



HM Treasury

# Public Sector exit payment recovery regulations:

consultation

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December 2015





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# 1

## Background

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**1.1** The previous government enacted framework powers in the Small Business, Enterprise and Employment Act 2015 to allow for the recovery of public sector exit payments when a high earner returns to the public sector shortly after leaving. Regulations setting out the detail of the policy will be laid in Parliament to implement this policy from April 2016.

**1.2** Exit payments associated with loss of employment including redundancy are important to employers' ability to reform and react to new circumstances. They provide important support for employees as they find new employment. Equally it is important that these payments are proportionate and offer value for money.

**1.3** In the government's response to the consultation on the recovery of public sector exit payments, certain decisions remained under review with a commitment to consult further before laying the final regulations. **This consultation invites comment on the final draft regulations.**

**1.4** Respondents will wish to note that the government has reconsidered some areas of the policy since the publication of the government response on 27 October 2014. As a result, some of the details of the exit payment recovery have been strengthened to better protect taxpayers' money within the existing legal framework. These regulations do not override any existing recovery provisions that go further, but underpin these arrangements and provide a framework for the required minimum.

**1.5** In line with other decisions on financial management and pay policy it is the responsibility of individual employers and departments to ensure that their exit payment arrangements are fair and proportionate. However, for high earning individuals moving between employers in the public sector, it is right for the government to examine whether there is sufficient assurance to the taxpayer that exit payment arrangements are fair and represent value for money for the taxpayer.

# 2

## Summary of changes to the proposal

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### Recovery on return to any public sector body

**2.1** The government proposes to replace the stipulation that exit payments are recovered when an individual returns to the same part of the public sector with the proposal that **public sector exit payments are recovered when an individual returns to any part of the public sector. The amount paid back will be net of tax paid.**

**2.2** This dispenses with the need to establish groupings of public bodies, for example a Health sub-sector or Local Government sub-sector, which would introduce unnecessary administrative complexity. It would also have led to inconsistencies in treatment, for example where in some professions, such as legal or IT services, similar jobs exist across sub-sectors.

### Salary level at which exit payment recovery takes effect

**2.3** The previous government's starting point was that recovery would apply only to individuals earning at or over £100,000. The government now proposes in these regulations to set **the minimum salary at which the recovery provisions apply at £80,000 per annum.** The government believes that a threshold set at this level is more consistent with the intention to prevent the highest paid people from exploiting opportunities to take redundancy and be re-employed soon after in the public sector. As average annual earnings are currently around £27,600, individuals earning £80,000 are amongst the top 2% of earners in the public sector and top 4% in the whole economy.<sup>1</sup> They are, as such, likely to receive substantial exit payments.

### Removal of a full recovery period

**2.4** The government proposes to **remove the full recovery period during which exit payments should be repaid in full on returning to a public sector body.** As such, the taper begins from the first day after a public sector employee has exited. This proposal ensures workers that return to the public sector are fairly compensated and provided sufficient support for the period between employments. A full recovery period could also have financially incentivised exiting employees not to seek further public sector employment for the duration of the full recovery period. The removal of this period is consistent with the government's commitment that work must always pay.

### Recovery of pension 'top up' payments made under the Local Government Pension Scheme

**2.5** The government response to the recovery of public sector exit payments consultation published on 27 October 2014 proposed excluding employer payments to provide unreduced pensions for early retirement under the Local Government Pension Scheme (LGPS) rules where

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<sup>1</sup> HM Treasury analysis using Annual Survey of Hours and Earnings, November 2015

LGPS members are made redundant before their Normal Pension Age. However, the government has concluded that this exclusion is unwarranted when recovery applies to similar top up payments made under other pension schemes.

**2.6** Employer-funded pension top up payments made under the LGPS will be treated as within the scope of the provisions governing recovery in the event of re-employment ensuring that recovery provisions are consistent.

## **Dissolved Bodies**

**2.7** In a situation where the public sector body that paid an exit payment to an exited worker has dissolved, the employee will be required to repay the required amount of their exit payment to the hiring public sector employer.

**2.8** The hiring public sector body will then be required to pay the amount recovered into the consolidated fund. This arrangement will ensure that recovery provisions are applied consistently irrespective of any machinery of government changes.

## **Exemptions**

**2.9** The Office of National Statistics (ONS) has recently classified Housing Associations to the public sector. **Housing Associations** would be granted an exemption from the recovery policy as it is the government's intention to take steps to ensure they can be reclassified to the private sector.

**2.10** The government has decided to grant an exemption to the **Financial Services Compensation Scheme (FSCS)** treating the organisation as a public financial corporation. A full list of exempt public financial corporations can be found in Chapter 3.

