



Ministry of Housing,
Communities &
Local Government

Reforming local government exit pay

A consultation on the reform of exit payments in local government



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1. Scope of the consultation

A consultation paper issued by the Ministry of Housing, Department for Communities and Local Government, on behalf of the Secretary of State.

Topic of this consultation:	As part of a wider programme of cross-public sector action on exit payment terms, this consultation paper sets out the government’s proposals for reforming local government exit payment.
Scope of this consultation:	The Ministry of Housing, Communities and Local Government is consulting on proposals to reform exit payment terms for local government workers, and specifically those who are eligible to be members of the local government pension scheme
Geographical scope:	The reforms would apply to those areas which are the responsibility of the UK government. It would be for the Scottish government, Welsh government and Northern Ireland Executive to determine if and how they wanted to take forward similar arrangements in relation to devolved bodies and workforces.
Impact Assessment:	The government believes, to a large extent, any impact on protected groups as a result of these reforms would simply be a natural consequence of the composition of the local government workforce and does not believe that there would necessarily be disproportionate impacts on particular groups aside from this. However, following this consultation, an impact assessment will be produced to examine whether this is the case; the government will carefully consider its policy in the light of that assessment.

Basic Information

Topic of this consultation:	This consultation is open to everyone. We particularly seek the views of local government, Trade Unions and other workforce representatives.
Body responsible for consultation:	The Local Government Strategy and Improvement team in the Ministry of Housing, Communities and Local Government is responsible for conducting the consultation.
Duration :	The consultation will last for 9 weeks from 7 September 2020. All responses should be received by no later than 9 November 2020.
Enquiries and responses:	During the consultation, if you have any enquiries, please contact: LGExitPay@communities.gov.uk <u>How to respond</u> Responses can be submitted online at:

https://forms.office.com/Pages/ResponsePage.aspx?id=EGg0v32c3kOociSi7zmVqDX2xIA9hPhJv2EHTx_8-ZUQTdZUKlxOFBJTjU2RjFEQzY4WIIHSUoyNy4u

or sent by email to:

LGExitPay@communities.gov.uk

with the subject heading 'Consultation on Exit Payment Cap'.

Due to current restrictions on office access, responses sent by post may have a delay in reaching our team.

By post, please address your response to:

Exit Pay Consultation
Local Government Workforce and Pay Team,
Ministry for Housing, Communities and Local Government
2nd Floor, Fry Building
2 Marsham Street
London
SW1P 4DF

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.

2. Introduction

2.1 Redundancy provision and exit payments play an important role in enabling employers to reform and reorganise. They support employees during the transition to other employment or retirement following the loss of employment. However public sector arrangements vary significantly, including in the benefits provided for people with similar pay and length of service. Also, such provisions can often be out of line with practice in the wider economy.

2.2 The government announced in the Spending Review and Autumn Statement 2015 that it will continue to modernise the terms and conditions of public sector workers, by taking forward targeted reforms in areas where the public sector has more generous rights than most of the private sector. As part of this, the government committed to consulting on further cross public sector action on exit payment terms, to reduce the costs to the taxpayer of redundancy payments and ensure greater consistency between workforces. The government is therefore consulting on options to make public sector exit compensation terms fairer, more modern and more consistent.

2.3 **Taking forward exit payment reform proposals**

The Spending Review 2015 announced the government's intention to consult on cross-public sector action on exit payment terms, to reduce the costs of redundancy pay-outs and ensure greater consistency between workforces. This consultation, launched in February 2016, set out that the government would consider three key principles to underpin reform: fairness; modernity and flexibility; and greater consistency. It set out a package of proposed maximum levels for the calculation of different elements of exit packages to apply across the public sector, subject to negotiation at workforce level.

2.4 In September 2016, the government published a response to this initial consultation. Around 350 responses were received, from trade unions; public sector employers and employer organisations; and public sector workers and others responding in an individual capacity. The initial consultation document and the government's response can be accessed via this link: www.gov.uk/government/consultations/further-consultation-on-limiting-public-sector-exit-payments

2.5 **The current system for local government redundancy compensation payments**

Local government lump-sum redundancy arrangements vary considerably between employers. However, they must operate within a framework set by regulations. Those regulations are the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 ("the 2006 Regulations")¹. These regulations provide that the total maximum lump-sum pay-out is 104 weeks' (24 months') pay, although most local authorities currently provide for less than this.

