Meeting date:	14 December 2020
Report to:	Remuneration Committee
Subject/report title:	Public Sector Exit Payments
Report from:	Director of Resources and Deputy Chief Executive
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Wards affected:

☒ All Wards | ☐ Bickenhill | ☐ Blythe | ☐ Castle Bromwich | ☐ Chelmsley Wood |
☐ Dorridge/Hockley Heath | ☐ Elmdon | ☐ Kingshurst/Fordbridge | ☐ Knowle |
☐ Lyndon | ☐ Meriden | ☐ Olton | ☐ Shirley East | ☐ Shirley South |
☐ Shirley West | ☐ Silhill | ☐ Smith's Wood | ☐ St Alphege

Public/private report:	Public
Exempt by virtue of paragraph:	

1. Purpose of Report

1.1 To provide the Remuneration Committee with an update on the Public Sector Exit Cap Regulations and their implications for the Council.

2. Decision(s) recommended

2.1 The Remuneration Committee is asked to note the contents of the report in advance of receiving an updated Pay Policy Statement for consideration at its meeting on 26 January 2021.

3. Matters for Consideration

3.1 In 2015 the government first announced plans to introduce a cap on exit payments in the public sector. The cap applies to the total amount payable when someone exits and so applies to the total of severance payments, any pension strain cost and notice payments in excess of three months.

3.2 The implementing regulations came into effect from 4 November 2020.

3.3 The regulations consist of three separate elements:

1. The implementation of a £95,000 cap on public sector exit payments, including employer contributions to pension costs. There is no provision for this figure to be index-linked.

2. Reform of the Discretionary Compensation Payments Regulations and Local Government Pension Scheme Regulations to place additional restrictions on severance payments and limit the amounts an employer can contribute to pension strain costs where an employee aged 55 or over draws their pension early as a result of exiting.

3. Proposals to require high earners to repay severance payments if they secure re-employment in the public sector within 12 months.

3.4 The proposals to require high earners to repay exit payments if they return to the public sector have previously been consulted on but there has been no further indication of if and when this proposal will be implemented. Therefore, the two most important issues currently are the implementation of the £95,000 exit payment cap and the proposed reform of the Discretionary Compensation Payments Regulations and Local Government Pension Scheme Regulations.

Directions and Guidance (HM Treasury)

3.5 On 29 October HM Treasury published its guidance on the Exit Cap Regulations and its Direction on the relaxation of the cap, also known as waivers.

3.6 Under the Direction there is a mandatory relaxation of the Regulations where the payment relates to a complaint that an employment tribunal has the jurisdiction to consider under the whistleblowing provisions of the Employment Rights Act 1996, the discrimination provisions of the Equality Act 2010, or health and safety related detriment and dismissal claims.

3.7 Discretionary relaxations could also apply where the Decision Maker (full council) is satisfied:

- that not exercising the power would cause undue hardship
- that not exercising the power would significantly inhibit workforce reform

3.8 The Guidance sets out that where the Council exercises the discretionary power to relax the cap it has to submit a business case to MHCLG for approval by the Principal Accounting Officer (the Permanent Secretary) and the Minister before it is then submitted to HM Treasury for approval. In the case of a mandatory relaxation the authority does not need HM Treasury approval but still needs MHCLG approval. Waivers exercised must be published.

Legal Challenges to the Regulations

3.9 There are currently four known potential legal challenges to the Exit Cap Regulations by means of Judicial Review. Pre-action correspondence has been issued by the

BMA, UNISON, GMB and Lawyers in Local Government /SOLACE/ALACE. Whilst further developments are awaited the Regulations took effect on 4 November 2020.

Implications

3.10 Considerations for the Council in relation to pension strain payments prior to the LGPS rules being amended are detailed below.

Pension Strain Payments

3.11 Any pension paid to an employee, including an entitlement to an unreduced pension is not payable by the employer – instead it is payable by, and the responsibility of, the LGPS administering authority. The LGPS administering authority can though then request a strain payment from the Council, which could be a sum which would result in a breach of the £95k cap. Under the Exit Cap Regulations, employers can make a strain payment up to that amount, allowing for the value of other exit payments made to this individual.

3.12 To ensure that employees who are not subject to the cap continue to receive an unreduced pension, the Council will notify the LGPS administering authority of any employees who are subject to the cap (including strain cost) prior to the exit.

3.13 A letter dated 28 October from MHCLG Minister, Luke Hall, sent to LGPS administering authorities and local authority chief executives, set out the government's view that the Exit Pay Regulations effectively curtail the use of LGPS Reg 30(7) to pay an immediate unreduced pension when the cap is breached. According to this view, a 'capped' member should only receive an immediate pension under LGPS Reg 30(5) (with actuarial reductions applied), or a deferred pension, together with a 'cash alternative' payable by the employer under Reg 8 of the Exit Cap Regulations.

