction to a pension upon early retirement;
- (d) to extinguish any liability to pay money under a fixed term contract;
- (e) under a settlement or conciliation agreement;
- (f) made by way of shares consequent upon a loss of employment; or

(a) 1975 c. 26.
 (b) 1996 c. 18.
 (c) For definition of ‘repayment amount’ see regulations 6 and 7.
 (d) S.I. 2006/246.

(g) made as a consequence of, in relation to, or conditional upon, loss of employment whether under a contract of employment or otherwise.

(5) The following payments are not qualifying exit payments—

- (a) a payment made in respect of incapacity or death as a result of accident, injury or illness;
- (b) a payment made in respect of leave due under a contract of employment but not taken;
- (c) a payment made in lieu of notice due under a contract of employment;
- (d) a bonus payment otherwise determined to be due under a contract of employment;
- (e) a payment made in compliance with an order of any court or tribunal; and
- (f) a payment made to an exit payee who, in the period of 12 months prior to the end of the exit payee's employment or before the exit payee ceased to hold office, earned remuneration of under £80,000.

(6) For the purposes of these Regulations, an exit payee is deemed to have received a qualifying exit payment on the same day as they left the employment or ceased to hold the office in respect of which the qualifying exit payment was made.

(7) These Regulations do not affect any obligation of the exit payee to repay a qualifying exit payment that arises other than as a result of these Regulations.

PART 2

Duties following the making of a qualifying exit payment

Responsible authority's duty to keep a record

4. When a responsible authority makes a qualifying exit payment it must maintain a record of the payment in written or electronic form, which must be capable of being retrieved by the responsible authority upon request for three years, and which includes—

- (a) the fact that a qualifying exit payment has been made;
- (b) the identity of the exit payee;
- (c) the amount and type of the qualifying exit payment;
- (d) the date on which the qualifying exit payment was made;
- (e) the exit payee's age on the date the qualifying exit payment was made;
- (f) the exit payee's length of service with the responsible authority;
- (g) the total remuneration received by the exit payee from the responsible authority in the period of 12 months prior to receiving the qualifying exit payment;
- (h) the tax and employee national insurance contributions paid by the exit payee in respect of the qualifying exit payment; and
- (i) the exit payee's standard weekly hours.

Exit payee's duty to provide information

5. Where an exit payee accepts an offer to return to the public sector and the return to the public sector would be within a year of receiving a qualifying exit payment, the exit payee must inform the hiring authority and the responsible authority as soon as reasonably practicable, and in any event before returning to the public sector, that—

- (a) there has been a qualifying exit payment; and
- (b) there may be an obligation to repay some or all of that qualifying exit payment under these Regulations.

PART 3

Repayment of Exit Payments

Duty to repay a qualifying exit payment

6.—(1) This regulation applies where an exit payee returns to the public sector within 12 months of receiving a qualifying exit payment.

(2) The exit payee must pay to the responsible authority an amount equal to the repayment amount.

(3) The repayment amount is to be calculated in accordance with regulation 7.

(4) The repayment amount shall be recoverable by the responsible authority as a debt owed to the responsible authority.

(5) The responsible authority must take all reasonable steps to recover the repayment amount from the exit payee.

Calculation of repayment amount

7.—(1) Subject to paragraphs (2), (3) and (4), the repayment amount is calculated as—

$$A - B - \frac{(C \times D)}{365}$$

where:

A is the amount of the qualifying exit payment;

B is the is the amount of tax and employee national insurance contributions paid in respect of the qualifying exit payment;

C is net final pay;

D is the number of days between the exit payee leaving the employment or ceasing to hold the office in respect of which the qualifying exit payment was made and the exit payee's return to the public sector;

(2) Where the standard weekly hours the exit payee will work for the hiring authority is less than the standard weekly hours worked for the responsible authority, the repayment amount is reduced by multiplying the amount by $\frac{E}{F}$

where:

E is the standard weekly hours the exit payee will work for the hiring authority;

F is the standard weekly hours the exit payee worked for the responsible authority.

(3) Where the difference between the amount of the qualifying exit payment and the repayment amount is less than the minimum amount, the repayment amount is to be reduced so that the difference between the amount of the qualifying exit payment and the repayment amount is equal to the minimum amount.

(4) Where the amount calculated under this regulation is equal to or less than zero, the repayment amount is equal to zero;

(5) In this regulation—

(a) “minimum amount” means—

- (i) the amount the exit payee was entitled to receive under Part XI of the Employment Rights Act 1996(a) calculated in accordance with section 162 of that Act; or
 - (ii) where the exit payee was not entitled to receive a payment under Part XI of that Act by virtue of chapter 1 of Part XIII of that Act, the amount that the exit payee would have received had the exit payee been so entitled.
- (b) “net final pay” means—
- (i) the remuneration received by the exit payee from the responsible authority in the period of 12 months prior to receiving the qualifying exit payment less any tax or employee national insurance contributions paid on that remuneration; or
 - (ii) where the exit payee was in employment or office for less than 12 months, the amount calculated according to the following formula—

$$G - H \times \frac{365}{I}$$

where:

- G is the total remuneration received by the exit payee from the responsible authority
- H is the total tax and employee national insurance contributions paid on the total remuneration received by the exit payee from the responsible authority
- I is the number of days the exit payee was in employment or office.

