

Draft Regulations laid before Parliament under section 161(4) of the Small Business, Enterprise and Employment Act 2015, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2019 No. 000

EMPLOYMENT

**The Restriction of Public Sector Exit Payments Regulations
2019**

Made - - - -

Coming into force in accordance with regulation 1(2)

The Treasury makes the following Regulations in exercise of the powers conferred by sections 153A(1), (2), (4) and (8)(a), 153B(1)(c) and (4)(a), 153C(1), (5) and 8(a) and 161(2) of the Small Business, Enterprise and Employment Act 2015(a).

A draft of these Regulations has been laid before Parliament and has been approved by a resolution of each House of Parliament in accordance with section 161(4) of that Act.

Citation and commencement

1. These Regulations may be cited as the Restriction of Public Sector Exit Payments Regulations 2019.

(1) These Regulations come into force on the day after the day on which they are made.

Application

2. These Regulations apply where an exit payment(b) is made—

(a) by a public sector authority listed in Part 1 of the Schedule; or

(b) to a holder or former holder of an office listed in Part 2 of the Schedule.

Interpretation

3. In these Regulations—

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

“ACAS” means the Advisory, Conciliation and Arbitration Service;

“ACAS arbitration scheme” means the arbitration scheme set out in the Schedule to the ACAS Arbitration (Great Britain) Order 2004(c);

(a) 2015 c.26. Sections 153A, 153B and 153C were inserted by section 41(1) of the Enterprise Act 2016 (c.12).

(b) For the definition of “an exit payment” see regulation 3.

(c) S.I. 2004/753.

“Conciliation agreement” means any agreement to refrain from instituting or continuing legal proceedings where an ACAS conciliation officer has taken any action under any of sections 18A to 18C of the Employment Tribunals Act 1996(a);

“Devolved Welsh authority” has the meaning in section 157A of the Government of Wales Act 2006 (b);

“exit payment” means a payment of a description prescribed in regulation 6(1);

“exit payment cap” means either the amount specified in section 153A(1) of the Act or the substituted amount referred to in section 153A(9) of that Act;

“fire and rescue authority” has the meaning in section 1 of the Fire and Rescue Services Act 2004(c);

“fixed term contract” has the meaning in regulation 1(2) of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002(d);

“hours worked” by a person means the basic hours the person is required to work under the terms of a contract in respect of their employment or office;

“local authority” means—

- (a) a county council;
- (b) in relation to Wales only, a county borough council;
- (c) a district council;
- (d) a London borough council;
- (e) the Common Council of the City of London in its capacity as a local authority; or
- (f) the Council of the Isles of Scilly;

“redundancy” has the meaning in section 139 of the Employment Rights Act 1996(e);

“relevant Minister” means either—

- (a) a Minister of the Crown; or
- (b) in relation to a relevant Welsh exit payment, the Welsh Ministers;

“relevant public sector authority” means—

- (a) a body listed in Part 1 of the Schedule; or
- (b) a body responsible for determining the level of remuneration payable to the holder of a public sector office listed in Part 2 of the Schedule;

“relevant public sector exit” occurs when—

- (a) an employee leaves the employment of a public sector authority listed in Part 1 of the Schedule; or
- (b) a holder of a public sector office listed in Part 2 of the Schedule leaves office;

“relevant redundancy payment” means—

- (a) a payment to a person of statutory redundancy pay to which the person is entitled under section 135 of the Employment Rights Act 1996(f); or
- (b) in a case where a person is not, solely as a result of section 159 of that Act, entitled to statutory redundancy pay, a payment to the person of an amount equivalent to the statutory redundancy pay to which the person would have been entitled but for section 159 of that Act;

(a) 1996 c.17. Sections 18A to 18C were added by the Enterprise and Regulatory Reform Act 2013 c.24 Pt 2s.7(1).

(b) 2006 c.31. Section 157A was added by the Wales Act 2017 c.4 Pt. 1 s. 4(1).

(c) 2004 c.21. S.1 is moved under a new heading entitled “Fire and rescue authorities” by Policing and Crime Act 2017 c.3 Sch.1(1) para 2.

(d) S.I. 2002/2034;

(e) 1996 c.18. Section 139 was amended by paragraph 31 of Schedule 21 to the Education Act 2002 (c.32) and paragraph 41(4) of Schedule 2(2) to the Local Education Authorities and Children’s Service Authorities (Integration of Functions) Order 2010 S.I. 2010/1158.

(f) 1996 c.18.