# 3

## Who is in scope?

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<b>Earnings thresholds/ exemptions</b>	<ul style="list-style-type: none"><li>• All public sector employees and office holders earning over £80,000.</li></ul>
<b>Which individuals</b>	<ul style="list-style-type: none"><li>• Current and future employees and office holders of prescribed public sector authorities.</li><li>• Individuals that return off-payroll to prescribed public sector authorities.</li></ul>
<b>Bodies in Scope</b>	All bodies within the ONS definition of public sector except those granted an exemption
<b>Bodies exempt from the policy</b>	<ul style="list-style-type: none"><li>o The following public financial corporations and subsidiaries:<ul style="list-style-type: none"><li>- The Royal Bank of Scotland</li><li>- Northern Rock</li><li>- Bradford and Bingley</li><li>- Pension Protection Fund</li><li>- The London Authorities Mutual Limited</li><li>- National Employment Savings Trust Corporation (NEST)</li><li>- Financial Conduct Authority</li><li>- Payment Systems Regulator</li><li>- Financial Ombudsman Service Ltd.</li><li>- First Rate Exchange Services Holdings Limited</li><li>- First Rate Exchange Services Limited</li><li>- Guaranteed Export Finance Corporation PLC (GEFCo)</li><li>- Northern Ireland Central Investment Fund for Charities</li><li>- UKAR</li><li>- Financial Services Compensation Scheme (FSCS)</li></ul></li><li>o Armed Forces</li><li>o Housing Associations</li><li>o National Museums</li><li>o The Commissioners for Irish Lights</li><li>o Public broadcasters: BBC, Ch4, and S4C</li><li>o Bank of England</li></ul>

# 4

## How will it work?

<b>Mechanism</b>	<ul style="list-style-type: none"><li>• Require the individual to notify their new and previous employer where they propose to return to the public sector after they have received a public sector exit payment within the previous 12 months.</li><li>• Require old employers to make arrangements with individuals where exit payments are due to be recovered.</li></ul>
<b>Which payments for recovery</b>	<ul style="list-style-type: none"><li>• Payments for loss of employment, including discretionary payments to buy out actuarial reductions to pensions and severance payments.</li></ul>
<b>Excluded are:</b>	<ul style="list-style-type: none"><li>• Contractual entitlements unconnected to loss of employment.</li><li>• Those payments that have a potential, if not actual, monetary value.</li><li>• Payments and Compensation in lieu of notice.</li><li>• Payments equal to minimum statutory redundancy payments.</li><li>• Payments made in respect of incapacity or death as a result of accident, injury or illness.</li><li>• Payments made in respect of leave not taken.</li><li>• Payments made in compliance with an order of court or tribunal.</li></ul>
<b>Defining the Public Sector</b>	<ul style="list-style-type: none"><li>• Bodies classified as within the public sector by the ONS for the purpose of National Accounts.</li></ul>
<b>Amount to recover</b>	<ul style="list-style-type: none"><li>• Tapered recovery from the date of exit up to 12 months.</li><li>• None after 12 months.</li></ul>
<b>Sanctions</b>	<ul style="list-style-type: none"><li>• Civil recovery / Prohibition on taking up new role / Dismissal</li></ul>
<b>Mechanism for Waiving the recovery of exit payment</b>	<ul style="list-style-type: none"><li>• Decision assigned to the relevant Secretary of State.</li><li>• This power can be exercised on behalf of the relevant Secretary of State by an appropriate person or persons (e.g. the Accounting Officer).</li><li>• The Full Council to take the decision whether to grant a waiver from repayment in cases involving Local Authorities and for local government bodies within their delegated powers.</li><li>• Reported and published as part of Annual Reports and Accounts.</li></ul>
<b>Mechanism for enforcement</b>	<ul style="list-style-type: none"><li>• Old employers will have the right to take individuals to court to reclaim money.</li><li>• Guidance will make clear that old employers should inform the individual of their obligation at the point of exit and to ensure that reasonable steps are taken to recover the exit payment.</li><li>• New employers will be required not to employ the individual until repayment arrangements have been finalised.</li></ul>
<b>Devolution</b>	<ul style="list-style-type: none"><li>• Our proposal is for devolved bodies to be a part of the exit payment recovery process, and that devolved administrations will be responsible for waivers in their delegated areas.</li><li>• As set out in the primary legislation, the Scottish Government has the powers to enact their own regulations in relation to devolved</li></ul>

	Scottish workforces.
<b>Transparency</b>	<ul style="list-style-type: none"> <li>• Require the body that granted the waiver to disclose this and the reason for it in their Annual Reports and Accounts.</li> </ul>
<b>Implementation Date</b>	<ul style="list-style-type: none"> <li>• Require compliance with new arrangements from April 2016.</li> </ul>

### Question

The government invites you to comment specifically on the draft regulations and Schedule 1 (which lists public sector authorities and offices in scope of the regulations), and changes to the proposal for the recovery of public sector exit payments. In particular, do these regulations achieve the policy intention of ensuring the mechanism for the recovery of exit payments is fair, proportionate and represents value for money to the tax payer?

### How to respond to this consultation

**4.1** This consultation will close on **25 January 2016**. Responses should be sent by email to: [exitpaymentrecovery@hmtreasury.gsi.gov.uk](mailto:exitpaymentrecovery@hmtreasury.gsi.gov.uk) with the subject heading "Consultation on Public Sector Exit Payment Recovery Regulations".

**4.2** Alternatively please send responses by post to:

Consultation on Public Sector Exit Payment Recovery Regulations,  
Workforce, Pay & Pensions Team,  
HM Treasury,  
1 Horse Guards Road,  
London SW1A 2HQ.

**4.3** When responding please say if you are making a representation on behalf of a business, individual or representative body. In the case of representative bodies, please provide information on the number and nature of people you represent.

### Confidentiality

**4.4** Information provided in response to this consultation, including personal information, 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 1988 (DPA) and the Environmental Information Regulations 2004.

**4.5** 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. 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.

**4.6** HM Treasury will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.



## **HM Treasury contacts**

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