



# Enterprise Act 2016

## 2016 CHAPTER 12

### PART 9

#### PUBLIC SECTOR EMPLOYMENT: RESTRICTIONS ON EXIT PAYMENTS

#### **41 Restriction on public sector exit payments**

- (1) Before section 154 of the Small Business, Enterprise and Employment Act 2015 (but after the italic heading preceding that section) insert—

**“153A Regulations to restrict public sector exit payments**

- (1) Regulations may make provision to secure that the total amount of exit payments made to a person in respect of a relevant public sector exit does not exceed £95,000.
- (2) Where provision is made under subsection (1) it must also secure that if, in any period of 28 consecutive days, two or more relevant public sector exits occur in respect of the same person, the total amount of exit payments made to the person in respect of those exits does not exceed the amount provided for in subsection (1).
- (3) An exit payment is in respect of a relevant public sector exit if it is made—
- (a) to an employee of a prescribed public sector authority in consequence of the employee leaving employment, or
  - (b) to a holder of a prescribed public sector office in consequence of the office-holder leaving office.
- (4) An exit payment is a payment of a prescribed description.
- (5) The descriptions of payment which may be prescribed include—
- (a) any payment on account of dismissal by reason of redundancy (read in accordance with section 139 of the Employment Rights Act 1996);
  - (b) any payment on voluntary exit;

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- (c) any payment to reduce or eliminate an actuarial reduction to a pension on early retirement or in respect of the cost to a pension scheme of such a reduction not being made;
  - (d) any severance payment or other ex gratia payment;
  - (e) any payment in respect of an outstanding entitlement;
  - (f) any payment of compensation under the terms of a contract;
  - (g) any payment in lieu of notice;
  - (h) any payment in the form of shares or share options.
- (6) In this section a reference to a payment made to a person includes a reference to a payment made in respect of that person to another person.
- (7) For the purposes of subsection (2), a public sector exit occurs when the person leaves the employment or office in question (regardless of when any exit payment is made).
- (8) Regulations may include—
- (a) provision which exempts from any provision made under subsection (1) exit payments, or exit payments of a prescribed description, made in prescribed circumstances;
  - (b) provision which, in consequence of provision made under subsection (1), amends a relevant public sector scheme so as to make any duty or power under the scheme to make exit payments subject to any restriction imposed by regulations under subsection (1) (taking account of any relaxation of such a restriction which may be made under section 153C);
  - (c) provision which makes an amendment of any provision made by or under an enactment (whenever passed or made) which is necessary or expedient in consequence of any provision made by or under this section.
- (9) Regulations may substitute a different amount for the amount for the time being specified in subsection (1).
- (10) Nothing in this section applies in relation to payments made by authorities who wholly or mainly exercise functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).
- (11) In this section—
- “enactment” includes an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales and Northern Ireland legislation;
  - “prescribed” means prescribed by regulations under this section;
  - “relevant public sector scheme” means—
- (a) a scheme under section 1 of the Superannuation Act 1972 (civil servants);
  - (b) a scheme under section 7 of that Act (local government workers);
  - (c) a scheme under section 9 of that Act (teachers);
  - (d) a scheme under section 10 of that Act (health service workers);

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- (e) a scheme under section 1 of the Public Service Pensions Act 2013 (schemes for persons in public service);
- (f) a scheme under section 26 of the Fire Services Act 1947 or section 34 of the Fire and Rescue Services Act 2004 (fire and rescue workers);
- (g) a scheme under section 1 of the Police Pensions Act 1976 or section 48 of the Police and Fire Reform (Scotland) Act 2012 (members of police forces);
- (h) any other prescribed scheme (whether established by or under an enactment or otherwise).

