

2015 No. 0000

EMPLOYMENT

**The Repayment of Public Sector Exit Payments Regulations
2015**

Made - - - - ***
Laid before Parliament ***
Coming into force - - 1st April 2016

Two Lords Commissioners of Her Majesty's Treasury, in exercise of the power conferred by [clause 149(1)] of the [Small Business, Enterprise and Employment Bill](a) upon them, make the following Regulations.

PART 1

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Repayment of Public Sector Exit Payments Regulations 2015.

(2) These Regulations come into force on 1st April 2016 and have effect from the day they come into force.

(3) These Regulations extend to the whole of the United Kingdom.

Interpretation

2. In these Regulations—

“exit payment” means a payment of a type prescribed in regulation 3;

“new employer” has the meaning set out in regulation 10;

“old employer” has the meaning set out in regulation 9;

“part time basis” means employment or contracted work over any given month when the average hours of work required by the employment or contract is less than 37.5 per week;

“redundancy” has the meaning set out in section 139 of the Employment Rights Act 1996(b);

“relevant contract for services” has the meaning set out in regulation 11;

(a) 2014 c.x

(b) 1996 c.18

“relevant Schedule”, in relation to a sub-sector, has the meaning set out in regulation 8(3);

“remuneration” includes—

- (i) salary or wages;
- (ii) bonus payments mandated by any contract;
- (iii) payments by way of shares; and

“sub-sector” has the meaning set out in regulation 8(1).

PART 2

Exit Payments

3.—(1) Subject to regulation 7 below, these Regulations apply to the following payments made in connection with a loss of employment or offices—

- (a) a payment in account of dismissal by reason of redundancy;
- (b) a payment made consequently upon a voluntary exit from employment;
- (c) a payment made by way of shares consequent upon a loss of employment;
- (d) a payment to reduce or eliminate an actuarial reduction to a pension upon early retirement;
- (e) a payment made to extinguish any liability to pay money under a fixed term contract; and
- (f) any other payment made as a consequence of, in relation to, or conditional upon, loss of employment.

(2) The provisions of paragraph (1) are subject to the provisions of regulations 4 to 7 below.

(3) For the purpose of these Regulations, the payments listed in paragraph (1) shall be described as “exit payments”.

4. Regulation 3(d) does not include a payment made under regulation 30(7) of the Local Government Pension Scheme Regulations 2013(a).

5. Regulation 3(f) does not include a payment made in order to give effect to a term of the contract of employment, including—

- (a) a payment made in respect of leave due under the contract but not taken;
- (b) a payment made in respect of a period of notice due under the contract but not served; or
- (c) a bonus payment otherwise due under a term of the contract of employment.

6. Regulation 3(f) does not include any payment made in compliance with an order of any court.

7.—(1) These Regulations do not apply to an exit payment made to an exit payee who, in the period of 12 months prior to the end of their employment, or before they ceased to hold office, earned remuneration of under £100,000.

(2) These Regulations do not apply to an exit payment made to an exit payee—

- (a) who left employment or office after a period of under 12 months in that employment or office; and
- (b) during the time they were in employment or office, they earned remuneration under $N \times £8,333.34$

where N is equal to the number of time that they were in employment or office, rounded down to the nearest number of whole months.

(3) When calculating the remuneration earned by an exit payee under paragraph (1) or (2) above, if the exit payee works on a part time basis, then:

- (a) for each week that the exit payee works under 3 hours, multiply the actual earnings by 0;
- (b) for each week that the exit payee works 3 or more hours, but under 7.5 hours, multiply the actual earnings by 5;
- (c) for each week that the exit payee works 7.5 or more hours, but under 15 hours, multiply the actual earnings by 2.5;
- (d) for each week that the exit payee works 15 or more hours, but under 22.5 hours, multiply the actual earnings by 1.66; and
- (e) for each week that the exit payee works 22.5 or more hours, but under 30 hours, multiply the actual earnings by 1.25.

PART 3

Sub-sectors and employers

8.—(1) In these Regulations, a reference to a sub-sector refers to one of the groups of bodies and offices listed in paragraph (2).

(2) The sub-sectors are:

- (a) The civil service sub-sector is the bodies and offices listed in Schedule 1;
- (b) The local government sub-sector is the bodies and offices listed in Schedule 2;
- (c) The health sub-sector is the bodies and offices listed in Schedule 3;
- (d) The education sub-sector is the bodies and offices listed in Schedule 4; and
- (e) The Office for National Statistics sub-sector is the body listed in Schedule 5.

(3) In relation to a sub-sector listed in paragraph (2), a reference to the relevant Schedule refers to the Schedule containing the bodies and offices that form that sub-sector.

9. In these Regulations, the old employer means—

- (a) the body listed in the relevant Schedule with which has made an exit payment to the exit payee; or
- (b) the responsible authority for the office listed in the relevant Schedule in respect of which the exit payee has received an exit payment consequent upon ceasing to hold that office.

