

HAMPSHIRE COUNTY COUNCIL

Committee:	Employment in Hampshire County Council
Date:	12 th November 2020
Title:	Pay, Policy and Legislation Update
Report From:	Director of Corporate Resources

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Purpose of this Report

1. The purpose of this report is to provide an update to EHCC on the National Pay Award and proposed employment-related legislative changes.

Recommendation(s)

2. That EHCC note the current position on the pay award and developments concerning employment legislation.
3. Agree the delegation to the Chief Executive in respect of Departmental Management Team members as set out in paragraph 9.

Executive Summary

4. The National Pay Award for local council employees has been formally agreed for 2020.
5. This report provides updates on the following legislation and Government consultation topics:
 - Public sector exit payments
 - Ethnicity pay gap reporting
 - Support for domestic abuse survivors in the workplace
 - Veterans National Insurance employer contributions relief
 - Changes to public sector pension schemes

- Migration Advisory Committee recommendation to the Shortage Occupation List

Contextual information

2020 Pay Award

6. The national employers' final pay offer of 2.75% has been formally agreed. In accordance with the EHCC Collective Agreement, this pay award will be applied to staff on Grades A to G, and also to staff graded H and above. For staff who have transferred to Hampshire County Council on a TUPE transfer, the pay award will be applied where applicable. The new pay rates will be paid in November's salary.

Confirmation of Chief Executive Delegation

7. This section seeks to clarify arrangements already expressed within the constitution. In the County Council's Constitution, determination of "Chief Officer" remuneration is delegated to the Chief Executive subject to ratification by EHCC (Part 2, Chapter 4). The Constitution refers to Chief Officers as being members of the Corporate Management Team (CMT) and the Director of Public Health. The Constitution also refers to "Deputy Chief Officers" which effectively means those Senior Officers of the County Council who report to a Chief Officer in respect of all or most of their duties, in effect Departmental Management Team (DMT) members.
8. Historically, new DMT appointments have been made following approval by EHCC and through member appointment panels where required. In recent times, the practice for new DMT appointments has been for EHCC to delegate authority to the Chief Executive (in consultation with the Chairman of EHCC) to set remuneration rates for each of the post holders which are reflective of the established rates for the posts. The established rates for posts at this level fall within the pay range £83,064 to £135,000. Any changes to this range going forwards will be published in future annual pay statements. The actual remuneration within this range that is appropriate for individual post holders is determined by a number of factors including levels of responsibility, breadth of role, performance and taking appropriate advice from Korn Ferry (formerly known as HAY). In respect of these recent DMT appointments, the delegations effectively enable the Chief Executive to set the postholders' remuneration and vary that remuneration from time to time as appropriate, in consultation with the Chairman of EHCC, and within the established salary range for DMT roles.
9. However, a number of current DMT members were appointed some considerable time ago and it has not been possible to find consistent

delegations in respect of determination of all DMT members' remuneration, including for some DMT members who have accrued considerable experience in post. To enable the Chief Executive to continue to determine the remuneration of all DMT members consistently and with appropriate governance, EHCC are asked to formally delegate to the Chief Executive, in consultation with the Chairman of EHCC, authority to determine the remuneration of current and future DMT members from time to time, within the established pay range for these roles, currently £83,064 to £135,000.

10. New appointments to DMT posts will continue to involve approval by EHCC and member appointment panels as required.
11. Determination of remuneration for CMT members will continue to be dealt with under the delegation in Part 2 Chapter 4 of the Constitution and will therefore be subject to ratification by EHCC.

Public Sector Exit Payments – Employment Legislation and Consultation updates

12. Government legislated, through the Small Business Enterprise and Employment Act 2015, for a range of reforms that seek to restrict the payments that can be made to individuals on exit from a public sector organisation. These changes have been subject to several consultations since 2015. An update on each of these areas is provided below.

Restriction of Public Sector Exit Payments Regulations 2020 - £95k payments cap

13. In response to the feedback on the Restriction of Public Sector Exit Payments consultation which closed in July 2019, Government have announced that they plan to implement the £95k exit payments cap. The Restriction of Public Sector Exit Payments Regulations 2020 'the exit payment regulations', which have previously been reported to EHCC, will come into effect for all exits on or after 4 November 2020.
14. Key provisions of those regulations state that any payments made to an employee by way of their exit will be capped at £95k. Exit payments include:
 - Any payment on account of dismissal by reason of redundancy,
 - pension strain to reduce or eliminate an actual reduction to a pension on early retirement the employee would otherwise suffer,
 - compensation pursuant to an ACAS settlement,
 - ex-gratia or severance payments,
 - payments made on voluntary exit,

