



**NOTTINGHAMSHIRE**  
**Fire & Rescue Service**  
*Creating Safer Communities*

Nottinghamshire and City of Nottingham  
Fire and Rescue Authority  
Policy and Strategy Committee

# **STATUTORY CHANGES TO PAY POLICY**

Report of the Chief Fire Officer

**Date:** 29 April 2016

**Purpose of Report:**

To update Members on proposals affecting the application of the Service's Pay Policy as a result of statutory revisions.

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## **1. BACKGROUND**

- 1.1 In 2015 the government commenced consultation on changes to public sector exit payments, and this has resulted in the publication of draft regulations. The main provisions of which set a cap of £95k on any payments relating to termination of employment and establish pay back provisions for certain employees returning to “similar” employment within the public sector within 12 months of an exit payment being received.
- 1.2 In the Chancellor’s 2015 Autumn Statement, the introduction of a National Living Wage was announced. This has become effective from 1 April 2016.
- 1.3 This paper sets out the likely implications of these statutory changes for the Service.

## **2. REPORT**

- 2.1 In respect of the proposed changes to exit payments, draft regulations have been issued as part of the Small Business, Enterprise and Employment Act 2015 to facilitate legislation to regulate public sector exit payments.

### **RESTRICTIONS ON EXIT PAYMENTS**

- 2.2 A £95k cap on exit payments will be introduced which will restrict payments linked to loss of employment or office, with certain exceptions. Most dismissals will be covered by the regulations, including payments arising from redundancy and those made via a settlement agreement. It will not include payments made in relation to incapacity or death as a result of accident, injury or illness; related to Firefighter fitness provisions; contractual leave not taken; contractual bonuses or court orders.
- 2.3 For the purposes of calculating payments which are in scope, payments will include (but are not restricted to):
  - Redundancy payments;
  - Compensation payments;
  - Actuarial (pension) strain;
  - Payments on voluntary exit;
  - Severance or ex-gratia payments;
  - Payment in lieu of notice;
  - Compensation under the terms of a contract.
- 2.4 If an employee has more than one public sector employment, and receive exit payments within 28 days in relation to any of these employments, the payments will be combined and the cap applied.

- 2.5 The draft regulations include a provision to enable a full council of a local authority (or equivalent body) to exercise powers to waive or relax the cap in relation to payments made by itself in line with guidance to be provided by the Treasury.
- 2.6 Due to the progress of the Enterprise Bill through Parliament, and changes to be applied to other statutory instruments to amend relevant pension provisions, it is anticipated that the implementation date for application of the cap on exit payments will be from October 2016.
- 2.7 It should be noted that further consultation commenced in February on further reforms to public sector exit payments, which may include setting limits on calculating exit payments at three weeks per year of service; capping the maximum number of months' salary that can be used when calculating redundancy payments to 15 months, setting a maximum salary for the calculation of exit payments eg £80k; tapering of lump sum compensation; removing or limiting employer funded "top up" pension payments. The consultation period on these proposals ends on 3 May 2016.

## **REPAYMENT OF EXIT PAYMENTS**

- 2.8 Under the Repayment of Public Sector Exit Payments Regulations 2015, a person who has received a qualifying exit payment will be liable to repay all or part of the payment if they are subsequently re-employed in the public sector within 12 months.
- 2.9 The repayment provision will apply to those employees who have received in excess of £80k in remuneration (salary, wages or fee for service) within the preceding twelve months.
- 2.10 The repayment provision will be triggered when a qualifying employee who has received an exit payment returns to the public sector as an employee or enters into a relevant contract for services or becomes a holder of an office which is appointed by a public sector authority.
- 2.11 It will be the responsibility of the exit payee to notify the hiring authority of any exit payments received in previous public sector employment and to notify their previous employer (the Responsible Authority) of their new employment.
- 2.12 The Responsible Authority are responsible for implementing arrangements for the recovery of all or part of a qualifying exit payment and may not refuse, or delay making, relevant repayment arrangements. These arrangements must be put in place within three months of a return to the public sector.
- 2.13 The Hiring Authority may not permit a return to employment until the exit payee has repaid the payment amount or entered into relevant arrangements for repayment with the Responsible Authority. Any breach must be recorded and retained for a period of three years.

- 2.14 If the exit payee refuses to enter into a repayment agreement or breaches the terms then the Hiring Authority may dismiss them, terminate a relevant contract for services or remove them from office. If none of these sanctions are applied, then they must record the reason for the decision and retain it for a period of three years.
- 2.15 The Regulations allow for the waiving of the whole or part of the requirement to repay an exit payment by agreement of a local authority (or fire authority) in relation to payments made by that authority and exercised in line with directions issued by the Treasury. In this case the decision must be recorded and retained for a three year period, and reported annually in the Authority's annual accounts.
- 2.16 The anticipated implementation date for the recovery of exit payments is May 2016.