10. In these Regulations, the new employer means—

- (a) the subsequent authority listed in the relevant Schedule with which the exit payee has taken up new employment;
- (b) the subsequent authority listed in the relevant Schedule which has entered into a relevant contract for services; or
- (c) the subsequent authority for the office listed in the relevant Schedule which the exit payee has taken up.

11. In these Regulations, a relevant contract for services is a contract for services with the new employer under which the exit payee provides service to the new employer—

- (a) as the employee of another person; or
- (b) as a self-employed person;

and the service provided to the new employer accounts for more than 50% of the exit payee's new employment or self-employment.

PART 4

Repayment of exit payments

12. For the purposes of these Regulations, an exit payee is deemed to have received the exit payment upon the same day as they left the employment or ceased to hold the office in respect of which the exit payment was made.

13.—(1) Regulations 14 and 15 apply to exit payees who—

- (a) receive an exit payment to which regulation 3 applies upon—
 - (i) leaving the employment of a body listed in the first column of the table in the relevant Schedule; or
 - (ii) ceasing to hold the office listed in the first column of the table in the relevant Schedule;
- (b) and who—
 - (i) takes up employment with a body listed in the first or second column of the table in the relevant Schedule;
 - (ii) enters into a relevant contract for services with a body listed in the first or second column of the table in the relevant Schedule; or
 - (iii) takes up an office listed in the first or second column of the table in the relevant Schedule.

(2) Regulations 14 and 15 do not apply to exit payees who—

- (i) take up employment with a body listed in the first or second column of the table in the relevant Schedule;
- (ii) enters into a relevant contract for services with a body listed in the first or second column of the table in the relevant Schedule; or
- (iii) take up an office listed in the first or second column of the table in the relevant Schedule;

where the employment, contract for services, or period holding office lasts for less than 15 days in any period of 90 consecutive days.

14. Where this regulation applies, if the exit payee satisfies the conditions in regulation 13(1) within 28 days of receiving the exit payment, the exit payee must repay the exit payment to the old employer in full.

15.—(1) Where this regulation applies, if the exit payee satisfies the conditions in regulation 13(1) after 28 days, but before 12 months, of receiving the exit payment, the exit payee must repay to the old employer the amount of the exit payment calculated in accordance with this regulation.

(2) That amount is calculated as—

$$A - (((B/12) \times C) + D)$$

where—

A is the amount of the exit payment;

B is the remuneration of the exit payee for the 12 months prior to the exit payment being made;

C is the amount of months or part months that have passed between the exit payment being made and the exit payee becoming liable to repay the exit payment under these Regulations; and

D is the amount of tax and national insurance contributions paid by the exit payee in relation to the exit payment.

(3) Where the remuneration—

- (a) for employment with the new employer;

- (b) due to be paid the exit payee under a relevant contract for services; or
- (c) paid in respect of the new office;

is less than the remuneration received by the employment or office in respect of which the exit payment was made, the amount of the exit payment due to be repaid calculated under paragraph (2) is further reduced by the proportional difference between the remuneration of the old employment or office and the new employment, office, or relevant contract for services.

(4) Where an exit payee receives an exit payment in relation to a full time role in employment or office, and returns to work to a part time role in employment, under a relevant contract for services, or in office, the amount of the exit payment due to be repaid calculated under paragraph (2) is further reduced by the proportion of time the new part time role is less than the old full time role.

(5) Where the amount calculated under paragraph (2) is equal to or less than:

- (a) the amount of statutory redundancy pay due under section 162 of the Employment Rights Act 1996(a); or
- (b) where the exit payee did not have an entitlement to statutory redundancy pay calculated under that section, the amount of statutory redundancy pay that would have been due under that section if it had applied;

the amount of the exit payment due to be repaid is equal to zero.

(6) In any case where the amount calculated under this regulation is equal to or less than zero, the amount of the exit payment due to be repaid is equal to zero.

PART 5

Duties

16. Where an exit payment is made that may become subject to repayment under regulations 14 and 15, the responsible authority shall—

- (a) inform the exit payee that if they take up employment or enter into a contract for services with a body, or take up a public office, in the same subsector, then they may be liable to repay some or all of that exit payment under these Regulations; and
- (b) keep a record of that payment for 12 months.

17. When an exit payee, within a year of receiving an exit payment, applies to—

- (a) take up employment with a new employer listed in the first or second columns of the relevant Schedule;
- (b) start work under a relevant contract for services with a new employer listed in the first or second columns of the relevant Schedule; or
- (c) take up an office listed in the first or second columns of the relevant Schedule;

the exit payee shall inform the old employer and the new employer of the fact that there has been an exit payment, and that there may be an obligation to repay some or all of that exit payment under these Regulations.

