



Cabinet Office

Civil Service Compensation Scheme

Consultation on the effect of the Restriction of Public Sector Exit
Payment Regulations on the Civil Service Compensation Scheme.

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Summary

- While exit payments are important for employers, to allow them to reform their workforces where necessary, and for employees, acting as a bridge until retirement or support until they find new work, they must represent value for money and be fair to the taxpayers who fund them. In addition to this, the Government does not believe that the majority of six figure exit payments, which are far in excess of those available to most workers in the public sector or wider economy, are proportionate or provide value for money for taxpayers.
- To help ensure exit payments in the public sector represent value for money, the Government has introduced powers to cap exit payments in the public sector at £95,000 through the Restriction of Public Sector Exit Payment Regulations 2020 (“The Regulations”).
- HM Treasury (HMT) previously ran a public consultation on the draft Regulations in 2019, with its response published in July 2020. This consultation was open to contributions from all and dealt with a number of topics including:
 - Who the Regulations should be applied to
 - The mandatory and discretionary exercise of the power to relax the cap restrictions
 - The guidance supporting the implementation of the Regulations
- The Regulations have a coming into force date of the 4th November 2020 and apply to the whole of the public sector including the Civil Service, with some rules applying differently for the devolved administrations in Wales, Scotland and Northern Ireland. **The remit of this consultation is not to discuss whether the cap should or should not be implemented in the Civil Service, but rather to discuss proposed amendments to the terms of the Civil Service Compensation Scheme (CSCS) arising from introduction of the Regulations.**

Overview

Topic of this consultation	This consultation is on the effect of the Regulations on the Civil Service Compensation Scheme (CSCS).
Purpose of this consultation	The purpose of this consultation is strictly to discuss changes required to the CSCS scheme terms brought about by the Regulations coming into force.
Target of this consultation	This consultation is targeted at Trade Unions representing civil servants and other workers of those organisations covered by the terms of the CSCS
Duration of this consultation	8 weeks
Enquiries and response	Enquiries about the content or scope of the consultation should be sent to civilservicepay@cabinetoffice.gov.uk
Consultation process	Following initial consideration of the proposals contained in this consultation document we will write to representative Trade Unions with plans for verbal discussions on the relevant topics
After the consultation	The Government will consider all responses received throughout the consultation process. Subject to discussions with representative Trade Unions and responses received to this document, the Government's present intention is to make amendments to the Civil Service Compensation Scheme limited to those required due to the application of the Regulations, and to lay such amendments before Parliament.

Purpose of this Consultation

1. The purpose of this consultation is to seek views on changes required to the CSCS scheme terms due to the effect of the Regulations.

Context for this Consultation

The Restriction of Public Sector Exit Payments Regulations 2020

2. In 2015, the Government enacted framework powers in the Small Business, Enterprise and Employment Act 2015 to allow for clawback of paid public sector exit payments in certain circumstances. The Enterprise Act 2016 amended the 2015 Act to provide powers for regulations to impose a £95k cap on exit payments.
3. HM Treasury (HMT) ran a public consultation on the draft regulations in 2019 and published their response in July 2020. Following on from this, HMT signalled its intention to ensure the Regulations were brought into force either before the end of the year or early 2021.
4. The Regulations were debated in the Commons (21/09/20) and Lords (23/09/20) respectively and received assent in both. Following this, the Regulations were made on the 14 October with a coming into force date of the 4 November.
5. The Regulations impose a cap of £95k on any exit payments made in the public sector in consequence of termination of employment or loss of office.
6. An exit payment is subject to the cap if it is the type of payment described in regulation 5(2) of the Regulations when made whether under contract of employment or otherwise in consequence of termination of employment or loss of office. Regulation 6 lists the types of payments which are exempt from the restriction¹.