¹ Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 SI/ 2914 <http://www.legislation.gov.uk/uksi/2006/2914/made>

2.6 The current system for local government early access to pensions

Under Regulation 30(7) of the Local Government Pension Scheme Regulations 2013² employees aged 55 or more who are members of the Local Government Pension Scheme (LGPS) are currently entitled to immediate access to unreduced pension where:

- The member is dismissed from an employment on redundancy or business efficiency grounds, or
- The employment is terminated by mutual consent on business efficiency grounds.

An employer participating in LGPS which provides early unreduced payment of pension benefits has to make additional payments to the relevant pension fund to make up the resulting shortfall in the pension funding. This is because provision for early exits is not included in their standard employer contributions. This extra payment is also known as the pension strain cost³.

The purpose of this consultation

2.7 This consultation is **not** seeking views or representations on the government's position regarding exit pay reform. The framework for reform has been produced following extensive consultation led by HM Treasury. Instead, this consultation is seeking information on:

- The effect/s that the proposals for reform outlined below will have on the regulations which currently govern exit payments (including both redundancy compensation pay and early access to pensions) in local government.
- The impact that the proposals for reform outlined in paragraph 3.4 will have on the local government workforce. Consultation responses will inform a full impact assessment, including equalities considerations which will be issued alongside the regulations when these are laid before Parliament.

² The Local Government Pension Scheme Regulations 2013
<http://www.legislation.gov.uk/ukxi/2013/2356/regulation/30/made>

³ The precise arrangement by which strain cost is paid varies between funds. Some funds ask for payment on a case by case basis, others may have allowed for a certain number of exits in setting the regular contribution level. In those cases, if experience differs from what is assumed then this is taken into account when that employers contributions are next adjusted.

3. Reforms to public sector exit payments

3.1 The government believes that it is an important principle that exit arrangements are determined at workforce level. However, given that exit arrangements in all workforces are ultimately funded by the taxpayer, it is clearly appropriate for the government to ensure that these provide value for money.

3.2 However, the government legislated for a cap of £95,000 for all exit payments in the public sector in the Small Business Enterprise and Employment Act 2015 (later amended by the Enterprise Act 2016). The 2015 Act sets out the duty to implement the cap through secondary legislation and HMT carried out a consultation on a Public Sector Exit Payment Cap in 2019 which proposed introducing a cap of £95,000 on the total value of exit payments across the Public Sector (although with some exceptions under consideration). That consultation was completed and regulations for this were laid on 21 July 2020.

The response to the consultation is available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902087/Public_sector_exit_payments_Consultation_response.pdf

3.3 The government believes that an approach of individual sector workforce negotiations within an overarching framework strikes the right balance in ensuring fairness to the individual and the taxpayer and ensuring that there is greater consistency between schemes while recognising the differences between workforces. This consultation therefore contains proposals to implement the measures specifically for the local government workforce.

3.4 The overarching framework was set out in the Government Response published in February 2016⁴. The key elements can be summarised as:

- A maximum of three weeks' pay per year of service;
- A maximum of 15 months on the amount of a redundancy payment;
- A maximum salary of £80,000 on which an exit payment can be based;
- Limiting publicly funded pension top-ups;
- A £95k cap on the total of all forms of compensation, including redundancy payments, pension top-ups, compromise agreements and special severance payments.

⁴ <https://www.gov.uk/government/consultations/further-consultation-on-limiting-public-sector-exit-payments>

4. Proposals for reforms to exit payments in local government

4.1 The government has asked those government departments responsible for the main public sector workforces to negotiate and agree reforms directly with each sector. MHCLG is therefore leading on local government workforce reform⁵.

4.2 Total exit payments will be capped at £95,000 in line with HMT's proposed reforms.

4.3 Following preliminary discussions with local government sector representatives, MHCLG's proposals to reform redundancy payments in local government are as follows:

- a) A maximum tariff for calculating exit payments of three weeks' pay per year of service. Employers could apply tariff rates below these limits.
- b) A ceiling of 15 months (66 weeks) on the maximum number of months' or weeks salary that can be paid as a redundancy compensation payment. Employers will have discretion to apply lower limits, as they do at present under 2006 Regulations.
- c) A maximum salary of £80,000 on which a redundancy compensation payment can be based, to be reviewed on an annual basis using an appropriate mechanism, for example: CPI (Consumer Prices Index).

Question 1:

Are there any groups of local government employees that would be more adversely affected than others by our proposed action on employer funded early access to pension?