“relevant Welsh exit payment” has the meaning in section 153B(6) of the Act;

“salary” in respect of any employment or service in an office means the annual value of remuneration, including any benefit in kind, a person was entitled to receive under the terms of a contract in respect of the employment or office on the date that the person left the employment or ceased to hold the office;

“settlement agreement” means any agreement to refrain from instituting or continuing legal proceedings which satisfies the conditions in section 203(3) of the Employment Rights Act 1996(a);

“statutory redundancy pay” means an amount calculated in accordance with section 162 of the Employment Rights Act 1996(b);

“the Schedule” means the schedule to these Regulations.

Restrictions on exit payments

4. Subject to regulations 6, 7 and 8–

- (a) a relevant public sector authority must not make an exit payment exceeding the exit payment cap in respect of a relevant public sector exit;
- (b) where two or more relevant public sector exits occur in respect of the same person within any period of 28 consecutive days, the total amount of the exit payments made to that person in respect of those exits shall not exceed the exit payment cap.

5. For the purposes of regulation 4(b), the exit payments will be treated as having been paid in the following sequence–

- (a) where the relevant public sector exits do not occur on the same day, in chronological order;
- (b) in any other case, in the following order–
 - (i) in descending order of salary;
 - (ii) where the salaries are equal, in the descending order of hours worked;
 - (iii) where the salaries and hours worked are equal, in descending order of the person’s length of the service in the employment or as holder of the office; or
 - (iv) where the salaries, hours worked and length of service in the employment or as holder of the office are equal, in the order determined by the relevant Minister.

Exit payments

6. In this regulation a reference to an exit payment made to a person includes a reference to an exit payment made in respect of that person to another person.

(1) The following descriptions of payment are exit payments paid to a person, unless the payment falls within regulation 7–

- (a) subject to regulation 8, any payment on account of dismissal by reason of redundancy;
- (b) any payment made to reduce or eliminate an actuarial reduction to a pension on early retirement or in respect to the cost of a pension scheme of such a reduction not being made;
- (c) any payment made pursuant to an award of compensation under the ACAS arbitration scheme or a settlement or conciliation agreement;
- (d) any severance payment or ex gratia payment;
- (e) any payment in the form of shares or share options;
- (f) any payment on voluntary exit;
- (g) any payment in lieu of notice due under a contract of employment;

(a) 1996 c 18.

(b) 1996 c. 18. Section 162 was amended by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c.8), paragraph 1 of Schedule 9 to the Employment Relations Act 1999 (c.26) and S.I. 2006/1031.

- (h) any payment made to extinguish any liability to pay money under a fixed term contract;
- (i) any other payment made, whether under a contract of employment or otherwise, in consequence of termination of employment or loss of office.

Payments exempt from restriction.

7. The following descriptions of payment are not exit payments—

- (a) any payment made in respect of death in service;
- (b) any payment made in respect of incapacity as a result of accident, injury or illness (not including injury to feelings);
- (c) any payment made under—
 - (i) rule B7(5A), Schedule 2 of the Firemen’s Pension Scheme Order 1992(a) where the relevant fire and rescue authority has determined that an individual be paid a lump sum;
 - (ii) rule 6, Part 3, Schedule 1 of the Firefighters’ Pension Scheme (England) Order 2006(b) where the relevant fire and rescue authority has determined that an individual should be retired with an early retirement pension initiated by that authority in accordance with the Addendum to the Fire and Rescue National Framework for England on firefighters’ fitness prepared in accordance with section 21 of the Fire and Rescue Services Act 2004(c);
 - (iii) rule 6, Part 3, Schedule 1 of the Firefighters’ Pension Scheme (Wales) Order 2007(d) where the relevant fire and rescue authority has determined that an individual should be retired with an early retirement pension;
 - (iv) regulation 62 of the Firefighters’ Pension Scheme (England) Regulations 2014(e) where the relevant fire and rescue authority has determined that an individual should be retired with an early retirement pension initiated by that authority in accordance with the Addendum to the Fire and Rescue National Framework for England on firefighters’ fitness prepared in accordance with section 21 of the Fire and Rescue Services Act 2004(f);
 - (v) regulation 71 of the Firefighters’ Pension Scheme (Wales) Regulations 2015 (employer initiated retirement) (g) where the relevant fire and rescue authority has determined that an individual should be retired with an early retirement pension initiated by the authority;
- (d) a service award paid to a member of the judiciary in accordance with the determination of the Lord Chancellor dated 31 March 2006(h);
- (e) a service payment made in respect of annual leave due under a contract of employment but not taken;
- (f) any payment made in compliance with an order of any court or tribunal;
- (g) a payment in lieu of notice due under a contract of employment that does not exceed one quarter of the relevant person’s salary.

(a) SI 1992/129. Rule B7(5A), Schedule 2 was amended by the Firefighters’ Pension Scheme (Amendment) (No.2) (England) Order 2013/1392 Sch. 1 para.2(i).