¹ <https://www.legislation.gov.uk/ukdsi/2020/9780348210170>

7. HMT issued Directions and Guidance supporting the Regulations on the 29th October, and made it clear that these are subject to review in particular following the outcome of relevant consultation exercises and, **where relevant, amendments will be made following the outcome of these consultation exercises.**
8. The Regulations cover exit payments made by the authorities listed in the schedule that accompanied them. The Regulations do **not** cover exit payments made by:
 - a. an authority which exercises functions devolved to Northern Ireland
 - b. the Scottish Parliamentary Corporate body or any authority which exercises functions devolved to Scotland, with the exception of the following which are covered by the Regulations: payments made by the Scottish Administration to non-Ministerial office holders and staff of the Scottish Administration
 - c. “relevant Welsh exit payments” made to the following office-holders:
 - i. member of Senedd Cymru/Welsh Parliament;
 - ii. the First Minister for Wales;
 - iii. Welsh Minister appointed under section 48 of the Government of Wales Act 2006;
 - iv. Counsel General to the Welsh Government;
 - v. Deputy Welsh Minister;
 - vi. member of a county council or a county borough council in Wales;
 - vii. member of a National Park Authority in Wales;
 - viii. member of a Fire and Rescue Authority in Wales.
9. Separate regulations and guidance may be issued by the appropriate devolved administration for payments not covered by the Regulations.
10. Devolved administrations and government departments can provide further guidance on the application of the cap for their responsible bodies that are in the schedule to the Regulation. Any additional guidance published by government departments should comply and be read in conjunction with the HM Treasury documents.
11. The power to relax restrictions in relation to exit payments may be exercised by a Minister of the Crown unless the payment is:
 - a. a relevant Welsh exit payment (these are not covered by the Regulations as explained above)

- b. made by a devolved Welsh authority, when it is exercised by the Welsh Ministers
 - c. made by a relevant Scottish authority with the exception of certain payments made by the Scottish Administration
 - d. made by a local authority in England or the Greater London Authority
 - e. made by a fire and rescue authority in England
12. The Minister of the Crown's power to relax restrictions including where that power has been delegated can only be exercised either in compliance with the conditions set out in HM Treasury Directions or with the consent of HM Treasury, with the exception of payments made by a devolved Welsh authority. Where the exit payment is made by a devolved Welsh authority, the power to relax restrictions is conferred upon Welsh Ministers, meaning neither HMT consent nor compliance with HMT Directions is required for relaxing the restriction in relation to these payments.
13. HM Treasury Directions set out circumstances where the power to relax restrictions must be exercised ("mandatory cases") and may be exercised ("discretionary cases"). The mandatory circumstances are as follows and must be exercised by a Minister of the Crown (which for the purposes of the CSCS would be the Minister for the Cabinet Office), the Ministers of the relevant devolved administration or the relevant Minister:
- where an obligation to pay an exit payment arises as a result of the 1981 or 2006 Transfer of Undertakings (Protection of Employment) Regulations or as a result of the EU Acquired Rights Directive;(TUPE)
 - where a payment is made to avoid employment tribunal litigation in relation to a complaint that someone has suffered a detriment or been dismissed as a result of whistleblowing or being involved in health and safety activities
 - where a payment is made to avoid employment tribunal litigation in relation to a complaint of discrimination under the Equality Act 2010
 - certain payments made by the Nuclear Decommissioning Authority
14. In discretionary cases, for the purposes of the CSCS consent for the payment is required from the Cabinet Office Principal Accounting Officer, the Minister for the Cabinet Office and HMT, except in cases relating to the devolved administrations. The relevant circumstances for discretionary exercise of the power are as follows:
- that not exercising the power would cause undue hardship
 - that not exercising the power would significantly inhibit workforce reform

- that a written arrangement to exit was entered into before the regulations came into force with the intention was for the exit to occur before that date , but the exit was delayed until after that date and the delay was not attributable to the employee or office holder concerned

15. The Minister of the Crown or a delegated authority can relax the cap outside of the circumstances outlined in HM Treasury Directions only with HM Treasury Consent. In these exceptional cases, the relevant delegated authority or employer must submit a business case to the sponsoring department for approval of the Principal Accounting Officer and the relevant Minister before submitting the business case to HM Treasury for approval.

16. A Welsh Minister has the power to relax the cap in relation to exit payments made by a devolved Welsh authority. This power is not subject to the requirement to relax only in compliance with conditions set out in HM Treasury Directions or with HM Treasury consent. This means the provisions in HM Treasury Directions in relation to relaxing the cap including provisions in relation to mandatory and discretionary waivers do not apply to exit payments made by a devolved Welsh authority.

