

HAMPSHIRE COUNTY COUNCIL

Report

Committee:	Employment in Hampshire County Council
Date:	28 June 2019
Title:	Legislation Update
Report From:	Deputy Chief Executive and Director of Corporate Resources

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Purpose of this Report

1. The purpose of this report is to update EHCC on recent and pending legislative changes and recommends that a further update be provided to EHCC when further information is available.

Recommendations

2. That EHCC note the successful application of the pay award, in accordance with the EHCC collective agreement.
3. That EHCC note the developments in relation to legislation.
4. That EHCC endorses the officers proposed responses to the exit payment gap consultation outlined in section 11 below.

Executive Summary

5. This paper confirms that the EHCC pay award for 2019 has been successfully applied.
6. This paper provides information on two legislative changes taking effect in April 2020, and information on two government consultations

Contextual information

7. Application of the 2019 Pay Award

- 7.1. The pay award for 2019, as agreed by EHCC in July 2018, was successfully applied to staff on Grades A-K in the April pay run. This was the second year of a two-year deal. EHCC will be updated when further details of the national pay settlement for 2020 are known.

8. Changes to employment legislation following The Good Work Plan consultation

- 8.1. Following the Government's Taylor review and subsequent recommendations in The Good Work Plan, new legislation comes into force on 6 April 2020. This brings three key changes to contractual documentation;
- a requirement for contractual documentation to be issued on or before day one of employment. The current requirement is for this to be issued within 2 months.
 - an extension to what information must be contained in a single statement of particulars. However, the Council already provides the majority of the information in documentation currently issued.
 - an extension of the entitlement to a statement of particulars from employees, to casual workers and temporary staff. The Council and Connect2Hampshire already provide documentation to workers.
- 8.2. Business processes and documentation are being reviewed and changed where necessary to ensure compliance from April 2020, or earlier.

9. Changes to employment legislation – calculating a week's pay

- 9.1. On 6 April 2020, the method for calculating a week's pay will change from an average of 12 weeks, to an average of 52 weeks. This will affect the calculation for holiday and redundancy pay. Work has already commenced to ensure the Council remains compliant with the changes to employment legislation.

10. Consultation – Ethnic Pay Gap Reporting

- 10.1. This consultation sought views on which data and ethnicity pay gap should be reported and who should be expected to report. The consultation closed in January 2019. An update will be provided to EHCC when the outcome and therefore impact of this consultation is known.

11. Consultation – Exit Payment £95k cap

- 11.1. Government has launched a fresh consultation on the implementation of The Restriction of Public Sector Exit Payments Regulations 2019. The government legislated for a cap of £95,000 on exit payments in the public sector in the Small Business Enterprise and Employment Act 2015 as amended by the Enterprise Act 2016. This latest round of consultation is focussed on the implementation of the new regulations and is due to close on the 3rd July 2019. There is currently no proposed implementation date for the regulations.
- 11.2. The regulations propose that all exit payments made in consequence of the termination of employment, including voluntary and statutory severance pay and LGPS pension strain, are included within the £95k exit pay cap. Government's objective is to ensure that these payments are value for money and fair to the taxpayer.

- 11.3. Currently, the Council employer is required to make a 'pension strain' payment, for those employees aged 55 plus who are made redundant to provide the pension scheme member with an immediate unreduced pension before the member's Normal Pension Age. Including the LGPS pension strain within the calculation of the exit pay cap will result in a lower pension strain payment and consequently reduced pension benefits to the scheme member on redundancy. This will affect middle income and not just higher paid public sector workers.
- 11.4. Paragraph 5 of Schedule 6 to the Enterprise Act 2016 amends the Local Government Pension Scheme Regulations 2013 to allow:
- partial reduction of a member's pension benefits where otherwise the exit payment cap would be breached and
 - a scheme member to pay a charge to buy out some or all of that reduction
- These changes do not come into effect until the Treasury issue a commencement order.
- 11.5. If an exit payment includes pension strain cost and would exceed the cap, then the member's benefits would be reduced to such a level that the exit payment cap is not breached. The member would have the option of paying extra to buy-out some or all of the reduction.
- 11.6. Furthermore, the Council would need to prioritise payment of statutory redundancy pay and the pension strain within the exit pay cap calculation ahead of voluntary severance payments. This may prevent the Council from being able to make a voluntary severance payment.
- 11.7. The Council has from the outset of austerity in 2008 been managing the reduction in its workforce in response to the reductions in government grant in a planned and controlled way by the use of managed recruitment, redeployment of staff where possible and voluntary redundancy
- 11.8. The practical implications of the exit payment cap are that it may prove to be impossible to facilitate some individuals' exit from the organisation, despite any compelling business case to do so. Including the LGPS pension strain payment within the proposed exit payment cap will make it much harder for the Council to transform its workforce and meet future financial targets and continue to deliver quality public services.
- 11.9. A response is being submitted on behalf of the Council recommending that the LGPS pension strain is not included within calculation of the exit pay cap.
- 11.10. The response will be recommending to Government that Local Government should be an exempted body as they are outside the operational control of central government, are democratically accountable for their decision making, and exit decisions do not impact financially on the Treasury as they are met from within budgets set locally.

11.11. If the Council continues to be in scope of the exit payment cap we will be recommending that the cap should not include the cost of the LGPS pension strain.

11.12. If the LGPS pension strain continues to be in scope of the draft regulations, then the Council will be recommending that there should be an option;

- for the individual to defer payment of pension benefits in the event of a LGPS member who is over age 55 being made redundant or leaving on the grounds of business efficiency, or
- for the Council to appropriately assess its 'cash value' to the individual by applying an appropriate divisor as the pension will be received over many years, not in a single lump sum, or
- for the Council to only include those exit payments that can't demonstrate a 'pay back' period of less than 12 to 18 months whereby the costs saved through an exit (through the removal of a post) meet or exceed the exit payment, thus allowing an ongoing saving to be delivered.

11.13. An update will be provided to EHCC when the outcome and therefore the impact of this consultation is known.

11.14. In addition to the exit pay cap, Government previously proposed to implement new Repayment of Public Sector Exit Payments Regulations. This would require public sector workers earning at least £80,000 to repay their exit payments if they get a new public sector job within a year. At the time of writing, Government has made no further announcements regarding when it proposes to implement these regulations. An update will be provided to EHCC when Government brings forward its implementation plans.

12. **Consultation and Equalities**

12.1 It is not envisaged that there will be any equalities impact from the known changes.

Conclusions

13. Two legislative changes have been identified, which are straightforward to implement. However, it should be noted that the proposals for a cap on exit payments covered in paragraph 8 has potential to significantly impact the Council's exit strategies.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

This proposal does not link to the Strategic Plan but potentially impact the County Council's workforce strategy

Other Significant Links

Direct links to specific legislation or Government Directives

<u>Title</u>	<u>Date</u>
Pay, Policy and Legislation Update	12 July 2017
Pay Update	22 November 2017
Pay and Legislation Update	28 March 2018

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

See guidance at <http://intranet.hants.gov.uk/equality/equality-assessments.htm>

Insert in full your **Equality Statement** which will either state:

- (a) *why you consider that the project/proposal will have a low or no impact on groups with protected characteristics or*
- (b) *will give details of the identified impacts and potential mitigating actions*