18. Where it becomes apparent that if the exit payee were to—

- (a) take up employment with a new employer listed in the first or second columns of the relevant Schedule;
- (b) start work under a relevant contract for services with a new employer listed in the first or second columns of the relevant Schedule; or
- (c) take up an office listed in the first or second columns of the relevant Schedule;

(a) 1996 c.18

the exit payee shall enter into such arrangements with the new and old employers as are necessary to repay to the old employer the amount of the exit payment that is due to be repaid under regulations 14 and 15.

19.The arrangements under regulation 18 shall include arrangements to—

- (a) pay by lump sum;
- (b) pay by instalments; or
- (c) pay by any other method the old employer considers to be appropriate.

20. The exit payee, old employer, and new employer shall co-operate with each other, and supply each other with sufficient information, to enable the exit payee to make arrangements under regulation 18.

21.When arrangements under regulation 18 have been made, the old employer shall confirm to the new employer that the arrangements have been made.

22.The exit payee may not—

- (a) take up employment with a new employer listed in the first or second columns of the relevant Schedule;
- (b) start work under a relevant contract for services with a new employer listed in the first or second columns of the relevant Schedule; or
- (c) take up an office listed in the first or second columns of the relevant Schedule;

until they have made such arrangements with the new and old employers as are necessary to repay to the old employer the amount of the exit payment that is due to be repaid under these Regulations.

23.—(1) Once the exit payee—

- (a) takes up employment with a new employer listed in the first or second columns of the relevant Schedule;
- (b) starts work under a relevant contract for services with a new employer listed in the first or second columns of the relevant Schedule; or
- (c) takes up an office listed in the first or second columns of the relevant Schedule;

then they must within a reasonable time repay to the old employer the amount of the exit payment that is due to be repaid under these Regulations.

24. The old employer must take all reasonable steps to collect any repayment due to be repaid under these Regulations.

25. In the event that the exit payee does not repay, to the old employer and within a reasonable time, the amount of the exit payment that is due to be repaid under regulations 14 and 15, then the new employer must consider whether to—

- (a) dismiss the exit payee from the new employment;
- (b) stop the exit payee from working under the relevant contract for services; or
- (c) remove the exit payee from the new office.

PART 6

Waiver

26.—(1) This regulation sets out the persons who may waive, in whole or in part, the requirement upon an exit payee to repay an exit payment under these Regulations.

(2) If that power is exercised to waive the requirement to repay an exit payment under these Regulations, then—

- (a) regulations 14 and 15 do not apply to the exit payment; and

(b) the duties and obligations under regulations 17 to 25 no longer apply to the exit payee, the old employer, and the new employer.

(3) Those persons are—

(a) for the civil service sub-sector—

(i) the Secretary of State; or

(ii) the Minister for the Cabinet Office;

(b) for the local government sub-sector, the Secretary of State for Communities and Local Government;

(c) for the health sub-sector, the Secretary of State for Health;

(d) for the education sub-sector, the Secretary of State for Education; and

(e) for the Office for National Statistics sub-sector, the Office for National Statistics.

(4) The persons who under this regulation may waive the requirement to repay an exit payment under these Regulations may delegate that power to—

(a) Welsh Ministers, in respect of a public body or office in Wales;

(b) the Department for Finance and Personal, in respect of a public body or office in Northern Ireland; or

(c) a local authority, in respect of a body or office in the local government sub-sector.

(5) Such a delegation may also include the power to sub-delegate the power.

27. Where a person exercises the power to waive the requirement to repay an exit payment under these Regulations, they shall:

(a) keep a record of the exercise of that power and the reasons for it for at least 12 months; and

(b) publish, as part of annual accounts or in a list published at the start of the financial year, a list of all the times in the preceding twelve months that they have exercised that power and the reasons for it.

28.—(1) The Treasury may issue guidance to persons who can exercise the power in regulation 26 to waive the requirement upon an exit payee to repay an exit payment under these Regulations.

(2) In the event that the Treasury issue such guidance, those persons must follow it.

Signed

Name
a Lord Commissioner of Her Majesty's Treasury

[date]

Name
a Lord Commissioner of Her Majesty's Treasury

SCHEDULES

SCHEDULE 1

The civil service sub-sector

Government Department	Scottish Government Department
Non-Departmental public body in England	Non-Departmental public body in Scotland
Welsh Government Department	
Non-Departmental public body in Wales	
Northern Ireland Executive Department	
Non-Departmental public body in Northern Ireland	

SCHEDULE 2

The local government sub-sector

Department for Communities and Local Government	Council in Scotland
Council in England	Local body in Scotland
Council in Wales	
Council in Northern Ireland	
Local authority company	
Local body	

SCHEDULE 3

The health sub-sector

Department for Health	NHS Trust in Scotland
NHS Trust in England	
NHS Trust in Wales	

SCHEDULE 4

The education sub-sector

Department for Education	Local authority school in Scotland
Academy in England	
Local authority school in England	
Local authority school in Wales	

Local authority school in Northern Ireland

SCHEDULE 5

The Office for National Statistics sub-sector

The Office for National Statistics

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