If so, please provide data/evidence to back up your views.

How would you mitigate the impact on these employees?

Question 2:

What is the most appropriate mechanism or index when considering how the maximum salary might be reviewed on an annual basis?

Question 3:

Are there any groups of local government employees that would be more adversely affected than others by our proposed ceiling of 15 months or 66 weeks as the maximum number of months' or weeks salary that can be paid as a redundancy payment?

If so, please provide data / evidence to back up your views.

How would you mitigate the impact on these employees?

⁵ These proposals will cover all employers which participate in the LGPS and are named in Schedule x of the draft Exit Payment Regulations, which are due to be made under s153A of the Small Business, Enterprise and Employment Act 2015.

Question 4:

Are there any groups of local government employees that would be more adversely affected than others by our proposal to put in place a maximum salary of £80,000 on which an exit payment can be based?

If so, please provide data / evidence to back up your views.

How would you mitigate the impact on these employees?

4.4 Most importantly we wish to introduce an element of choice into the current arrangements. At present, employees may have no option but to take immediate payment of their pension on being made redundant. That means that they cannot accrue further benefits (in that employment) and it sends a signal that their working life is over. In the modern world of work, people have good reasons for wanting to work longer and someone made redundant in their late 50's may still look forward to a satisfying career for many years to come. However, we recognise that for those who have done demanding work throughout their adult lives, they should have the security of a reliable income with a suitable enhancement.

4.5 We therefore propose that for members of the LGPS who are at least 55 years old when made redundant, the benefits and the associated strain cost due from the employer should be limited as follows:

- The strain cost cannot exceed the overall cap contained in the Exit Payment Regulations (£95k)
- Strain cost will be further reduced by the value of any Statutory Redundancy Payment required to be paid (which the employee will still receive as a cash payment)
- A further reduction would be made to reflect any voluntary payments made to cover grant of additional pension under regulation 31 of the LGPS Regulations 2013
- Any reduction in the strain cost due to the above limitations may be made up by the worker from his own resources
- The member will receive an actuarially adjusted pension benefit in line with the revised strain cost under these provisions.

4.6 Where the employer pays any amount of strain cost in respect of an employee's exit, an employer may not grant an employee any discretionary redundancy payment. However, in the rare cases where the discretionary payment would have had a higher value than the strain cost the member will be entitled to take the pension enhancement delivered by the strain cost due under paragraph 4.5 plus a cash payment equal to the difference between the strain cost and discretionary redundancy payment.

4.7 However, the member can choose to forgo the pension enhancement due under paragraph 4.5 and instead receive an actuarially reduced pension (using standard early retirement factors) and take the discretionary redundancy payment to which they would be entitled under their employer's redundancy scheme, subject to it being consistent with the proposals at paragraph 4.3 above.

4.8 We are also proposing to grant employees a further option which would be to defer their pension benefits (as accrued, with no enhancement and not coming into immediate payment) and to receive the discretionary redundancy payment under their

employer's redundancy scheme, subject to it being consistent with the proposals at paragraph 4.3 above.

4.9 As the effect of these provisions and the cap established by the Exit Pay Regulations will be the same for all pension funds in England, we believe that it would be appropriate to have a consistent approach taken to the calculation of strain costs between funds. Hence the Secretary of State has asked the Government Actuary's Department to provide actuarial guidance on this for funds to follow. We will consult on this actuarial guidance in due course.

Relaxation of the cap

4.10 There will be some circumstances where it is necessary or desirable to relax the overall cap on benefits set out in the Exit Payment Regulations (£95k). Therefore, the regulations allow for discretionary relaxation of the cap in exceptional circumstances, including where imposing the cap would cause genuine hardship.

4.11 The full council of a local authority has a delegated power to relax the cap in relation to local government bodies for which it has responsibility. The London Assembly has the power to relax in respect of exit payments made by the Greater London Authority.

4.12 The power to relax must be exercised in accordance with the mandatory directions in section 5 of the HMT statutory guidance to the Exit Payment Regulations. In line with that guidance, all requests by LGPS scheme employers to relax the cap must be approved by the appropriate Minister of the sponsoring department. For local councils that will be the Secretary of State for Housing, Communities and Local Government.

4.13 There may be circumstances in which our Minister cannot approve a business case for relaxation in accordance with the mandatory directions but believes the cap should be relaxed on a discretionary basis. In these circumstances, MHCLG Ministers will require agreement from HMT Ministers to approve the relaxation.

