

APPENDIX B

A Summary of the draft Repayment of Public Sector Exit Payments Regulations 2016

Introduction

These Regulations were first consulted on during 2014. They apply where employees return to the 'same part or sector of the public sector.' At the end of 2015, the Government published draft regulations which included changes to the original proposals. This included a further short consultation period.

This summary is based on the draft Regulations although there are various points requiring further clarification.

The final regulations, (The Repayment of Public Sector Exit Payments Regulations 2016) are expected in July 2016. It is expected that they will take effect immediately and so applying to exits taking place from the date of implementation.

The LGA will be producing further advice/guidance to Local Authorities once the final regulations are made but in relation to the current proposal:

- **Applies to those earning £80,000+**
- **Who receive an exit payment as a result of:**
 - Redundancy
 - Voluntary exit
 - Reducing or elimination of an actuarial reduction to a pensions upon early retirement
 - Payment to extinguish liability under a fixed term contract
 - Settlement or conciliation agreement

NOTE: Qualifying Exit payments do not include:

- Payments in respect of incapacity or death as a result of accident, injury or illness
 - Payments in respect of leave due under a contract of employment but not taken
 - Pay in lieu of notice
 - Payment made in compliance with an order of any court or tribunal
- **Who return to any part of the public sector within 12 months of receiving the exit payment:**
 - Employee
 - Specified Officer Holder
 - Relevant contract for services under which s/he provides services to a hiring authority:

- As employee
 - As a self-employed person
- **Returning employees under a duty to repay a qualifying exit payment (it is a debt owed to the authority)**
 - **A complicated calculation – the repayment amount is the lesser of:**
 - (i) The Qualifying Exit Payment less:
 - Tax and NI paid on exit payment
 - Salary they would have earned (in old job based on net final pay) between date of leaving and date of commencing the new job
 - If new job involves less the amount is reduced pro rata to hours worked in the old job (i.e. old job 37 hours, new job 18.5 hours means amount to be repaid is 50%)
 - (ii) The Qualifying Exit Payment less:
 - The amount of statutory redundancy pay the employee received (some special arrangements for certain crown employees who do not get statutory redundancy payments)
 - **Duties on old employer (Responsible Authority) to keep records**
 - Maintain for 3 years
 - Identity of exit payee
 - Amount and type of payment
 - Date payment made
 - Exit payee's age when payment made
 - Exit payee's length of service with Responsible Authority
 - Total remuneration received by exit payee in 12 months before exit payment
 - Tax and NI paid by exit payee in respect of exit payment
 - Exit payee's standard weekly hours
 - **Duty on Exit Payee to provide information**

If accepting an offer to return to public sector within 1 year must inform the hiring authority and responsible authority (old employer) as soon as reasonably practicable – and before returning, that:

 - There has been a qualifying exit payment
 - There may be an obligation to repay some or all of it
 - **Duty on Exit Payee not to return unless having repaid the repayment amount or have made arrangements to do so**

- **Hiring Employer**

- Must not permit a return unless repayment has been made or arrangements have been made
- If it allows a return in breach the employee must make arrangements to repay within three months
- If employee does not repay or make further alternative arrangements within three months the amount becomes immediately payable and hiring employer must:
 - Dismiss/ terminate contract for services/ remove from office
 - Provide any information the Responsible authority might require to fulfil its duties under the regulations

- **Duty on Responsible Authority**

The responsible authority (old employer) has a duty to provide information:

- Confirm to hiring authority that relevant repayment arrangements have been made
- Inform hiring authority if arrangements have been breached by employee
- Inform hiring authority if new arrangements have been made
- Provide such information as the hiring authority may need to fulfil its obligations under the regulations
- Provide confirmation to hiring authority if repayment amount is zero or if repayment has been made in full

- **Power to waive the repayment**

In local government the responsible authority (old employer) has the power to waive all or part of the repayment – but must be **exercised in accordance with** any written directions issued by the Treasury on how that power is to be exercised

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