17. Regulation 8 of the Regulations allows for organisations whose current scheme terms do not allow for the payment of partial employer funded pension buyout, to instead make a cash compensation payment not exceeding £95k to the individual or scheme.

The Civil Service Compensation Scheme

18. The CSCS sets the terms for paid exits in the Civil Service and certain other public sector organisations. The main types of exit are voluntary and compulsory Redundancy as well as voluntary exit. Eligible Civil Servants have a statutory right to access the CSCS.

19. The Cabinet Office has responsibility for approving all exit schemes (including individual exits) made under the CSCS. This responsibility has been delegated to the Scottish and Welsh Government for schemes operated within devolved bodies. As mentioned above in paragraph 16, a Welsh Minister has the power to relax the cap in relation to exit payments made by a devolved Welsh authority meaning Cabinet Office approval will not be required for these exit payments.

20. The Cabinet Office has operated a controls process since 2015 to review exit schemes which seek exit payments under the CSCS over £95K. All exits made under the CSCS require Cabinet Office approval (or where relevant, approval by a Devolved Administration) and there is an additional control process whereby bulk exit schemes (20 or more) and high value exits (of over £95K) require specific approval from the Minister of the Cabinet Office (or where relevant, approval by a Devolved Administration). As mentioned above in paragraph 16, a Welsh Minister has the power to relax the cap in relation to exit payments made by a devolved Welsh authority meaning Cabinet Office approval will not be required for these exit payments.
21. Organisations cannot commence formal consultation before Cabinet Office approval is given, but can start informal consultation with staff affected and the relevant Trade Unions, to let them know that a business reorganisation is going to take place. Departments cannot make any offer of voluntary exit or redundancy until they get their scheme application approved by the Cabinet Office.
22. Departments are expected to continue to look for redeployment opportunities for at risk staff throughout the exit process
23. Under the terms of the CSCS, individuals offered a voluntary redundancy package who have reached their minimum scheme pension age (50 or 55) and wish to access their pension before normal pension age, are entitled to have the cost of buying out the actuarial reduction to their pension met by their employer. The employer does this, by topping up the compensation due to the individual until it reaches the amount needed to enable them to have full access to their pension provisions.
24. The current scheme rules only allow for the employer to top up the pension amount in full. Partial pension buyout is not possible.

Wider Civil Service Compensation Scheme Reforms

25. Separate to this consultation, the Cabinet Office is continuing to consult with representative Trade Unions with a view to reaching agreement on proposals to reform the CSCS.
26. The consultation is focused on a set of principles to reform the CSCS. The Government's proposals in this ongoing consultation include making changes to the tariff for calculating compensation and reforming access to pension provision to meet these principles.

27. The consultation to reform the CSCS is separate to the consultation set out in this document, which is focused on amending the CSCS to make clear the effect of the £95k cap.

Scope of this Consultation

28. The anticipated length of this consultation is eight weeks from the day this document is issued, but we recognise that this may need to be longer if further discussions are required.
29. As the Regulations are owned by HMT and have already been subject to public consultation, we cannot consult on the specifics of the Regulations themselves, or whether they should be imposed on the CSCS. This means that the following is **out of scope** for this consultation:
- a. whether the Regulations apply to the CSCS
 - b. the value of the cap
 - c. the coming into force date for the Regulations
 - d. the type of payments covered by the Regulations
 - e. the power of a devolved administration, local authority or fire and rescue authority to relax restrictions for payments in excess of £95k.
 - f. any other requirements placed on the CSCS by virtue of the Regulations themselves
30. In addition to the above, the following non-exhaustive list is out of scope for this consultation:
- a. the tariff of the CSCS
 - b. any provisions related to employer funded top up outside of those related to regulation 8 of the Regulations
31. The scope of this consultation is limited to the remit as set in this document. The outcome of this consultation will be taken in account by HMT when reviewing HMT Directions and Guidance and where appropriate amending the documents as a result of the consultation responses received.
32. The following represents the areas we feel would be beneficial to consult on. This is not an exhaustive list and we recognise that other areas may come up as we receive feedback and discussions develop:
- a. specific amendments to the wording of the terms of the CSCS to make clear that the Regulations have effect

