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Llywodraeth Cymru
Welsh Government

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To:

Leaders and Chief Executives, County and County Borough Councils
Chairs of Boards and Chief Executives, Local Health Boards
Chairs of Boards and Chief Executives, NHS Trusts
Chairs of Boards and Chief Executives, Special Health Authorities
Chairs of Boards and Chief Executives, Welsh Government Arm's Length Bodies
Chairs of Governors, Foundation and Voluntary Aided Schools
Welsh Commissioners
HM Chief Inspector for Education and Training
Auditor General for Wales

2 November 2020

RESTRICTION OF PUBLIC SECTOR EXIT PAYMENTS REGULATIONS

The Welsh Government greatly values the work being done by staff at all levels in the Welsh public service, wherever they are and whatever their role in providing vital services to the people of Wales. That has been reinforced by the way that the public sector has responded to the challenges that this year has brought and continues to bring, with public servants putting themselves at risk in order to help the people of Wales and in some cases losing their lives in doing so. Welsh Ministers do not believe that this is the right time to put restrictions on the benefits received by public sector workers, especially when they leave their employer.

However, following a decision by the UK Parliament and HM Treasury, the Restriction of Public Sector Exit Payments Regulations 2020 (SI 2020/1122) will come into force across the United Kingdom on 4 November 2020. This puts a cap of £95,000 on all exit payments and means that all local authorities, health bodies, Voluntary-Aided and Foundation schools, and other public bodies must ensure that no exit payment is made to any employee or office holder that exceeds the £95,000 limit without Welsh Ministers' approval. This includes taking into account any employer funded payment or adjustment to enhance or protect an individual's pension, known as 'pension strain' or 'pension top-up', and any payment agreed before 4 November but departure is on or after that date. This is separate to UK Government proposals to change the terms of the Local Government Pension Scheme or any other public sector pension or compensation scheme.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Welsh Ministers do not want to see workers' hard-won benefits on leaving the public sector to be unnecessarily restricted. We are particularly concerned about the effect that this UK legislation will have on staff who are on relatively low pay and who have served the public for many years, with an expectation that their pension scheme would provide compensation at the right time. As a result, and subject to legal advice and further consideration of evidence, Welsh Ministers are considering introducing a waiver that, where legally possible, removes 'pension strain' costs from the exit payment cap calculation. They will also reflect on whether other issues should be considered as reasons for waiver in order to protect our public sector workers further. This is additional to the areas that the UK Treasury has proposed where waivers might be considered:

- where an obligation to pay an exit payment arises as a result of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE);
- where a payment is made to avoid employment tribunal litigation in relation to whistleblowing;
- where a payment is made to avoid employment tribunal litigation in relation to a complaint of discrimination under the Equality Act 2010;
- where not exercising the power would cause undue hardship;
- where not exercising the power would significantly inhibit workforce reform;
- where an arrangement to exit was entered into before the regulations came into force, but the exit was delayed until after that date.

Before the wider process for approval of waivers is in place, all public bodies should continue to consider potential exit payments through their existing approval processes and refer any requests for a waiver for payments to be made on or after 4 November 2020 to your partnership team within Welsh Government for consideration.

Yours sincerely,



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