### **IMPACT ON PAY POLICY**

- 2.17 The proposed changes will directly impact upon the application of the Authority's Pay Policy (Section 5 "Re-engagement and Pension Abatement" and Section 6 "Severance Payments") and the Authority's Discretionary Compensation Payments Scheme Policy. Once the regulations have been finalised, these policies will be amended and brought before the Authority for approval.
- 2.18 The impact of the exit payment cap is most likely to affect those employees who are eligible to receive the early payment of pension benefits under the Local Government Pension Scheme (from age 55) or older employees with longer service who are currently eligible to receive up to 66 weeks' pay at their normal pay rates under existing compensation provisions.

### **NATIONAL LIVING WAGE**

- 2.19 From 1 April 2016, a National Living Wage (NLW) of £7.20 an hour has been applied for employees aged over 25. It is the intention that the NLW will rise annually until it reaches £9.00 per hour by 2020.
- 2.20 The Authority, as part of its agreed Pay Policy, already applies the Living Wage calculated by the Living Wage Foundation. This is currently set at £7.85 per hour. There are no operational roles, and very few support (non-uniformed) roles, that are currently affected by this. The current policy applies the living wage to all roles (with the exception of Apprenticeship roles) and not just to those who are over 25 years of age.
- 2.21 There is no immediate impact arising from the implementation of the NLW as the Service already supplements national pay rates to bring them in line with the Living Wage. However over time this may change and the Authority will have to review current arrangements as statutory pay rates increase and, notionally, more employees are affected.

- 2.22 Currently only three Grade 1 employees are employed on an hourly rate of less than £7.85, however as the NLW increases it is likely that additional employees will fall within its scope. The national employers are currently reviewing national spinal column points to take into account the impact of the future NLW, and this is likely to impact upon national salary levels going forward. This may mean that the Service will need to review its grading structure to take into account any changes to national pay rates in due course.

## **NEXT STEPS**

- 2.23 Clearly the issues within this report are sensitive and attract interest from Members, representative bodies and the general public. To ensure complete transparency it is proposed that the affected policies will be brought back to a future meeting of this Committee for comment, scrutiny and approval once the regulations are finalised.

## **3. FINANCIAL IMPLICATIONS**

- 3.1 The proposed regulations covering restrictions to public sector exit payments and repayment of public sector exit payments are designed to reduce the cost of such payments across the public sector. For this Authority past exit payments have generally not been budgeted for where they have been part of a package of measures to reduce on-going costs. Savings generated in the year of the exit payment have been used to partially fund the cost, with the remainder funded from general or earmarked reserves. There would therefore be no budgetary savings arising from the implementation of these regulations however exit payments in the future will be lower than some previous exit payments have been at this Authority.
- 3.2 The National Minimum Wage regulations have no financial impact for the Authority currently, but may result in an increase in pay costs over time. This is not likely to be a significant impact due to the relatively few employees on the pay grades affected by these regulations.

## **4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS**

- 4.1 There are significant implications for existing pay policy arising from the changes to statutory regulations implemented during 2016, which are set out within the report.
- 4.2 These changes will be incorporated into revised local policies at the point at which the regulations are finalised and will be considered by the Policy and Strategy Committee at a later date.
- 4.3 In the interim period, if there are any exit payments which may exceed the £95k cap these will be referred to Policy and Strategy Committee by the Discretionary Compensation Payments Board for approval.

## **5. EQUALITIES IMPLICATIONS**

- 5.1 An Equality Impact Assessment will be undertaken as part of the policy review once the full details of the regulations are published.
- 5.2 It is likely that the proposed changes to exit payments will impact upon older workers and/or those with long service as the current compensation scheme include these factors in determining an exit payment. It will particularly impact those employees over 55 who are eligible to receive early payment of pension under Local Government Pension Scheme regulations.
- 5.3 The application of the new National Living Wage adversely impacts upon employees below the age of 25, who do not fall within its scope. However, under current Service policy, the living wage is applied to all employees with the exception of apprentices.

## **6. CRIME AND DISORDER IMPLICATIONS**

There no crime and disorder implications arising from this report.

## **7. LEGAL IMPLICATIONS**

- 7.1 The changes set out in this report are covered by statutory regulations, namely:
- The Public Sector Exit Payment Regulations 2016
  - The Repayment of Public Sector Exit Payment Regulations 2015
  - The National Minimum Wage (Amendment) Regulations 2016
- 7.2 Whilst there are discretions within the exit payment regulations to waive or reduce the statutory cap or exit payment reimbursement arrangements, the responsible authority must record and publish its decision not to apply the cap or repayment arrangements in their Annual Report and Accounts.
- 7.3 There is a penalty for employers who do not apply the National Living Wage regulations. The penalty for non-payment will be 200% of the amount owed, unless the arrears are paid within 14 days. The maximum fine for non-payment will be £20,000 per worker.

## **8. RISK MANAGEMENT IMPLICATIONS**

The revision of internal pay policies will mitigate the risk of non-compliance with the statutory regulations governing public sector exit payments and the national living wage.

## **9. RECOMMENDATIONS**

It is recommended that Members:

- 9.1 Note the contents of this report.
- 9.2 Agree to receive the policies which are affected by the legislative changes for revision and approval.

## **10. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)**

None.

John Buckley  
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