REPORT TO:	**PENSION COMMITTEE** **16 March 2021**
SUBJECT:	**Exit Payment Cap**
LEAD OFFICER:	**Vicki Richardson** **Head of HR & Finance Service Centre**

SUMMARY OF REPORT:

This report relates to the revocation of the Restriction of Public Sector Exit Payments Regulations 2020 and the impact on the Local Government Pension Scheme (LGPS)

POLICY CONTEXT/AMBITIOUS FOR CROYDON:

Sound Financial Management: This report updates on the government's decision to revoke the Restriction of Public Sector Exit Payments Regulations 2020 which will impact on the level of benefits paid to scheme members and employer strain costs paid when an LGPS member aged 55 or over exits the organisation..

FINANCIAL IMPACT:
This report will impact on the calculation of strain costs for early retirement.

KEY DECISION REFERENCE NO.: N/A

RECOMMENDATIONS:

The Committee is asked to note that:

1) On 12 February 2021, the government announced that the Restriction of Public Sector Exit Payments Regulations 2020 (Exit Cap Regulations) introduced on 4 November 2020 to cap exit payments in the public sector to a maximum of £95,000 will be revoked, and that an HM Treasury Direction would disapply the Exit Cap Regulations 2020 until revocation, removing any conflict with the LGPS regulations that arose as a result of the cap, with immediate effect from 12 February 2021;

2) On 25 February 2021, the Restriction of Public Sector Exit Payments (Revocation) Regulations 2021 (Revocation Regulations) were laid before Parliament. They will come into force on 19 March 2021 and formally revoke the Cap Regulations from that date.

3) The administering authority will revert to using local factors supplied by the funds actuaries for calculating early retirement strain costs

1. Background

1.1 The Restriction of Public Sector Exit Payments Regulations 2020 (Exit Cap Regulations) implementing the £95k cap on exit payments came into force on 4th November 2020. Within the meaning of the Exit Cap Regulations an exit payment included redundancy payments (including statutory redundancy payments), severance payments, pension strain costs that arise when a Local Government Pension Scheme (LGPS) pension is paid unreduced before a member's normal pension age, and other payments made as a result of termination of employment.

1.2 As required changes to the LGPS regulations to comply with the £95K exit payments cap had not been implemented this created a conflict between the Exit Cap Regulations and the LGPS regulations if the cap was breached when an LGPS member aged 55 or over exited. The LGPS regulations still entitled the member to receive and required them to take immediate payment of an unreduced pension, but the Exit Cap Regulations prevented the employer from paying the full strain cost.

1.3 The Croydon Pension Fund (the fund), as an administering authority needed to decide how to treat the payment of benefits to members affected by the Exit Cap Regulations whilst there was a conflict in legislation. The fund also had to consider what factors to use whilst calculating strain costs.

1.4 At the Pension Committee held on 8 December 2020 it was decided that (Appendix A) whilst there was a conflict between the Exit Cap Regulations and the LGPS regulations the funds policy would be to:

i. offer scheme members the opportunity to take a deferred benefit under LGPS regulation 6 or a fully actuarially reduced pension under LGPS regulation 30(5) if the cap is breached when an LGPS member aged 55 or over exits, whilst there is a conflict between the Exit Cap Regulations and the LGPS regulations.
ii. adopt the factors and calculation methodology consistent with Government Actuary's Department (GAD's) draft guidance for calculating early retirement strain factors.

1.5 On 12 February 2021 HM Treasury (HMT) announced that after extensive review of the application of the Cap, the Government has concluded that the Cap may have had unintended consequences and the Regulations should be revoked. HMT Directions have been published that disapply the Cap with immediate effect from 12 February 2021 until the Regulations have been revoked. The guidance also confirmed that the government would revoke the exit cap regulations in due course, but that they will legislate again to tackle unjustified exit payments.

1.6 This announcement removed any conflict with the LGPS regulations. The LGPS scheme advisory board have advised that for exits from 12 February 2021, LGPS Administering Authorities must pay qualifying scheme members an unreduced pension under Regulation 30(7) of the LGPS 2013 regulations. Scheme employers will be required to pay full strain costs in relation to those unreduced benefits, as notified by their administering authority. Employers should not make cash alternative payments to either the scheme member or the administering authority.

1.7 On 25 February 2021, the Restriction of Public Sector Exit Payments (Revocation) Regulations 2021 (*SI 2021/197*) (Revocation Regulations) were laid before Parliament. They will come into force on 19 March 2021 and formally revoke the Cap Regulations from that date. The Revocation Regulations provide that anyone who received an exit payment from a relevant public sector body between 4 November 2020 and 19 March 2021 which was capped as the result of the Exit Cap Regulations will be entitled to receive an additional payment from that public sector body. The additional payment will be the difference between the amount of the payment made and the amount that would have been payable had the Exit Cap Regulations not applied. That additional payment (together with interest at 8% calculated in accordance with the Judgment Debts (Rate of Interest) Order 1993 can be paid to the person concerned, or on their behalf to a pension scheme or to another person (or to more than one of these parties).