- b. clarification on the process for approving exits made by organisations covered by the terms of the CSCS to pay a total exit payment in excess of £95k, except where these come under the powers of devolved administrations.
- c. clarification around the guidance issued by the Cabinet Office to supplement HMT Guidance (issued to all employers) and Treasury Directions on when exercise of the relaxation power/waiver in HMT Directions might be appropriate
- d. clarification on the evidence required from organisations to support their applications to make exit payments in excess of £95k.
- e. the detail of the equality impact assessment and those the cap is most likely to impact
- f. circumstances around the exercise of the discretionary relaxation power
- g. the meaning of an exit payment made “in consequence of termination of employment or loss of office” as contained in the Regulations
- h. feedback for HMT on the operation of the Regulations, HMT Directions and/or Guidance.

Question 1: Are there any other areas you feel the Government may wish to consider consulting on within the context of the effect the Regulations have on the terms of the CSCS?

The Government's proposals

33. In line with the above scope of the consultation, the Government has set out its initial proposals against each of the topics for discussion.

Specific amendments to the wording of the terms of the CSCS to make clear that the Regulations have effect

34. The Government proposes amending the terms of the CSCS to make it clear that the Regulations have effect. As the Regulations apply to a prescribed list of public sector bodies and do not exempt the Civil Service, the Government must update the CSCS terms to make it clear that the Regulations have effect. It is proposed that section 1 of the CSCS rules will be amended to add the following rule: **“All compensation payments paid under this scheme and in consequence of a civil servant leaving employment will be subject to the application of the Restriction of Public Sector Exit Payments Regulations 2020”**

Clarification on the process for approving exits made by organisations covered by the terms of the CSCS to pay a total exit payment in excess of £95k.

35. As outlined in paragraphs 12-15 the Cabinet Office currently operates a controls process including Cabinet Office Ministerial approval for exits in excess of £95k, with alternative arrangements in place in relation to the devolved administrations. Although the Regulations make it clear that in cases where an organisation wants to use a discretionary relaxation power, final approval will be needed from HMT, there is scope to clarify the process for dealing with such requests made under the terms of the CSCS in the Civil Service.
36. The Government believes that the current approvals process for exits made under the terms of the CSCS should continue, except where these fall under the powers of the devolved administrations. This means that exits in excess of £95k will first be scrutinised by Cabinet Office Ministers to ensure that the organisation has met their obligations under the Cabinet Office Redundancy Protocol 2016 (the Protocol). In addition to compliance with the Protocol, departments will need to provide evidence to support any application for exercise of either a mandatory or discretionary relaxation of the cap. If the department wishes to seek a mandatory relaxation, then they will only need the approval of Cabinet Office Ministers, but will still need to cite which mandatory provision in HMT Directions they wish to rely upon and provide evidence as to why it's appropriate.
37. Once Cabinet Office Ministers have given their approval on specific applications, for discretionary cases, the Cabinet Office will then seek HMT approval and notify the relevant organisation aware of the final decision. This approach is consistent with HMT's draft guidance².
38. There is no route for appealing decisions made by HMT, but if the organisation feels that additional information has come to light which may result in a different outcome, then the Cabinet Office may consider updated applications.
39. Maintaining the current £95k control process will ensure continued support for a Civil Service wide approach to handling exits and may provide further opportunities for suitable alternative employment to be considered for those at risk of redundancy. It will also ensure that the Cabinet Office is able to

² Paragraph 5.10 of the HMT Restriction of Public Sector Exit Payments: Guidance on the 2020 Regulations

continue to maintain central oversight over the number of redundancies in departments.

