


Non-Executive Report of the: HR Committee 21 st January 2016	 TOWER HAMLETS
Report of: Zena Cooke, Corporate Director Resources	Classification: Unrestricted
Repayment of public sector exit payments (to be read in conjunction with Report on Pay Policy 2016-17)	

Originating Officer(s)	Simon Kilbey – Service Head HR&WD
Wards affected	All wards

Summary

The Small Business, Enterprise and Employment Act 2015 became law on 26th March 2015. The Act includes provision for secondary legislation in relation to the repayment of public sector exit payments. Draft Repayment of Public Sector Exit Payments Regulations 2015 (Appendix 1) have been created, which are due to come into force on 1st April 2016.

The regulations will require public sector employees or office holders earning more than £100,000 per annum to repay exit payments on a pro rata basis if they return to the same part of the public sector within 12 months.

This paper provides a summary of the draft regulations for information. This report should be read in conjunction with the report on Pay Policy Statement 2016-17.

Recommendations:

HR Committee is recommended to:-

Note the information in the report

1. REASONS FOR THE DECISIONS

1.1 The report is for information only.

2. ALTERNATIVE OPTIONS

2.1 The report is for information only..

3. DETAILS OF REPORT

3.1 The requirement to repay public sector exit payments has been triggered by evidence that many senior employees re-joined the public sector within a year after receiving redundancy payments from the same or another public sector organisation.

3.2 In particular, evidence was cited from the Health Select Committee, which found that of 19,000 NHS redundancies, 17% had been rehired and most within a year. An Audit Commission report in 2010 found that of 37 chief executives who left by mutual agreement over a 2 year period from January 2007, 6 had been employed in another council within 12 months.

3.3 The draft regulations provide guidance in the following areas:

- Exit payments
- Organisational sub-sectors
- Repayment of exit payments
- Duties
- Waiver

Further details on each of these areas is set out below

Exit Payments

3.4 The draft regulations state that:

Regulation 3(1) *“These Regulations apply to the following payments made in connection with a loss of employment or offices-*
(a) a payment in account of dismissal by reason of redundancy;
(b) a payment made consequently upon a voluntary exit from employment;
(c) a payment made by way of shares consequent upon a loss of employment;
(d) a payment to reduce or eliminate an actuarial reduction to a pension upon early retirement;
(e) a payment made to extinguish any liability to pay money under a fixed term contract; and
(f) any other payment made as a consequence of, in relation to, or conditional upon, loss of employment.

Regulation 3(1)(d) does not include a payment made under regulation 30(7) of the Local Government Pension Scheme Regulations 2013(a) (payment of retirement pension to an employee aged 55 or over who is dismissed by reason of redundancy or business efficiency).

Regulation 3(f) does not include a payment made in order to give effect to a term of the contract of employment, including—

- (a) a payment made in respect of leave due under the contract but not taken;*
- (b) a payment made in respect of a period of notice due under the contract but not served; or*
- (c) a bonus payment otherwise due under a term of the contract of employment.*

These Regulations do not apply to an exit payment made to an exit payee who, in the period of 12 months prior to the end of their employment, or before they ceased to hold office, earned remuneration of under £100,000.

These Regulations do not apply to an exit payment made to an exit payee—

- (a) who left employment or office after a period of under 12 months in that employment or office; and*
- (b) during the time they were in employment or office, they earned remuneration under $N \times £8,333.34$, where N is equal to the number of time that they were in employment or office, rounded down to the nearest number of whole months.*

- 3.5 The Regulations state that payments made under regulation 30(7) of the Local Government Pension Scheme Regulations 2013(a) are not included. This relates to the immediate payment of retirement pension “where an active member aged 55 or over is dismissed from employment by reason of redundancy or business efficiency, or whose employment is terminated by mutual consent on grounds of business efficiency.”

Sub-Sectors

- 3.6 Sub-sectors are groups of bodies that have been determined to have workforce or operational similarities. Exit payments will be required to be repaid if an exit payee enters into a new ‘contract for services’ within the same sub-sector within a period of 12 months.
- 3.7 There are 5 separate sub-sectors. These are:
- Civil service
 - Local government
 - Health
 - Education
 - Office for National Statistics
- 3.8 The local government sub-sector contains the following bodies or offices:
- Department for Communities and Local Government
 - Council in England
 - Council in Wales
 - Council in Northern Ireland
 - Local authority company
 - Local body
 - Council in Scotland*

- Local body in Scotland*

*for these bodies, repayment is only required where the exit payee leaves one of the other bodies within the list and joins this body within 12 months. Repayment is not required where an exit payee leave this body and joins another within the list.

- 3.9 The Draft Regulations state that *“a relevant contract for services is a contract for services with the new employer under which the exit payee provides service to the new employer—*
(a) as the employee of another person; or
(b) as a self-employed person;
and the service provided to the new employer accounts for more than 50% of the exit payee’s new employment or self-employment.”