(b) Order 2006/3432. Pt 3 rule 6(4) inserted by the Firefighters’ Pensions Scheme (England) (Transitional and Consequential Provisions) Regulations 2015/589 Sch.2 para.3(f).

(c) 2004 c 21. Section 21 was added by Policing and Crime Act 2017 c. 3 Sch.1(1) para.9.

(d) Order 2007/1072. Pt 3 rule 6(4) inserted by the Firefighters’ Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015/1016 Sch.2 para.3(f).

(e) S.I. 2014/2848. Regulation 62(3) added by the Firefighters’ Pension Scheme (England) (Transitional and Consequential Provisions) Regulations 2015/589 Sch.1 para.5(b).

(f) 2004 c.21. Section 21 was added by the Policing and Crime Act 2017 c.3 Sch.1(1) para.9.

(g) S.I. 2015/622. Regulation 71(3) added by the Firefighters’ Pension Scheme (Wales) (Transitional and Consequential Provisions) Regulations 2015/1016 Sch.1 para5(b).

(h) A copy of the determination can be found at: https://jac.judiciary.gov.uk/sites/default/files/sync/basic_page/moj_jupra_1993_scheme_guide_nov2014_web_3.pdf.

Prohibition on reduction of statutory redundancy pay or equivalent

8. A relevant public sector authority must not reduce the amount of a relevant redundancy payment in respect of a relevant public sector exit.

(1) Accordingly, if—

- (a) a person is entitled to a relevant redundancy payment and one or more other exit payments in respect of a relevant public sector exit; and
- (b) the total amount of the exit payments in respect of the exit would exceed the exit payment cap;

the relevant public sector authority must reduce the amount of one or more of the other exit payments.

(2) Where this regulation applies, a payment of a relevant redundancy payment by a relevant public sector authority may cause the total amount of exit payments payable to the person to exceed the exit payment cap, but only if all other exit payments by the relevant public sector authority to which the person is entitled to have been reduced to zero.

Non-cash exit payments

9. Where these regulations prevent a relevant public sector authority from making an exit payment of the type described in regulation 6(1)(b) the relevant public sector authority must, as an alternative, make a cash payment of an amount not exceeding the amount of that exit payment.

(1) This regulation is subject to regulation 4(a).

Requirement to inform

10. This regulation applies to a person—

- (a) who has left employment or office in circumstances amounting to a relevant public sector exit; and
- (b) who is entitled to receive an exit payment in respect of that relevant public sector exit.

(2) The person must as soon as reasonably practicable on or after the day on which the exit occurs inform in writing all other relevant public sector authorities which the person is an employee of or which are responsible for determining the level of remuneration payable to the person as a holder of a public sector office listed in Part 2 of the Schedule—

- (a) that the person is entitled to an exit payment;
- (b) the type of exit payment;
- (c) the amount of the exit payment;
- (d) the date that the person left the employment or office to which the exit payment relates; and
- (e) the identity of the relevant public sector authority that is obliged to make the exit payment.

Relaxation of the restriction on exit payments

11. The power in section 153C(1) of the Act (relaxation of restriction) is exercisable, in relation to exit payments made by—

- (a) a devolved Welsh authority, by the Welsh Ministers instead of by a Minister of the Crown;
- (b) a local authority in England, by the full council of that local authority;
- (c) a fire and rescue authority, by the fire and rescue authority; and
- (d) the Greater London Authority, by the London Assembly.

Power to relax to be exercised following compliance with Treasury directions or with consent

12. The power in section 153C(1) of the Act must not, unless it is exercised with the consent of the Treasury, be exercised without compliance with any directions given by the Treasury applicable to the exercise of the power.

(1) This regulation does not apply in relation to payments made by a devolved Welsh authority.

Duties to keep records in respect of relaxation of the restriction

13.—(1) A person who exercises the power in section 153C(1) of the Act must keep a written record of—

- (a) the fact the power has been exercised;
- (b) the name of the person in respect of whom the power was exercised;
- (c) the amount and type of the exit payment in respect of which the power was exercised;
- (d) the date on which the power was exercised; and
- (e) the reasons why the power was exercised.

(2) A record under paragraph (1) must be kept for 3 years beginning with the day on which the decision is taken to exercise the power in section 153C(1) of the Act.

(3) At the end of each financial year in which the power in section 153C(1) of the Act was exercised, each relevant public sector authority must publish a list detailing—

- (a) the amounts and types of exit payments made by the relevant public sector authority in respect of which the power was exercised;
- (b) the dates on which the power was exercised; and
- (c) the reasons why the power was exercised.

Date

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury