

## Mandatory HM Treasury Directions

HM Treasury, in exercise of the powers conferred on them by section 153C(1) and (5) of the Small Business, Enterprise and Employment Act 2015, make the following Directions.

1. These Directions may be cited as the Exit Payment Cap Directions 2019 and come into force on the same day as the Restriction on Exit Payment Regulations 2019 (“the Regulations”).
2. In these Directions “Decision Maker” means the person who exercises the power under section 153C(1) of the Small Business, Enterprise and Employment Act or under regulation 11(b), 11(c) or 11(d) of the Regulations.

### Mandatory exercise of the power

3. The Decision Maker must exercise the power to relax restrictions imposed by the Regulations on payments of a type described in regulation 6(1) of the Regulations and which are made in respect of a relevant public sector exit in the following circumstances:

#### *Transfer of Undertakings (TUPE)*

- 3.1 Where the obligation to make that payment arises as a result of the application of the [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(SI 2006/246\)](#).

#### *Employment tribunal claims: discrimination and whistleblowing.*

- 3.2 Where –
  - (a) the payment relates to a complaint that an employment tribunal has the jurisdiction to consider under s48(1A) of the Employment Rights Act 1996 or s120(1) of the Equality Act 2010; and
  - (b) the Decision Maker is satisfied on the balance of probabilities that an Employment Tribunal would make an award or order of compensation under s49(1)(b) or s118(1) of the Employment Rights Act 1996 or s124(2)(b) of the Equality Act 2010 if it considered the complaint.

#### *Nuclear Decommissioning Authority (NDA): pension related payments paid upon redundancy.*

- 3.3 Where –
  - 3.3.1 the obligation to make the payment arises from a NDA group pension scheme, and
  - 3.3.2 the payment is –
    - (a) of a type described in para 3.3.3 below, and
    - (b) made to or on behalf of an employee –
      - (i) who is employed –
        - by a company or other body holding a site licence granted under the Nuclear Installations Act 1965 for one or more nuclear-licenced sites (“the employer”), and
        - on a site that is subject of a decommissioning programme agreed between the NDA and the BEIS Secretary of State, and
      - (ii) whose employment is terminated –
        - as result of the decommissioning programme, and
        - for a reason which amounts to a redundancy as defined by section 139(1) of the Employment Rights Act 1996, and

(iii) for whom there is no suitable alternative employment within the employer's business, business within the employer's group of companies, or any other employer with the NDA estate.

3.3.3 The following types of payments are a payment for the purposes of para 3.3.2 (a) –

(a) any payment made to reduce or eliminate an actuarial reduction to a pension on early retirement or in respect to the cost of a pension scheme of such a reduction not being made;

(b) any payment made to the pension fund for additional years' pension in lieu of service, or

(c) any payment made in lieu of an enhanced and/or unreduced pension which may be paid by means of a capitalised lump sum or continuing annual payments between the date of termination of employment and normal retirement age.

#### **Discretionary exercise of the power**

4. Subject to para 4.1, the Decision Maker may exercise the power to relax restrictions imposed by the Regulations ("the power") in relation to payments of a type described in regulation 6(1) of the Regulations and which are made in respect of a relevant public sector exit where the Decision Maker is satisfied—

- a. that not exercising the power would cause undue hardship;
- b. that not exercising the power would significantly inhibit workforce reform;
- c. (i) that an agreement to exit was made before the coming into force of the Regulations;  
(ii) that it was the intention of both parties that the exit would occur before that date; and  
(iii) that any delay to the date of exit was not attributable to the employee or office holder as applicable.

4.1 Where the Decision Maker is exercising the power pursuant to regulations 11 (b), 11(c) or 11 (d) of the Regulations, the Decision Maker must seek consent of HM Treasury before exercising the power.

#### **General**

5. The power to relax restrictions imposed by the Regulations must only be exercised to the extent necessary to give effect to one or more of the criteria set out in sections 3 and 4 of this document.