PERSONNEL COMMITTEE – 31ST JANUARY 2017

Report of the Head of Strategic Support

Part A

ITEM 10 PUBLIC SECTOR EXIT PAYMENTS

Purpose of Report

To inform Personnel Committee of proposed changes to public sector exit payments.

Recommendation

It is recommended that Personnel Committee note the Government proposals regarding public sector exit payments.

Reason

To ensure compliance with legislation and recommended best practice.

Policy Justification and Previous Decisions

Full Council currently have the opportunity to vote on severance packages over £100,000 before they are approved. The Council will need to consider how any changes will impact on the constitution and any associated policies.

Implementation Timetable including Future Decisions

Once the regulations are implemented, the proposals will be submitted to SMT, JMTUM prior to submission to Personnel Committee for agreement.

Report Implications

The following implications have been identified for this report

Financial Implications

There are no immediate financial implications arising from this decision.

Risk Management

There are no specific risks associated with this decision.

Background Papers: None

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Part B

Background

1. The Government announced on 23rd May 2015 that it intended to end six figure exit payments for public sector workers. Currently there are three proposals from the government to change exit payments in the public sector:

    - Public sector workers to have a cap of £95,000 on the total value of exit payments.
    - Recovery of some or all of an exit payment where an employee leaves the public sector with an exit package and is then re-employed within the public sector within 12 months; and
    - Further restrictions on public sector redundancy payments by coordinating the rules for calculating payoffs across the civil service, the NHS and local government. Consultation on this began on 5th February 2016.

    Public bodies will be required to maintain records and publish annual details of all exit payments made within a financial year.

Proposals

The £95,000 Cap on Exit Payments

2. The £95,000 cap on exit payments, which the government intends to introduce via the Enterprise Bill, is intended to apply to local authorities. It has been announced that there will be a further consultation of the draft regulations and guidance. There will be a 4 – 6 week consultation period, followed by a response through Parliament. Therefore the effective implementation date is likely to be Spring 2017.

3. The cap may be varied by further regulations, but the proposal is the cap will cover all types of arrangement for determining exit payments, including:
    - Voluntary and compulsory exits;
    - Other voluntary exits with compensation packages;
    - Ex gratia payments and special severance payments;
    - Monetary value of any extra leave, allowances or other benefits granted as part of the exit process which are not payments in relation to employment;
    - A payment made to a pension scheme;
    - Payments to discharge liability under a fixed term contract;
    - Payments or compensation in lieu of notice under a contact;
    - Payments made under a settlement or conciliation agreement; and
    - Any other payment (whether or not contractual) made as a consequence of loss of employment.

    It is proposed the following will not be in scope:

    - Compensation payment in respect of death or injury attributable to the employment, serious health and ill health retirement;

- Payments made following litigation for breach of contract or unfair dismissal.
- Payments that are made in respect of leave due under a contract of employment but not taken.

4. There are potential implications with regard to the Local Government Pension Scheme (LGPS). The LGPS requires that members who are made redundant on or after the age of 55 will receive an unreduced pension. The unreduced pension usually requires a significant top up payment to be made to the LGPS fund from the relevant local authority. Provisions in the Bill aim to deal with this should the top up exceed the £95,000 exit payment cap. It is also possible that the member may take a reduced pension when the £95,000 limit is reached, or alternatively the member would have to option to pay the extra amount required by the LGPS fund to pay the full unreduced pension. This would operate as follows:

    - Employees would retain the option to take early retirement on unreduced pension, where this is available;
    - However the extra cost to the employer of offering this benefit, and therefore the financial contribution to the employee's pension, should not exceed the £95,000 value of the cap on exit payments that the government is proposing;
    - If lump sum redundancy payments are offered as well as early access to unreduced pension, the total employer cost of buying out the reduction in pension and the lump sum redundancy payment should not when taken together exceed the £95,000 value of the cap.

5. Employees who receive an exit payment and who continue to be employed in the public sector must give their new employer certain prescribed details: that they have received an exit payment and the amount; the date they left employment; and the identity of the public sector authority that made the exit payment.

<u>Recovery of Exit Payments</u>

6. On 25th June 2014, HM Treasury published a consultation on the recovery of public sector exit payments where an employee leaves the public sector with an exit package and is then re-employed in the public sector within 12 months. The Recovery Regulations are intended to be laid before Parliament around the time of the New Year, therefore the effective implementation date would be early 2017 if agreed.

7. Since the initial consultation in 2014, the government has modified some elements of the proposals including:

    - The minimum salary to which the recovery provisions will apply has been reduced from £100,000 to £80,000 per year;
    - Applying the exit payment recovery policy to qualifying individuals who return to the public sector, instead of just those who return to the same part of the public sector;
    - Removing the full recovery period of 28 days. The reductions will apply after day 1 following termination, effectively reducing the repayment liability proportionately over the subsequent 365 days; and

- Including employer-funded pension top up payments made under the Local Government Pension Scheme within the sums to be recovered.

8. The legislation will also cover individuals who return to work for a public sector organisation, for example, as a self-employed consultant or as an employee of a consultancy firm.

9. The last government passed legislation to prevent highly paid individuals who return to the public sector within 12 months of exit from retaining their full exit payment.

10. The measures to cap public sector exit payments are in addition to the separate proposals to recover public sector exit payments from high earning individuals as outlined above.

Review of Consistency in Redundancy Payment across the Public Sector

11. On 5th February 2016 HM Treasury published a consultation on what it called "further cross-public sector action on exit payment terms, to reduce the costs of redundancy payments and ensure greater consistency between workforces".

12. The government is proposing to take action on the following elements across all major public sector compensation provision:

    - Setting the maximum tariff of three weeks' pay per year of service for calculating exit payments;
    - Capping the maximum number of months' salary that can be used when calculating redundancy payments to 15 months, with possibly a lower limit for compulsory redundancies to encourage employees to accept voluntary redundancy;
    - Setting a maximum salary for the calculation of exit payments. This limit could be set at various levels and could potentially align with the NHS redundancy scheme's salary cap of £80,000;
    - Tapering the amount of lump sum compensation that can be received as the individual gets closer to normal pension age; and
    - Reducing the cost of employer-funded pension top up payment, such as limiting the amount for early retirement, or removing access to them, and increasing the minimum age at which an employee is able to receive an employer-funded pension top-up.

13. The paper suggests three possible approaches to pension enhancements on redundancy:

    - To tie in with the NHS approach, capping the cost of employer funded enhancements to pension schemes, so that they are no more than the amount of the redundancy lump sum which the employee would be entitled to;
    - Prohibit employer funded pension enhancements entirely, but give the individual the option to use their lump sum exit payment to increase their pension entitlement; or
    - Change the age at which individuals have early access to employer funded pension enhancements.

Ex-public Sector Employees working in the Private Sector

14. The government is considering how to treat staff working in bodies that are protected under TUPE from their previous public sector employment. Employees returning of otherwise transferring to the public sector may also bring their previous employment terms with them. It is likely that such individuals may continue to be entitled to exit payments in excess of the cap introducing an inconsistency with public sector counterparts.

Waiver Process

15. For local authorities, the government proposes that any waivers must require the approval of Full Council. Should this be agreed local authorities would be required to publish a policy on the limited circumstances in which they would consider the granting of an exception. In line with bodies covered by Managing Public Money, authorities would be required to disclose all such exceptions in their annual Statement of Accounts, in a way that is consistent with Data Protection rules.

Consultation

8. The report details were noted at the SMT meeting on 27th July 2016 and JMTUM on 1st December 2016.

Appendices

None