

[This instrument contains a draft outline of proposals for secondary legislation. It is a working draft and has been prepared purely for illustrative purposes and for assisting with discussion during the passage of the Bill. The draft regulations were updated on 3 March 2016 following Public Bill Committee and do not reflect any amendments that have been tabled for Report Stage]

DRAFT STATUTORY INSTRUMENTS

2016 No. XXX

EMPLOYMENT

DRAFT The Public Sector Exit Payment 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 153A(1) of the Small Business, Enterprise and Employment Act 2015.

PART 1

General

Citation, commencement, extent and interpretation

- 1.—(1) These Regulations may be cited as The Public Sector Exit Payment Regulations 2016.
- (2) These Regulations come into force on [not before 1st October 2016].

Interpretation

2. In these Regulations—

“the Act” means the Small Business, Employment and Enterprise Act 2015;

“additional public sector authority” means—

any prescribed public sector authority with which an individual continues to be employed; and

any prescribed public sector authority responsible for the appointment of a prescribed public sector office which an individual continues to hold

when he leaves employment with a prescribed public sector authority or leaves a prescribed public sector office;

“aggregate exit payment” means the total exit payments received by an exit payee from one or more prescribed public sector authorities in respect of a public sector exits in a period of 28 days;

“the fitness provisions” means the Addendum to the Fire and Rescue National Framework for England on firefighters fitness prepared by the Department for

Communities and Local Government in accordance with section 21 of the Fire and Rescue Services Act 2004;

“exit payee” means an individual who receives an exit payment or payments;

“exit payment” means a payment of a type prescribed in regulation 3;

“exit payment threshold” means £95,000 or an amount specified in further regulations under section 153A(1) of Act coming into force after these Regulations take effect;

“prescribed public sector authority” means a public sector authority listed in part 1 of schedule 1 or a public sector authority responsible for the appointment of the public sector office listed in part 2 of schedule 1;

“redundancy” has the meaning set out in section 139 of the Employment Rights Act 1996;

PART 2

Restriction on Exit Payments

3.—(1) Subject to paragraph 2, these Regulations apply to the following payments made by a prescribed public sector authority in connection with loss of employment or office—

- (a) A payment on account of dismissal by reason of redundancy;
- (b) A payment made consequentially upon a voluntary exit from employment;
- (c) A payment made to a pension scheme;
- (d) A payment made in lieu of notice due under a contract of employment;
- (e) A payment made under a settlement or conciliation agreement;
- (f) A payment made to extinguish any liability to pay money under a fixed term contract;
- (g) A payment made by way of shares consequent upon a loss of employment; and
- (h) Any other payment made as a consequence of, in relation to, or conditional upon, loss of employment whether under a contract of employment or otherwise.

(2) Regulation 3(1) does not include payments that are—

- (a) made in respect of incapacity or death as a result of accident, injury or illness;
- (b) made under regulation 62 of the Firefighters’ Pension Scheme (England) Regulations 2014 where the relevant Fire and Rescue Authority has determined that an individual should be retired with an authority initiated early retirement pension in accordance with the fitness provisions;
- (c) made in respect of leave due under a contract of employment but not taken;
- (d) bonus payments otherwise determined to be due under a contract of employment;
- (e) made in compliance with an order of any court or tribunal.

4.—(1) Where this regulation applies—

- (a) a prescribed public sector authority may not make a payment to the exit payee of an amount that would result in the aggregate exit payment to the exit payee exceeding the exit payment threshold;
- (b) an exit payee’s entitlement to an exit payment is not enforceable other than to the extent that the payment is permitted by regulation 4(1)(a);

(2) Subject to regulations 5 and 9, this regulation applies where an exit payment to an exit payee would mean that the exit payee’s aggregate exit payment would exceed the exit payment threshold.

5. Regulation 4 does not apply to an exit payment where an exit payee has an entitlement to that exit payment as a result of regulation 5 of The Transfer of Undertakings (Protection of Employment) Regulations 1981 or regulation 3 of The Transfer of Undertakings (Protection of Employment) Regulations 2006.

6. Where the restriction imposed by regulation 4(1) would result in a prescribed public sector authority making exit payments to an exit payee which total less than—

- (a) the amount of statutory redundancy pay due under section 162 of the Employment Rights Act 1996, or
- (b) where the exit payee did not have an entitlement to statutory redundancy pay calculated under that section, the amount of statutory redundancy pay that would have been due under that section if it had applied;

the prescribed public sector authority may make an exit payment to the exit payee equivalent to that amount.

7. Where the restriction imposed by regulation 4(1) would result in a public sector authority being unable to make a non-cash exit payment, the public sector authority may substitute an exit payment of a cash sum of an amount that means the aggregate exit payment to the exit payee does not exceed the exit payment threshold.

8. When an individual leaves employment with a prescribed public sector authority or leaves a prescribed public sector office he must inform all additional public sector authorities—

- (a) that he has received an exit payment;
- (b) the amount of any exit payment;
- (c) the date that he left employment or office;
- (d) the identity of the prescribed public sector authority that made the exit payment.

PART 3

Relaxation of the Cap on Exit Payments

9. Where the power under section 153C(1) of the Act to relax the restriction on payment of exit payments under these Regulations is exercised then regulation 4(1) does not apply to the extent of the relaxation.

10. The power under section 153C(1) of the Act is exercisable—

- (1) by the Welsh Ministers, in relation to payments made by a relevant Welsh authority;
- (2) by the full council of a local authority, in relation to payments made by that local authority.
- (3) [any further delegation of the power to relax the restriction to be included here]

11. The power under section 153C(1) of the Act must be exercised in accordance with any directions issued by the Treasury on how that power is to be exercised **(a)**.

12. Where a person exercises the power to relax the restrictions on payment of exit payments under these Regulations, they shall—

- (a) Keep a record of the exercise of that power and the reasons for it for at least 36 months; and

a The Treasury will issue guidance on the operation of the cap which will include directions as to how the power to relax the restrictions should be exercised. This will include, for example, how cases involving public interest disclosures (whistleblowing) or discrimination should be considered.

- (b) Publish, as part of annual accounts or in a list published at the start of the following financial year, a list of all the times in the preceding twelve months that they have exercised that power and the reasons for it.

SCHEDULES

SCHEDULE 1

[This schedule will set out the public sector authorities to which the regulations will apply. It is proposed that the list will include all bodies within the public sector (as set out on the list prepared by the Officer of National Statistics) save that payments from the following authorities were identified as being potentially exempt in the Government's response to the consultation on these proposals:

- (i) The following public financial corporations and subsidiaries:
 - 1. The Royal Bank of Scotland
 - 2. UK Asset Resolution
 - 3. Northern Rock
 - 4. Bradford and Bingley
 - 5. Pension Protection Fund
 - 6. The London Authorities Mutual Limited
 - 7. National Employment Savings Trust Corporation (NEST)
 - 8. Financial Conduct Authority
 - 9. Financial Ombudsman Service Ltd.
 - 10. First Rate Exchange Services Holdings Limited
 - 11. First Rate Exchange Services Limited
 - 12. Guaranteed Export Finance Corporation PLC (GEFCo)
 - 13. Northern Ireland Central Investment Fund for Charities
 - 14. Prudential Regulation Authority
- (ii) Armed Forces
- (iii) National Museums
- (iv) The Commissioners for Irish Lights
- (v) Public broadcasters: BBC, Ch4 and S4C
- (vi) Bank of England]