Repayment of exit payments

- 3.10 An exit payee is deemed to have received the exit payment upon the same day as they left the employment or ceased to hold the office in respect of which the exit payment was made.
- 3.11 Where an exit payee undertakes a new contract for services within 28 days of receiving the exit payment, this must be repaid in full.
- 3.12 A proportion of the exit payment must be repaid where an exit payee undertakes a new contract for services after 28 days but before 12 months of receiving the exit payment. A calculation is provided within the Regulations to determine the repayment amount.

Duties

- 3.13 The Draft Regulations state that bodies making an exit payment that may be subject to these regulations must:
- “(a) inform the exit payee that if they take up employment or enter into a contract for services with a body, or take up a public office, in the same subsector, then they may be liable to repay some or all of that exit payment under these Regulations; and*
(b) keep a record of that payment for 12 months.”
- 3.14 *“The exit payee shall inform the old employer and the new employer of the fact that there has been an exit payment, and that there may be an obligation to repay some or all of that exit payment under these Regulations.”*
- 3.15 The Draft Regulations state that *the exit payee, old employer, and new employer shall co-operate with each other, and supply each other with sufficient information, to enable the exit payee to make arrangements to repay all or part of the exit payment. No further detail has been provided as to how this information should be passed between organisations.*

- 3.16 The new employment must not start until arrangements have been made to repay the required payment.
- 3.17 In the event that the amount is not repaid to the old employer within a 'reasonable time', the new employer must consider whether to:
- (a) dismiss the exit payee from the new employment;*
 - (b) stop the exit payee from working under the relevant contract for services;*
 - or*
 - (c) remove the exit payee from the new office.*

Waiver

- 3.18 Designated persons can waive, in whole or in part, the requirement for an exit payee to repay the exit payment. For the local government sub-sector, this is the Secretary of State for Communities and Local Government.
- 3.19 This power can be delegated to a local authority. Notes on the Regulations produced by HM Treasury suggest that they will set out, in further guidance, that the exercise of the waiver power will need to be authorised by a vote of the Full Council.

Credit for previous service

- 3.20 As part of the response to the government consultation exercise, a question was raised about whether employers could give individuals credit for previous service, where recovery of payments occurs and the contract of employment is later terminated at the employer's request.
- 3.21 The government have clarified that they will not cover this issue in legislation but rather employers will have the discretion to credit individuals for previous service. There is no further guidance on the circumstances when this may apply. Given this, it is suggested that benchmarking be undertaken to establish the approach of other authorities.
- 3.22 The ability to give credit for previous service could, for example, be used in areas where there is a skills shortage as a recruitment incentive, which would be pre-determined for a particular post as part of the recruitment process before the post was advertised. Further guidance and a sense of what other authorities are doing is awaited.
- 3.23 Guidance on the Regulations will be produced once the issues become clearer on publication of the final draft of the Regulations and any accompanying national guidance.

Pay Policy

- 3.24 The proposed Pay Policy 2016-17 includes a paragraph that covers the requirement for repayment of public sector exit payments (See Pay Policy Report). This may need to be amended in light of further guidance or amended regulations.

Issues for Clarification/Noting

3.25 The Regulations could have potential implications in the following areas, and some of these issues require further clarity before requisite changes can be made: -

- The time taken to appoint interim senior managers may be extended as they would potentially be subject to the Regulations
- The requirements of the Regulations could lead to delays in recruitment
- The council's reference form will need to include information about an individual's previous salary
- As part of the Council's recruitment practice for employees, agency workers and contractors, individual applicants will need to be asked whether they fall under the Regulations
- The route for dismissing someone who fails to comply with repayment under the Regulations is not clear – would this be through the disciplinary process or dismissal for some other substantial reason
- Contracts of employment for those earning over £100k need to be reviewed/existing employees written to and informed of the change
- Leavers that the Regulations apply to will need to be notified of their implications upon leaving
- A process for applying a waiver will need to be set out

4. COMMENTS OF THE CHIEF FINANCE OFFICER

4.1 This report is for information only. There are no financial implications.

5. LEGAL COMMENTS

5.1 The legal considerations are set out in the body of the report and therefore there are no additional legal implications arising.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 The report is for information only. Any changes to policy of a result of legislative changes would be assessed at the time.

7. BEST VALUE (BV) IMPLICATIONS

7.1 The report sets out legislative changes which the council will have to adopt. The changes ensure that the public sector does not lose money if senior staff move from one public sector organisation to a similar organisation within 12 months.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 There are no implications.

9. RISK MANAGEMENT IMPLICATIONS

9.1 There are no direct risk management implications arising from this report.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 There are no implications.

Linked Reports, Appendices and Background Documents

Linked Report

Pay Policy 2016-17 Report

Appendices

Appendix 1– Draft Repayment of Public Sector Exit Payments Regulations
2015

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

NONE

Officer contact details for documents:

- Simon Kilbey, Service Head (HR/WD) 020 7364 4922