EMPLOYMENT MATTERS COMMITTEE

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THE PUBLIC SECTOR EXIT PAYMENTS REGULATIONS 2016 AND THE REPAYMENT OF PUBLIC SECTOR EXIT PAYMENT REGULATIONS 2016

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Summary

This briefing paper seeks to update the Committee on the proposed introduction of legislation that caps exit payments for public sector workers and introduces a statutory requirement to repay exit payment monies in the event that the worker gains future employment in the public sector within 12 months of leaving their previous public sector employment.

1. Budget and Policy Framework

1.1 The introduction of these arrangements has the potential to impact upon the current (and future) cohort of Council employees and revisions will need to be made to existing contracts of employment and related HR policies and payroll protocols.

1.2 The adoption of new HR Policies and amendment to the current suite of policies lies within the Council's policy and budget framework and the Committee's terms of reference. Therefore, this is a matter for the Employment Matters Committee.

2. Background

2.1 The Government announced in May 2015 that it intended to end six figure exit payments for public sector workers and to recover exit payments made to public sector workers in the event that they returned to work in the public sector within a 12 month period.

2.2 Following a period of consultation legislation was passed in May 2016 as a Statutory Instrument (SI) under section 153A (1) of the Small Business, Enterprise and Employment Act 2015 ("the Act").

2.3 At the date of the publication of this briefing paper an implementation date to both strands of the legislation has yet to be confirmed. The Draft Public Sector Exit Payment Regulations 2016 and the Draft

Repayment of Public Sector Exit Payments Regulation 2016 have been published but are not yet in force.

3. Draft Public Sector Exit Payment Regulations 2016

3.1 In summary, the draft legislation introduces a cap of £95K on the total value of exit payments made to a public sector worker. For the purposes of this legislation "payments" include:

- Voluntary and compulsory redundancy, other voluntary exits with compensation packages (such as settlement agreements or COT 3's), the reduction/elimination of an actuarial reduction to pension upon early release, discharging liabilities under a fixed-term contract, payment of shares on loss of employment, and any other payment (contractual and non-contractual) made due to loss of employment, including payments in lieu of notice.

The following payments are excluded:

- Payments related to incapacity, death, accrued annual leave that has not been taken by the termination date, bonuses, and other payments that are required to be made by a court order.

3.2 The draft legislation requires the Council to keep detailed records of all payments and to advise staff captured by either (or both strands of the legislation) of the impact and the requirement to repay monies in the event that they re-join a public sector organisation within 12 months from their last day of service.

3.3 The Council can (via a decision made at full council) apply a waiver to the application of the cap, but any waiver must be made in accordance with HM Treasury guidelines that, at the date of publication of this briefing paper, have yet to be published. It can, however, be reasonably predicted that there will be a very narrow band of circumstances whereby a waiver will be allowable.

4. Draft Repayment of Public Sector Exit Payment Regulations 2016

4.1 In summary, the legislation introduces a statutory requirement to recovery exit payments made to public sector workers whose minimum salary was £80K at the point of leaving their former employer and who return to work with another public sector employer with a calendar year.

4.2 For the purposes of the legislation, returning to work includes in a capacity as an employee, contractor or consultant, but excludes working on a casual basis for 15 days or less within any period of 91 consecutive days.

4.3 The recovery of exit payments included any payment made by the employer into the pension fund to provide an unreduced pension.

4.4 Where employment is gained within 28 days from the last day of service with the former employer a full recovery is triggered. From day 29 to day 365, the amount required to be repaid is proportionally reduced. The requirement to repay ceases after 365 days have elapsed from the last day of service with the former employer.

4.5 The requirement to repay will form part of the contractual terms of an employee's departure and any new employer will be required to include in employment contracts the right to dismiss employees who are found to have breached the rules on repayment.

5. Implications

- Traditional softer exit routes through settlement agreements will be challenged as they are captured under both regulations. This may encourage employees to pursue any claim through to an Employment Tribunal (or other court) as court awards are exempt, with an associated increase in costs to the Council in defending any claim.

- The inclusion of employer related pension costs is significant and this will capture older, longer serving cohort of staff who are on mid-range salaries.

- These costs are likely to have a strong influence as to whether a staff member would apply for voluntary redundancy, with a subsequent knock on effect on re-structuring programmes.

- There is normally a 30 day turn around for pension estimates limiting the opportunity to affect a quick exit.

- Note: The Local Government Association are currently lobbying the Trustees of LGPS to review the current obligation for members to take their pension if they are over 55 and their employment ends on the grounds of redundancy or business efficiency.

- Drives a review and re-design of senior salary remuneration to include a proportionally higher bonus earning capacity (as neither is included in either of the Regulations).

- There is lack of clarity in the situation that the Council transfers employees from the private sector under TUPE regulations.

- Administratively burdensome.

- We may see an upturn in requests for early release to beat the introduction of the legislation.

- We would need to manage the message to staff in relation to the contractual changes, and manage any peak of demand for pension quotations.

6. Risk Management

Risk	Description	Action to avoid or mitigate risk	Risk rating
That the legislation is implemented before adequate arrangements are in place to apply the statutory requirements.	The Council would be in breach of its responsibilities to apply the statutory requirements.	To closely monitor any published implementation dates. Review current policies and associated employment contracts to meet both the employee's and the Councils statutory obligations.	E3

7. Diversity Impact Assessment (DIA)

7.1 Due to the nature of this report, a Diversity Impact Assessment has not been completed. Should the implementation on the legislation require revision to existing HR policies (or require the drafting of a new policy) the usual consultation protocols will be applied and a DIA will be completed.

8. Financial and legal implications

8.1 It is not envisaged that there will be any additional financial or legal implications.

9. Recommendations

9.1 That the Committee notes the content of the briefing paper.

9.2 That the Committee notes that once the legislation has been enacted the new arrangements will be presented to the Committee for approval.

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Background papers
None

Appendices
None