Question 5:

Do you agree with these proposals? If not, how else can the Government's policy objectives on exit pay be delivered for local government workers?

Question 6:

Do you agree that the further option identified at paragraph 4.8 should be offered?

Question 7:

Are there any groups of local government employees that would be more adversely affected than others by our proposals?

If so, please provide data/ evidence to back up your views.

How would you mitigate the impact on these employees?

5. Impact analysis

5.1 Economic and fiscal impacts

Analysis of economic impact is being carried out for MHCLG by the Government Actuary Department. We will consult on this separately in due course.

5.2 Social impacts – including distributional and equalities

The Office for National Statistics (ONS) Labour Force Survey evidence suggests that the public sector has a significantly greater proportion of women and older workers than the workforce population as a whole, as well as slightly greater proportions of those with other protected characteristics, including disability. However, within this there are significant variations between different workforces.

5.3 MHCLG will produce a full impact assessment, including equalities considerations, and the government will carefully consider these impacts in making decisions on the appropriateness or otherwise of proposed reforms in each workforce. We are seeking more information to feed into the equalities assessment via this consultation document.

5.4 The government believes, to a large extent, that any impact on protected groups as a result of these reforms would simply be a natural consequence of the composition of these workforces and does not believe that there would necessarily be disproportionate impacts on particular groups aside from this.

5.5 Environmental impacts

This policy is assumed to have no tangible environmental impacts.

5.6 Costs and benefits – direct and indirect

The policy would produce a benefit to employers in terms of reductions in redundancy compensation payments which would contribute more widely to the public finances. The potential effects include: the reduction in redundancy compensation to affected employees (which the government believes is justified on grounds of fairness and affordability), and administrative costs to employers of implementing the necessary changes to their redundancy compensation arrangements.

5.7 Regulatory impact

This policy primarily affects the public sector and so is not expected to increase regulation on private business in the wider economy. Depending on final decisions on the scope of the Exit Payment Regulations, the policy may also have an impact on bodies employing staff previously from the public sector who are subject to Transfer of Undertakings (Protection of Employment) (TUPE) rules. These impacts cannot be quantified at this stage.

Question 8:

From a local government perspective, are there any impacts not covered at Section 5 (Impact Analysis) which you would highlight in relation to the proposals and/or process above?

5.8 Employees receiving pay and pension concurrently

To provide greater transparency in local authorities and give local taxpayers the information they need to hold authorities to account about how they spend their money, each local authority is required to have its own policy on the abatement of pension benefits when people in receipt of a local government pension are re-employed in local government.

5.9 Clearly, the purpose of a pension is to provide an income in retirement.

Therefore, local authorities should use their pay policy statements, which they are required by the Localism Act 2011 to prepare and publish annually, to explain their policies toward the reward of chief officers who were previously employed by the authority and who, on ceasing to be employed, were in receipt of a severance payment from that authority. Public bodies should seek to:

- Safeguard public expenditure, by restricting the total remuneration made from public funds for those who have not genuinely retired from a public service career;
- Avoid accusations of favouritism or even corruption if public servants, senior managers and Board Members were allowed to receive both pay and pension from public funds whilst remaining in public service, particularly if they remain in the same job, and;
- Ensure value for money is achieved and that public funding targeted through expenditure and tax relief at long-term retirement provision is focussed on retirement or preparation for retirement, rather than being used during part of an employee's working life.

Question 9:

Are these transparency arrangements suitably robust? If not, how could the current arrangements be improved?

5.10 This should include any local policy towards ex-employees later engaged as chief officers under a contract for services. Public authorities - which include local authorities - will be aware of their obligations, namely that if they plan to offer a temporary job to someone who works through their own intermediary (this is often their own company) they will need to decide whether the off-payroll working rules (known as IR35) apply. These off-payroll working rules are in place to make sure that where an individual would have been an employee if they were providing their services directly, they pay broadly the same tax and National Insurance contributions (NICs) as an employee.

5.11 Similarly, authorities should include their policies toward the reward of chief officers who are also in receipt of a pension under the Local Government Pension Scheme. These policies should take account of their agreed approach on abatement of pensions.

Question 10

Would any transitional arrangements be useful in helping to smooth the introduction of these arrangements?

Question 11

Is there any other information specific to the proposals set out in this consultation which is not covered above which may be relevant to these reforms?