- payment in lieu of notice where contractually entitled, where this is above 25% of their salary (not applicable to Council employees as contracts of employment do not include the right to pay in lieu of notice)
 - payment to extinguish liability for a fixed term contract,
 - any other payment, whether under contract or otherwise, in consequence of termination of employment or loss of office.
15. The pension strain charge is a cost paid by the employer if an employee is made redundant aged between 55 and their normal pension age. The pension strain paid by the employer ensures that the employee suffers no actual reduction in their benefits accrued to the date of redundancy.
16. Payments that are exempted from the £95k cap are those made in respect of death in service, any payment in respect of incapacity as a result of injury, accident or illness, pay in lieu of contractual annual leave, and payment in compliance with an order of a court or tribunal.
17. Where multiple payments are being made employers must not reduce the value of a statutory redundancy payment. The value of the other payments must be reduced instead.
18. There are two waivers within the regulations. The first is a mandatory waiver for payments made in relation to whistleblowing, discrimination and similar cases that could be considered by an ET.
19. The second is a discretionary waiver. There are 3 categories of discretionary waver which are:
- undue hardship – the LGA have advised that this will have a very tight definition and it is intended that this would be used rarely,
 - where workforce reform would be inhibited – this is not currently defined,
 - where an individual's exit is delayed and takes effect after the implementation date and the delay is not attributable to the employee (e.g. it may be due to Covid-19).
20. In these cases, the waiver would be subject to approval by Full Council and by both MHCLG and HM Treasury following submission of a business case.
21. There is no provision for the £95k cap to be index linked though Government will keep the figure under review.
22. Further clarity is needed from Government on the application of these regulations as these new provisions conflict with existing LGPS regulations

where someone exits the organisation through redundancy or efficiency at age 55 or over. In these types of exit, Local Authorities are required to pay a pension strain charge which, depending on age, salary and length of pensionable service, in itself can exceed the £95k cap. The necessary Treasury Directions and, MHCLG guidance are, at the time of writing, expected week commencing 19 October 2020.

23. The Council's policies and procedures will be updated as appropriate to comply with this legislative change.

Reforming Local Government Exit Pay Consultation – redundancy payments

24. In addition to the £95k cap, Government consulted on a framework for further reform of redundancy pay in 2016, the details of which were previously reported to EHCC. MHCLG have now published a fresh consultation on how that framework should apply within the Local Government workforce. The framework intends to limit local government redundancy payments as well as pension strain costs for early retirement under the Local Government Pension Scheme.

25. In relation to further reforms of exit payments, the consultation is seeking views on equalities/workforce impacts of those reforms. Those reforms are as follows:

- Set a maximum limit for calculating redundancy payments at three weeks' pay per year of service,
- Limit the number of months' salary that can be paid as a redundancy payment at a maximum of 15 months,
- Cap the maximum salary on which redundancy pay can be based on at £80,000 (which is subject to inflation reviews).

26. Our current understanding based on the wording in the latest Government consultation document is that these wider reforms (unlike the £95k cap) only apply to redundancy situations and not to other exits, e.g. efficiency that would be wrapped up in a settlement agreement. However, we need to wait for the outcome of the consultation and any detailed guidance to be published to know whether this is the case if or when implemented.

27. In addition to the above the current consultation sets out the following further reforms for exits where access to pension would be granted in the case of redundancy or efficiency:

- Regardless of the total value of the exit payments, pension strain charges to be paid by the employer will be reduced by the value of the statutory redundancy payment. Statutory redundancy payment is based on age,

length of service and a capped weekly pay of £538. This will result in an actuarial reduction in the pension the employee receives.

- Where the employer pays any amount of pension strain cost in respect of an employee's exit, an employer may not grant an employee any discretionary redundancy payment. However, in the rare cases where the discretionary payment would have had a higher value than the pension strain cost the member will be entitled to take the pension enhancement delivered by the strain cost plus a cash payment equal to the difference between the strain cost and discretionary redundancy payment.

28. Employees will be given a choice to use their statutory redundancy payment to offset any reduction in their pension. They may also choose to pay into the pension fund from their own resources to avoid the actuarial reduction.
29. The proposal which sets to limit the number of weeks' redundancy pay that can be paid to an individual at three weeks per year of service will impact upon the Council's Enhanced Voluntary Redundancy Scheme. The voluntary scheme currently offers a payment equivalent to 20 weeks' pay provided that permanent employees have at least two years' continuous service with the Council. If Government's maximum limit of three weeks' pay per year of service is implemented, it would mean employees with less than 7 years' service with the Council would receive a reduced voluntary severance payment as set out in the following table:

Length of Service	EVR2	Maximum exit-pay following implementation of new regulations
2 years	20 weeks	6 weeks
3 – 6 years	20 weeks	9 to 18 weeks (3 weeks per year of service)
7 years (plus)	20 weeks	20 weeks

30. Though, as a result of these changes, the EVR2 scheme would be less attractive to those members of staff with less than 7 years' service an amended scheme will continue to be a valuable tool for the Council to effect transformation through voluntary means. The scheme will, dependent on an individual's length of service, age and LGPS membership, still enable some staff to exit the organisation on grounds of redundancy on enhanced terms.
31. The Council has responded to the reforming local government exit pay consultation which closed on the 9th November 2020. An update on the outcome of this consultation will be provided once Government has responded. There is no proposed formal implementation date and the regulations which

would enact the proposals outlined above have not yet been laid before Parliament.