3.14 Employers and LGPS administering authorities have been advised that they need to take their own legal advice on what to do in the period between the Exit Cap Regulations coming into force on 4 November and the LGPS Regulations being amended early next year to expressly remove the entitlement to an unreduced pension under Reg 30(7) which would result in a breach of the cap. However, subject to any such advice, LGE have indicated that opinion which is based on the legal advice it has obtained, is:

"the course of action presenting the least risk to both LGPS administering authorities and scheme employers is for the:

- LGPS administering authority to offer the member the opportunity to take a deferred benefit under LGPS regulation 6 or a fully actuarially reduced pension under LGPS regulation 30(5)
- Scheme employer to delay the payment of a cash alternative under regulation 8 of the Exit Cap Regulations"

3.15 It is for the LGPS administering authority, not the employer, to decide whether to pay an unreduced pension or a reduced pension. The Council will need to ensure the

LGPS administering authority has confirmed what it intends to do, and that the employee understands the position.

Reform of Discretionary Compensation Payment Regulations and Local Government Pension Scheme Regulations

3.16 The proposed changes include:

- Capping severance payments at a maximum of 3 weeks' pay per year of service or 15 months' salary
- Imposing a maximum salary level on which calculations for severance pay can be based (currently £80,000)
- No severance will be payable if the member receives an immediate pension with a payment made by the employer to cover the cost of early release of pension
- The amount available for any strain cost will be reduced by the statutory redundancy payment
- Making the necessary changes to the Local Government Pension Scheme to cater for these changes and the effects of the broader £95,000 cap.

Multiple Exits

3.17 Where an employee leaves more than one public sector employment within a 28 day period, then the exit payments for both combined must be below the overall cap.

Solihull Community Housing

3.18 The regulations as currently drafted do not cover SCH or any other local authority owned/controlled companies. However, when the LGPS regulations are amended it is understood that this will apply to all scheme members.

4. What options have been considered and what is the evidence telling us about them?

4.1 A key consideration for the Council will be the need to design overall compensation policies in future that comply with the proposed restrictions, whilst still providing exit packages that work for employees.

4.2 The number of options available to employees will increase substantially, which we will need to communicate carefully. Employees are also much more likely to want to seek more guidance/advice around their various retirement options and in many cases there will be an inevitable tension between the attraction of the up-front redundancy cash and the longer-term pension enhancement.

4.3 Discussions on the proposals outlined in paragraph 3.16 remain ongoing, however these proposals could potentially affect many Council employees who face redundancy above the age of 55, not just high-earners. There remains however, significant uncertainty over some of the finer details encompassed within the proposals.

4.4 A revised Pay Policy Statement which will incorporate the known impacts of the exit cap is being developed and will be presented to the Remuneration Committee on 26 January 2021 and then Full Council on 2 February 2021 for approval.

4.5 A review of current policies and procedures that the exit cap has implications for, such as Management of Change is in progress. Where appropriate the revised policies will be considered by Governance Committee.

4.6 The Council currently administers in addition to the Local Government Pension Scheme arrangements for the NHS and Teachers and the implications of the cap on these schemes is currently being explored.

5. Reasons for recommending preferred option

5.1 N/A

6. Implications and Considerations

6.1 State how the proposals in this report contribute to the priorities in the [Council Plan]:

Priority:	Contribution:
Economy: 1. Revitalising our towns and local centres. 2. UK Central (UKC) and maximising the opportunities of HS2. 3. Increase the supply of housing, especially affordable and social housing.	N/A
Environment: 4. Enhance Solihull's natural environment. 5. Improve Solihull's air quality. 6. Reduce Solihull's net carbon emissions.	N/A
People and Communities: 7. Take action to improve life chances in our most disadvantaged communities. 8. Enable communities to thrive. 9. Sustainable, quality, affordable provision for adults & children with complex needs.	N/A

6.2 Consultation and Scrutiny:

6.2.1 N/A

6.3 Financial implications:

6.3.1 The calculation of early retirement strain costs and associated pensions will be based on a set of standard Government Actuary's Department strain cost factors, which differ from those currently used by the Pension Fund. The implication of using one standard set of factors, is that strain costs payable by the Council may not be sufficient to fund the associated liabilities and consequently there may be a shortfall to address when assessed at each forthcoming statutory actuarial valuation.

6.4 Legal implications:

6.4.1 A legally compliant Pay Policy Statement will be presented to the Remuneration Committee on 26 January 2021. It is expected that the Pay Policy Statement will need to be revised later in 2021 when further details are known.

6.5 Risk implications:

6.5.1 The Council must ensure that any exit payment does not exceed the cap. Appropriate arrangements in terms of the management of exit payments have been put in place.

6.6 Equality implications:

6.6.1 The exit cap regulations are a statutory requirement that will impact on employees aged 55 and over. The gender representation of employees as at 31 October 2020 was 71.5% female and 28.5% male. This is line with the gender split of the whole Council workforce.

7. List of appendices referred to

7.1 N/A

8. Background papers used to compile this report

8.1 N/A

9. List of other relevant documents

9.1 N/A