1.8 Whilst there was a conflict in legislation the fund had chosen to adopt the factors and calculation methodology consistent with Government Actuary's Department (GAD’s) draft guidance for calculating early retirement strain factors, as the funds actuaries have confirmed that early retirement strain factors provided to the Fund in the past used to calculate the strain charged to employers were developed to address the funding shortfall that would present itself due to paying a pension early and were never intended to impact member benefits.

1.9 The funds actuaries have commented that they do not believe there are any particular professional or funding reasons why the Fund must change its early retirement factors currently in place, however there are administrative and practical reasons why a reversion to the pre-November early retirement factors may be appropriate.

1.10 As the early retirement strain factors previously provided to the fund will no longer impact on member benefits, the fund will revert to using the early retirement strain factors provided by the actuaries for ease of administration as using GAD factors at the moment involves an “off-system” approach i.e. the use of a separate calculator which is not directly linked to the main admin system placing an additional administrative burden.

1.11 Should the government impose the GAD factors as part of the wider exit pay reforms in the future, the fund will need to update its processes at that time.

2. CONSULTATION

2.1 No consultation is required

3. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

3.1 There will impact on the level of benefits paid to scheme members and employer strain costs paid when an LGPS member aged 55 or over exits as for exits from 12 February 2021. LGPS Administering Authorities must pay qualifying scheme members an unreduced pension under Regulation 30(7) of the LGPS 2013 regulations. Scheme employers will be required to pay full strain costs in relation to those unreduced benefits, as notified by their administering authority.

3.2 Anyone who received an exit payment from a relevant public sector body between 4 November 2020 and 19 March 2021 which was capped as the result of the Exit Cap Regulations will be entitled to receive an additional payment from that public sector body. The additional payment will be the difference between the amount of the payment made and the amount that would have been payable had the Exit Cap Regulations not applied. That additional payment must be made together with interest at 8% calculated in accordance with the Judgment Debts (Rate of Interest) Order 1993.

3.3 Interest on any late LGPS benefits will only be payable where the interest provisions contained within the Local Government Pension Scheme Regulations 2013 (the “LGPS Regulations”) so require.

4. LEGAL CONSIDERATIONS

4.1 The Head of Litigation and Corporate Law comments on behalf of the Interim Director of Law and Governance that on 12 February 2021, the government announced that the Restriction of Public Sector Exit Payments Regulations 2020 (Exit Cap Regulations) introduced on 4 November 2020 to cap exit payments in the public sector to a maximum of £95,000 will be revoked, and that an HM Treasury Direction would disapply the Exit Cap Regulations 2020 with immediate effect from 12 February 2021. The Government also issued Guidance which states at paragraph 3.2: ‘*In light of the withdrawal of the Regulations, employers are encouraged to pay to any former employees who had an exit date between 4th November 2020 and 12th February 2021 and to whom the cap was applied, the additional sums that would have paid but for the cap. Given that the cap has now been disapplied, it is open to employers to do so and HM Treasury’s expectation is that they will do so.*

4.2 The LGPS scheme advisory board advised that for exits from 12 February 2021, LGPS Administering Authorities must pay qualifying scheme members an unreduced pension under Regulation 30(7) of the LGPS 2013 regulations. Scheme employers will be required to pay full strain costs in relation to those unreduced benefits, as notified by their administering authority.

4.3 On 25 February 2021, the Restriction of Public Sector Exit Payments (Revocation) Regulations 2021 (*SI 2021/197*) (Revocation Regulations) were laid before Parliament. They will come into force on 19 March 2021 and formally revoke the Cap Regulations from that date.

4.4 The Revocation Regulations provide that anyone who received an exit payment from a relevant public sector body between 4 November 2020 and 19 March 2021 which was capped as the result of the Exit Cap Regulations will be entitled to receive an additional payment from that public sector body. The additional payment will be the difference between the amount of the payment made and the amount that would have been payable had the Exit Cap Regulations not applied. That additional payment (together with interest at 8% calculated in accordance with the Judgment Debts (Rate of Interest) Order 1993 can be paid to the person concerned, or on their behalf to a pension scheme or to another person (or to more than one of these parties). Interest on any late LGPS benefits will be payable where the interest provisions contained within the Local Government Pension Scheme Regulations 2013 (the "LGPS Regulations") so require.

4.5 Approved by Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Interim Director of Law and Governance & Deputy Monitoring Officer

5. EQUALITIES IMPACT

5.1 There are no equalities impacts arising from this report.

6. ENVIRONMENTAL IMPACT

6.1 There are no environmental impacts arising from this report.

7. CRIME AND DISORDER REDUCTION IMPACT

7.1 There are no crime and disorder impacts arising from this report.

8. DATA PROTECTION IMPLICATIONS

8.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

NO

8.2 **HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?**

NO

The Director of Human Resources comments that this report contains only information which can be publically disclosed.

Approved by: Sue Moorman, Director of Human Resources

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APPENDICES TO THIS REPORT:
Pension Committee 8 December 2020 – Exit Payment Cap Report

BACKGROUND DOCUMENTS – LOCAL GOVERNMENT ACT 1972
None