32. If these proposals are implemented the Council will update its policies and procedures including the EVR2 scheme to ensure that they remain legislatively compliant.

Public Sector Exit Payment Recovery Regulations – repayment of exit payments

33. Alongside the £95k payments cap, the Small Business Enterprise and Employment Act 2015 also legislated for regulations which would require public sector workers to repay exit payments if they are re-employed in the public sector within 12 months and if they had a salary of £80,000 or more at the point of exit. Draft regulations were published in 2016.
34. Payments for loss of employment, including discretionary payments to buy out actuarial reductions to pensions and severance payments are in scope of these proposed regulations.
35. It is proposed that the recovery amount will be reduced over time for a return at any point up to 12 months from exit.
36. The draft regulations require the individual to notify their new and previous employer where they propose to return to the public sector after they have received a public sector exit payment within the previous 12 months. It then requires the old employer to make arrangements with individuals where exit payments are due to be recovered
37. At the time of writing, there is no development on the draft Public Sector Exit Payment Recovery Regulations 2016 and Government's response on this consultation is still awaited.

Summary

38. These are wide ranging and complex changes which if fully implemented will affect staff differently depending on their age, length of service and whether they are a member of the LGPS. Several examples are provided at appendix A.

Other Employment Legislation updates

39. There have been no developments in Government's intention to legislate neonatal leave and pay or any of the other proposed aspects in the anticipated draft Employment Bill as previously reported to EHCC.

Consultation updates

40. Government are considering responses to several consultations that have been reported previously to EHCC in July 2020. At the time of writing, there is no update on the following consultations:

- Ethnicity pay gap reporting
- How to reduce ill-health related job losses
- Measures to address one-sided flexibility
- Sexual harassment in the workplace
- Confidentiality clauses
- Carers' leave

41. In respect to Ethnicity Pay Gap Reporting, parliament is set to debate mandatory publishing of ethnicity pay gap data after a petition for its introduction passed over 100,000 signatures.

New Consultations

Supporting domestic abuse victims in the workplace

42. Government has recently launched a consultation to gather views on how best to support domestic abuse victims within the workplace. Government is calling for employer opinion on the support which is currently offered within the workplace and whether there is potential to do more such as providing an outlet for reporting abuse, financial aid, or emotional support. Currently, the Council offer the following support measures to employees who are experiencing domestic abuse:

- A framework for employees to report and for managers to respond to domestic abuse concerns is provided within the Domestic Abuse Policy and How to Guide.
- The opportunity to take leave or work flexibly is provided to enable the employee to attend appointments during work time with various support agencies or to attend hearings.
- In the moment confidential counselling support and telephone advice is offered through the Employee Support Service.
- Risk assessments when an employee discloses domestic abuse are conducted to ensure that the appropriate health, safety, and security arrangements are put in place.

43. The support in the workplace for victims of domestic abuse consultation is part of a broader Government review of employment rights for domestic abuse survivors. The consultation closed on the 9th September 2020.

National Insurance Contributions holiday for veterans

44. A consultation which seeks views on the proposed National Insurance Contributions holiday for veterans which was announced in the 2020 Spring Budget has been published. This measure would introduce an Employer National Insurance Contributions relief on the wages of veterans for the first 12 months of their civilian employment from April 2021. This consultation requests views on how to implement this relief, how Government intends to define eligible veterans and the qualifying employment periods that should apply to this scheme. The Council has responded to the consultation which closed on the 5th October 2020. If Government decides to enact employer National Contributions relief on veterans' pay, the Council will amend its policies and procedures accordingly.