6. Next Steps

6.1 Individual government departments are now working to negotiate, agree reforms and then implement them with specific public sector workforces. For reference, HMT's consultation on reforming exit payments in the public sector as a whole can be found at: <https://www.gov.uk/government/consultations/consultation-on-a-public-sector-exit-payment-cap/consultation-on-a-public-sector-exit-payment-cap>. MHCLG is therefore leading on local government exit pay reform.

6.2 Where applicable, implementation will be through changes to secondary regulations. The government will reserve the ability to set a reform framework in future primary legislation depending on progress in implementing the reforms.

6.3 The government would ensure any reforms do not breach the provisions of the Public Service Pensions Act 2013. Employees would remain entitled to pensions they have accrued during their employment and there would be no change to the age at which 'normal' retirement is available under existing scheme terms.

6.4 The government will carefully consider impacts around equalities and the economic and fiscal landscape as well as the practical implications of implementing any reforms.

In undertaking this consultation, we ask for general information and views on these proposed reforms and the draft regulations.

Question 12

Would you recommend anything else to be addressed as part of this consultation?

7. Consultation Questions

1. Are there any groups of local government employees that would be more adversely affected than others by our proposed action on employer funded early access to pension?
 - If so, please provide data/evidence to back up your views?
 - How would you mitigate the impact on these employees?
2. What is the most appropriate mechanism or index when considering how the maximum salary might be reviewed on an annual basis?
3. Are there any groups of local government employees that would be more adversely affected than others by our proposed ceiling of 15 months or 66 weeks as the maximum number of months' or weeks salary that can be paid as a redundancy payment?
 - If so, please provide data/evidence to back up your views?
 - How would you mitigate the impact on these employees?
4. Are there any groups of local government employees that would be more adversely affected than others by our proposal to put in place a maximum salary of £80,000 on which an exit payment can be based?
 - If so, please provide data/evidence to back up your views?
 - How would you mitigate the impact on these employees?
5. Do you agree with these proposals? If not, how else can the Government's policy objectives on exit pay be delivered for local government workers?
6. Do you agree that the further option identified at paragraph 4.8 should be offered?
7. Are there any groups of local government employees that would be more adversely affected than others by our proposals?
8. From a local government perspective, are there any impacts not covered at Section 5 (Impact Analysis), which you would highlight in relation to the proposals and/or process above?
9. Are these transparency arrangements suitably robust? If not, how could the current arrangements be improved?
10. Would any transitional arrangements be useful in helping to smooth the introduction of these arrangements?
11. Is there any other information specific to the proposals set out in this consultation, which is not covered above which may be relevant to these reforms?
12. Would you recommend anything else to be addressed as part of this consultation?

Annex A - Personal data

The data protection legislation is changing and a new Data Protection Act will be published in May 2018. It will give you greater powers to protect your own privacy, and place greater responsibility on those processing your data for any purpose. The following is to explain your rights and give you the information you will be entitled to under the new Act. Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

The identity of the data controller and contact details of our Data Protection Officer

The Ministry of Housing, Communities and Local Government (MHCLG) is the data controller. The Data Protection Officer can be contacted at dataprotection@communities.gsi.gov.uk

Why we are collecting the data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

Legal basis for processing the data

Part 2 of the draft Data Protection Bill (subject to change before it becomes an Act) states that as a government department, MHCLG may process personal data is necessary for the effective performance of a task carried out in the public interest i.e. a consultation.

With whom we will be sharing the data

We will not be sharing personal data outside of the MHCLG.

For how long we will keep the personal data, or criteria used to determine the retention period.

Your personal data will be deleted in accordance with our records retention and deletion policy which can be found on our website.

<https://www.gov.uk/government/publications/departmental-records-retention-and-disposals-policy>

Your rights, e.g. access, rectification, erasure

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record

- c. to have all or some of your data deleted or corrected
- d. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

MHCLG will not send your personal data overseas.

However, you may wish to be aware that Survey Monkey stores all data on its servers in the USA. Survey Monkey are certified under the EU-US Privacy Shield Programme which we consider to be adequate to protect the type of personal data we need from you to respond to this consultation. More information can be found on their website at https://help.surveymonkey.com/articles/en_US/kb/I-am-in-Europe-How-do-SurveyMonkey-s-privacy-practices-comply-with-laws-in-the-EU

This data will not be used for any automated decision making.

Annex B - About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004).

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 the Ministry.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).