Clarification around the guidance issued by the Cabinet Office to supplement HMT Guidance (issued to all employers) and Treasury Directions on when exercise of the relaxation power/waiver in HMT Directions might be appropriate

40. The Cabinet Office already provides a number of existing guidance documents to support employers with managing exits under the CSCS. Primarily these deal with the steps departments need to take when conducting an exit programme, but also deals with aspects such as redeployment and the mitigations the Cabinet Office expect departments to take before redundancies occur.
41. These guidance documents are unlikely to need to be substantially updated in line as a result of the application of the Regulations to the CSCS, but in respect of exits in excess of £95k, the Government believes there should be additional direction for Civil Service organisations on top of what is provided by HMT to assist in such cases where a department feels a discretionary exercise of the relaxation power is appropriate.
42. Although there is scope to feedback on the HMT draft Guidance and Directions (more information on our proposals here can be found in paragraphs 50 - 52), these proposals are drafted within the remit set by those documents in their current draft state.
43. The Government proposes making amendments to relevant Cabinet Office owned guidance documents to cover both the mandatory and discretionary power to relax the cap as outlined in the HMT Guidance. For the mandatory relaxation power, this will mean outlining the instances and details included in the HMT guidance, but also including examples to make clear exactly when the mandatory relaxation power would be applicable.
44. For the discretionary relaxation cases, again Cabinet Office guidance will reflect the positions outlined in the HMT Guidance and provide examples of what might be considered appropriate. In addition to this, the Government proposes including a non-exhaustive list of the type of evidence that departments should look to provide when making an application seeking exercise of a discretionary relaxation.
45. The Cabinet Office will also ensure that departments update their internal guidance and processes to reflect the changes made to the £95k controls process. In addition to this, the Cabinet Office will update the business case

templates hosted on the Scheme Administrators website to reflect the requirement for departments to cite the exemption they wish to use in cases involving exit payments in excess of £95k.

46. If the HMT draft Guidance and Directions are amended, the Cabinet Office will look to reflect these changes in relevant Cabinet Office owned guidance documents, subject to further discussion with the representative trade unions.

Separate guidance will apply for devolved administrations where power to relax restrictions or exemptions from the Regulations or HM Treasury Directions exists.

Clarification on the evidence required from departments to support their applications to make exit payments in excess of £95k.

47. As part of the updated guidance documents put out by the Cabinet Office to reflect the effect of the Regulations on the CSCS, the Cabinet Office is proposing to specify the type of evidence a department should provide when requesting to use one of the discretionary relaxation powers. Below we have set out our initial proposals against each one.

48. *That not exercising the power would cause undue hardship* - evidence provided should include, but not be limited to:

- a. details of the individual's personal circumstances
- b. likelihood of redeployment options both within the Civil Service and outside of it, including matters such as location
- c. details of the individual's family members and any relevant caring responsibilities
- d. the salary of the individual
- e. why those circumstances are exceptional

49. *That not exercising the power would significantly inhibit workforce reform* - evidence provided should include, but not be limited to:

- a. details of the workforce reform programme
- b. whether the workforce reform programme has been ongoing since before the Regulations came into effect
- c. details of whether other individuals have left the organisation under the same workforce reform programme before the Regulations came into effect
- d. issues that have arisen in the organisation related to the Regulations effect
- e. an explanation as to why capping payments at £95k would restrict the workforce reforms including whether individuals have first been offered

the chance to leave the organisation with an exit payment capped at £95k

- f. why those circumstances are exceptional

50. *That a written agreement to exit was entered into before the regulations came into force with a view that the exit takes place before that date, but the exit was delayed until after that date and the delay was not attributable to the employee or office holder concerned* - evidence provided should include, but not be limited to:

- a. written proof that an individual's exit date was scheduled before the Regulations came into force
- b. evidence that an organisation pushed their exit dates back due to steers beyond the individual's control

51. For mandatory relaxation requests, departments will need to demonstrate how the specific case satisfies the relevant mandatory grounds.

The detail of the equality impact assessment and those the cap is most likely to impact

52. HMT has published their Equalities Impact Assessment on the implementation of the Regulations on public sector exit schemes³. The Government does not consider that the implementation of the exit payment cap will result in any unjustified differential impact to individuals with the following protected characteristics: age, gender, disability, ethnicity, religion or belief, gender reassignment, pregnancy and maternity, sexual orientation and marriage/civil partnership.