Restriction on returns to the public sector and arrangements to repay

- 8.—**(1) Where an exit payee has received a qualifying exit payment—
- (a) the exit payee must not return to the public sector within 12 months of receiving that payment; and
 - (b) a hiring authority must not permit such a return unless the exit payee has repaid the repayment amount or the exit payee and the responsible authority have made relevant arrangements for the exit payee to repay that amount.
- (2) The responsible authority must not unreasonably refuse, or delay making, relevant arrangements.
- (3) If an exit payee returns to the public sector in breach of paragraph (1)—
- (a) the exit payee must enter into relevant arrangements to repay the repayment amount within three months of the date of that return; and
 - (b) the hiring authority must keep a record of the breach, and its reasons for permitting the exit payee to return to the public sector, in written or electronic form, which must be capable of being retrieved by the hiring authority upon request for three years.
- (4) If an exit payee—
- (a) breaches the relevant arrangements to repay the repayment amount and does not enter into new relevant arrangements to repay within three months of that breach; or
 - (b) does not enter into the relevant arrangements required by regulation 8(3)(a)
- the amount due under regulation 6 becomes immediately payable and the hiring authority must consider taking the appropriate action as set out in paragraph (5).
- (5) the appropriate action is—
- (a) where the exit payee is an employee, dismissing the exit payee;
 - (b) where the exit payee has entered into a relevant contract for services, terminating the relevant contract for services; or

(a) 1996 c. 18.

- (c) where the exit payee has been appointed to an office, removing the exit payee from that office.

(6) If the hiring authority does not take the appropriate action as provided in paragraph (5), the hiring authority must keep a record of any consideration it made under paragraph (4), including the reason why it did not take any action, in written or electronic form, which must be capable of being retrieved by the hiring authority upon request for three years.

Duty to provide information

9.—(1) As soon as reasonably practicable after the event, the responsible authority must—

- (a) confirm in writing to the hiring authority that relevant arrangements have been;
- (b) inform the hiring authority if the relevant arrangements are breached by the exit payee;
- (c) inform the hiring authority if new or further relevant arrangements have been made;
- (d) on request from the hiring authority, provide such information as the hiring authority may reasonably require for it to fulfil its duties under these Regulations.

(2) Where the repayment amount is equal to zero, or the exit payee has paid the repayment amount in full, the hiring authority must inform the hiring authority of that fact in writing.

(3) The hiring authority must, on request from the responsible authority, provide such information as the responsible authority may reasonably require in order for it to fulfil its duties under these Regulations.

Dissolved Bodies

10. Where the responsible authority has ceased to exist in circumstances where these Regulations are applicable, the Regulations shall nevertheless apply, subject to any necessary modifications, and in particular

- (a) regulations 6, 7 and 8 shall have effect as if the references to ‘responsible authority’ were references to ‘hiring authority’;
- (b) regulation 9 does not apply; and
- (c) the hiring authority must pay any amount recovered under these Regulations into the Consolidated Fund.

General Power of Competence

11. The restrictions and obligations imposed in this Part apply to public sector authorities which have a power under section 1 of the Localism Act 2011^(a) (local authority’s general power of competence) or a power under section 5A(1) of the Fire and Rescue Services Act 2004^(b) (powers of fire and rescue authorities).

PART 4

Waiver

Effect of Waiver

12.—(1) Where a person exercises the power under section 157(1) of the SBEE to waive the whole of the requirement imposed by regulation 6 the repayment amount is zero.

(a) 2011 c. 20.

(b) 2004 c. 21.

(2) Where a person exercises the power under section 157(1) of the SBEE to waive part of the requirement imposed by regulation 6 the repayment amount is as determined by the person exercising that power.

(3) The repayment amount in paragraph (2) cannot exceed the repayment amount that would otherwise have been calculated in accordance with regulation 7.

Power to waive

13.—(1) The following persons are prescribed for the purposes of section 157(1) of the SBEE—

- (a) a Minister of the Crown;
- (b) the Welsh Ministers in relation to exit payments made by a public sector authority which wholly or mainly exercises functions which could be conferred by provision falling within the legislative competence of the National Assembly for Wales (as defined in section 108 of the Government of Wales Act 2006^(a));
- (c) the Department for Finance and Personnel in relation to exit payments made by payments made by public sector authorities who wholly or mainly exercise functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998^(b));
- (d) a local authority, in relation to payments made by that local authority.

Power to waive to be exercised in accordance with Treasury Guidance

14. The power under section 157(1) of the SBEE must be exercised in accordance with any written directions issued by the Treasury on how that power is to be exercised.

Duty to keep records in respect of waiver

15.—(1) Where a person exercises the power under section 157(1) of the SBEE—

- (a) that person must keep a record in written or electronic form, which must be capable of being retrieved upon request for three years of—
 - (i) the identity of the exit payee in respect of whom the power was exercised;
 - (ii) the fact that the power has been exercised;
 - (iii) the amount and type of the qualifying exit payment in respect of which the power was exercised;
 - (iv) the date on which the power was exercised; and
 - (v) the reason why the power was exercised;
- (b) subject to paragraph (2), the responsible authority must publish a list detailing—
 - (i) the amounts and types of qualifying exit payments in respect of which the power was exercised;
 - (ii) the dates on which the power was exercised;
 - (iii) the reasons why the power was exercised.
- (c) the list referred to in regulation 15(1)(b) must be published at the start of each financial year in which the power under section 157(1) of the SBEE is exercised, or in the responsible authority's annual accounts for each such year.

(a) 2006 c. 32.

(b) 1998 c. 47.

(2) The responsible authority must not publish any personal data relating to the exit payee where to do so would amount to a breach of the responsible authority's obligations under the Data Protection Act 1998(a).

(a) 1998 c. 29.