Proposals to rectify age discrimination in public sector pension schemes

45. Government have produced two consultations which call for views on proposals to rectify the age discrimination in public sector pension schemes as identified in the case of McCloud. The Courts found that protection arrangements put in place in many public sector pension schemes when the schemes were reformed in 2014 to 2015 directly discriminated against younger scheme members.
46. Generally, the consultations propose to remove the discrimination by abolishing the condition that required a member to be within 10 years of retirement to be eligible for transitional protection. Of the two consultations, one deals with most public sector schemes, whilst the other only covers the Local Government Pension Scheme. The proposals for practically addressing the discrimination vary within the two consultations due to the differing approach the Local Government Pension Scheme took to provide transitional protection during the scheme's reform in 2014.
47. The consultation which covers the Local Government Pension Scheme specifically intends to address the discrimination to LGPS members by extending the underpin protection to all members who were not old enough to receive the protection when it was originally introduced. This protection would mean that all eligible LGPS members would receive a guarantee that their career-average pension would be at least as high as the final-salary pension they would have received in the old legacy scheme. Government intend to apply this protection retrospectively from 2014 to 31st March 2022, or the member's underpin date, where earlier.

48. The proposals set out within the consultations would apply to all employees who were active scheme members on the 31st March 2012 and who have accrued benefits under the revised schemes, including those with a qualifying break in service of less than 5 years.
49. The changes to the pension schemes are proposed to take effect from April 2022. Draft regulations which provide a framework to revise the Local Government Pension Scheme have been published alongside the respective consultation. The Local Government Pension Scheme focused consultation closed on the 8th October, whilst the other closed on the 11th October 2020.
50. An update on the outcome of these consultations will be provided once Government has responded.

Recommended Update to Shortage Occupations List

51. In March 2020, the Home Secretary commissioned the Migration Advisory Committee to review the occupations it had placed on its Shortage Occupation List. The occupations on the list are given special dispensations within the current immigration rules to make it easier for employers to access migrant labour to fill vacancies. EHCC should note that the MAC have recommended that 'senior care workers' are added to the List, an addition that the County Council requested through the consultation. If the recommendations are approved, the salary threshold applied will determine how this will impact on roles in the County Council such as Children's Residential Workers and Community Rehabilitation Care Workers.

Consultation and Equalities

52. The exit payment regulations are subject to a national Equalities Impact Assessment, which the government have yet to publish. Any subsequent changes to HCC policy as a result of these regulations, or other national changes identified in this paper may be subject to separate Equalities Impact Assessments that will be conducted, where required, as part of the process to amend policy.

Conclusions

53. Updates on the matters covered by this paper will be supplied to EHCC as further details and clarity are provided.

Appendix A – Case Examples

Example 1 – Grade G (£44k p:a), aged 59, with 2 years’ service (total package does not exceed the £95k cap)	
Current position	Proposed Position
<p>Pension strain of £9k and access to unreduced pension HCC Severance Payment of £2.5k Total exit package £11.5K</p>	<p>Pension strain of £7.4k (i.e. £9k less Statutory Redundancy Payment of £1.6k) and access to reduced pension PLUS Statutory Redundancy Payment of £1.6k with option to pay part or all of the Statutory Redundancy payment into their pension and offset the reduction = total exit package of £9k OR, Defer pension and take max severance package of £2.5k = total exit package of £2.5k</p>
Example 2 – Grade F (£38k p:a), aged 56, with 14 years’ service (total package exceeds the £95k cap)	
Current position	Proposed Position
<p>Pension strain of £89k and access to unreduced pension HCC Severance Payment £14.8K (greater than what they’d receive under EVR2) Total exit package £104k</p>	<p>Pension strain of £77.7k (i.e. £89k less Statutory Redundancy Payment of £11.3k) and access to reduced pension PLUS Statutory Redundancy Payment of £11.3k with option to pay part or all of the Statutory Redundancy Payment into their pension and offset the reduction = total exit package of £89k OR, Defer pension and take max severance package of £14.8k = total exit package of £14.8k</p>
Example 3 – Grade G (£47k p:a), aged 57, with 10 years’ service (total package exceeds the £95k cap)	
Current position	Proposed Position
<p>Pension strain of £156k and access to unreduced pension HCC Severance Payment of £13.5k or £18K (if offered EVR2) Total exit package £ 169.5k or £174k (EVR2)</p>	<p>Pension strain of £87k (i.e. capped at £95k less Statutory Redundancy Payment of £8k) and access to reduced pension PLUS Statutory Redundancy Payment of £8k with option to pay part or all of the Statutory Redundancy Payment into their pension and offset £8K of the reduction, therefore still an actuarial reduction of £69k = total exit package of £95k. Plus the ability to pay from private financial resources £69K to secure an actuarially unreduced pension OR, Defer pension and take max severance package of £18k = total exit package of £18k</p>

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

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

Other Significant Links

Direct links to specific legislation or Government Directives

<u>Title</u>	<u>Date</u>
Policy and Legislation Update	9 th March 2020
Pay, Policy and Legislation Update	9 th July 2020

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:

Equality objectives are not considered to be adversely affected by proposals in this report.