53. Despite this, the Government is committed to carrying out and publishing an equality impact assessment on the effect of the Regulations on the Civil Service. This will be published shortly and time given for feedback and consultation on its contents.

The meaning of an exit payment made “in consequence of termination of employment or loss of office” as contained in the Regulations.

54. As outlined in paragraph five, the Regulations impose a cap on exit payments when made in consequence of termination of employment or office. The Regulations make clear through regulation 5 what types of payments are included and in Regulation 6, which types of payments are exempt from the application of the cap⁴. It is not within the scope of this consultation to discuss

³ <https://www.gov.uk/government/publications/restriction-of-public-sector-exit-payments>

⁴ <https://www.legislation.gov.uk/ukdsi/2020/9780348210170>

the types of payment subject to the cap or exemptions outlined in the Regulations, but the Government does want to make sure Guidance and/or Directions assist in clarifying when and how the cap will operate in practice by making amendments to the Guidance or Directions where appropriate.

55. To ensure departments understand the requirements set by the Regulations in this respect, the Cabinet Office proposes to amend relevant guidance documents to make clear the position outlined in the Regulations. In addition to this, departments will be provided with upskilling sessions through the Recruitment and Redeployment Working Group that cover this ground.

Feedback for HMT on the operation of the Regulations, HMT Directions and/or Guidance

56. As set out in paragraphs 22 - 24, the Regulations themselves are not within the scope of this consultation. However, there is an opportunity to provide feedback and influence the draft HMT Guidance and Directions.

57. The Cabinet Office commits to listen, and consider in good faith, feedback collated and discussions with the representative Trade Unions, and then to write to HMT with a summary of the outcomes of this consultation including any proposed changes to the Guidance or Directions identified in the course of discussions.

58. However, HMT remains the decision maker on any requested changes to their Directions and Guidance. Furthermore, suggested amendments to these documents should be in keeping with the purpose of the Regulations which are for exit payments in the public sector to represent value for money and be fair to the taxpayers who fund them.

Question 2: How would you define “undue hardship”?

Question 3: Would you add anything further to the types of evidence listed above by way of exceptional circumstance, that an employer might use to demonstrate that failure to make a payment in excess of £95k would represent ‘undue hardship’ or ‘significantly inhibit workforce reform’?

Question 4 - What more could the Government do to make sure departments understand which payments are caught by the Regulations and which are not in scope of the Regulations?

Question 5: What clarification should the Cabinet Office provide to supplement HMT guidance and directions on when exercise of the relaxation power/waiver is appropriate (see paragraphs 7 & 8 for detail on the draft directions)?

Question 6: Are there any proposals listed above that you do not agree with? If so, what alternative proposed amendments would you suggest that fulfils the objectives set out in this consultation?

Form for responding to the Consultation

Please use this form to respond to the consultation and send your completed form to civilservicepay@cabinetoffice.gov.uk.

Name	
Job Role	
Trade Union	
Contact details	
Question 1: Are there any other areas you feel the Government may wish to consider consulting on within the context of the effect the Regulations have on the terms of the CSCS?	
Question 2: How would you define “undue hardship”?	
Question 3: Would you add anything further to the types of evidence listed above by way of exceptional circumstance, that an employer might use to demonstrate that failure to make a payment in excess of £95k would represent ‘undue hardship’ or ‘significantly inhibit workforce reform’?	

Question 4 - What more could the Government do to make sure departments understand which payments are caught by the Regulations and which are not in scope of the Regulations?

Question 5: What clarification should the Cabinet Office provide to supplement HMT guidance and directions on when exercise of the relaxation power/waiver is appropriate (see paragraphs 7 & 8 for detail on the draft directions)?

Question 6: Are there any proposals listed above that you do not agree with? If so, what alternative proposed amendments would you suggest that fulfils the objectives set out in this consultation?

Handling of information from individuals

The information you send may need to be passed to colleagues within Cabinet Office or other Government departments, and may be published in full or in a summary of responses.

We will ensure that we will treat all personal information in accordance with data protection legislation, including the General Data Protection Regulation and Data Protection Act 2018. More information on how we handle personal data that falls within the remit of the Cabinet Office Gov.uk, [here](#).