### **153B Supplementary provision about regulations under section 153A**

- (1) Subject to subsection (2), the power to make regulations under section 153A is exercisable—
  - (a) by the Scottish Ministers, in relation to payments made by a relevant Scottish authority;
  - (b) by the Welsh Ministers, in relation to relevant Welsh exit payments;
  - (c) by the Treasury, in relation to any other payments.
- (2) Where the relevant Scottish authority is the Scottish Administration (or a part of it) the power to make regulations under section 153A is exercisable by the Treasury (instead of the Scottish Ministers)—
  - (a) in relation to payments made to the holders of offices in the Scottish Administration which are not ministerial offices (read in accordance with section 126(8) of the Scotland Act 1998), and
  - (b) in relation to payments made to members of the staff of the Scottish Administration (read in accordance with section 126(7)(b) of that Act).
- (3) The power to make provision of the kind mentioned in section 153A(8)(b) (power to amend public sector schemes), so far as exercisable by the Treasury, is also exercisable concurrently by any other Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975) with the consent of the Treasury.
- (4) Regulations under section 153A—
  - (a) if made by the Treasury, are subject to the affirmative resolution procedure;
  - (b) if made by the Scottish Ministers, are subject to the affirmative procedure;
  - (c) if made by the Welsh Ministers, may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (5) In this section “relevant Scottish authority” means—
  - (a) the Scottish Parliamentary Corporate Body, or
  - (b) any authority which wholly or mainly exercises functions within devolved competence (within the meaning of section 54 of the Scotland Act 1998).

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- (6) In this section “relevant Welsh exit payments” means exit payments made to holders of the following offices—
- (a) member of the National Assembly for Wales;
  - (b) the First Minister for Wales;
  - (c) Welsh Minister appointed under section 48 of the Government of Wales Act 2006;
  - (d) Counsel General to the Welsh Government;
  - (e) Deputy Welsh Minister;
  - (f) member of a county council or a county borough council in Wales;
  - (g) member of a National Park Authority in Wales;
  - (h) member of a Fire and Rescue Authority in Wales.

### **153C Power to relax restriction on public sector exit payments**

- (1) A Minister of the Crown may relax any restriction imposed by regulations made by the Treasury under section 153A.
- (2) The Scottish Ministers may relax any restriction imposed by regulations made by the Scottish Ministers under section 153A.
- (3) The Welsh Ministers may relax any restriction imposed by regulations made by the Welsh Ministers under section 153A.
- (4) A requirement may be relaxed—
  - (a) in respect of a particular employee or office-holder or a description of employees or office-holders;
  - (b) in relation to the whole or any part of an exit payment, or a description of exit payments.
- (5) Regulations under section 153A made by the Treasury may—
  - (a) make provision for the power under subsection (1) to be exercisable on behalf of a Minister of the Crown by a person specified in the regulations;
  - (b) except in relation to exit payments made by a relevant Welsh authority, make provision for a requirement to be relaxed only—
    - (i) with the consent of the Treasury, or
    - (ii) following compliance with any directions given by the Treasury;
  - (c) make provision as to the publication of information about any relaxation of a requirement granted.
- (6) Regulations under section 153A made by the Scottish Ministers may—
  - (a) make provision for the power under subsection (2) to be exercisable on behalf of the Scottish Ministers by a person specified in the regulations;
  - (b) where provision is made by virtue of paragraph (a), make provision for a requirement to be relaxed only—
    - (i) with the consent of the Scottish Ministers, or
    - (ii) following compliance with any directions given by the Scottish Ministers;

- (c) make provision as to the publication of information about any relaxation of a requirement granted.
- (7) Regulations under section 153A made by the Welsh Ministers may—
- (a) make provision for the power under subsection (3) to be exercisable on behalf of the Welsh Ministers by a person specified in the regulations;
  - (b) where provision is made by virtue of paragraph (a), make provision for a requirement to be relaxed only—
    - (i) with the consent of the Welsh Ministers, or
    - (ii) following compliance with any directions given by the Welsh Ministers;
  - (c) make provision as to the publication of information about any relaxation of a requirement granted.
- (8) Regulations made by the Treasury under section 153A(1)—
- (a) must, if they make provision in relation to exit payments made by a relevant Welsh authority, provide for the power conferred on a Minister of the Crown by subsection (1) to be exercised instead by the Welsh Ministers in relation to those exit payments;
  - (b) may provide for the power conferred on a Minister of the Crown by subsection (1) to be exercised instead by the Welsh Ministers in relation to exit payments made by any other authority who is not a relevant Welsh authority but who wholly or mainly exercises functions in relation to Wales (but this does not limit the provision that may be made under subsection (5)(a)).
- (9) In this section—
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
  - “relevant Welsh authority” means an authority who wholly or mainly exercises functions which could be conferred by provision falling within the legislative competence of the National Assembly for Wales (as defined in section 108 of the Government of Wales Act 2006).”
- (2) Schedule 6 makes amendments consequential on subsection (1), and related provision.