Local Government Association

Exit cap information for LGPS employers

The information below is for redundancy and business efficiency exits that occur from 4 November 2020 until the LGPS regulations are changed to accommodate the exit cap. It applies to exits of **LGPS members who are aged 55 or over**. Information about other circumstances where a pension strain cost is payable will follow.

It is particularly important that you maintain close contact with your LGPS administering authority throughout the process set out below.

Step 1: Check if the exit cap regulations apply to you as an employer. You do this by looking at the Schedule at the end of the Restriction of Public Sector Exit Payments Regulations 2020. If your employer is listed here the exit cap regulations will apply.

Step 2: If the exit cap regulations apply, check the total value of the exit payments you would normally make to, or in respect of, the employee that is exiting your employment. For a list of exit payments that you need to consider for the exit cap see regulation 5 of the exit cap regulations and chapter three of the guidance to accompany the regulations. The LGPS pension is normally payable immediately without reduction.

You must include the pension strain cost when checking the total value of the exit payments.

Special rules apply if the employee is exiting from more than one public sector employment in a 28-day period. Under the exit cap regulations, the employee must tell you about any other public sector exits. You may wish to ask the employee about any other exits from public sector employment to ensure that you do not inadvertently breach the cap.

If the total value of the exit payments is less than or equal to £95,000 go to **step 3**. If the total value of the exit payments is more than £95,000 go to **step 4**.

Step 3: If the total of the exit payments is less than or equal to £95,000, process the exit as normal. The pension is payable immediately without reduction for early payment in line with the LGPS regulations. Your normal process for meeting the strain cost continues to apply.

You must inform your LGPS administering authority that the employee is not capped. You need take no further action under the exit cap regulations in respect of this exit.

Step 4: If the total value of the exit payments is more than £95,000, consider whether either a mandatory or discretionary waiver is applicable. For information about when a waiver is appropriate and a pro forma, see the documents produced by HM Treasury (HMT):

Guidance on the regulations

Directions on waiving the cap

Local authorities may also wish to refer to the LGA's position paper on the exit cap, guidance and directions.

If you decide a waiver is applicable, follow the process set out in the HMT documents above. More guidance on the process is expected from MHCLG in the coming weeks.

You must inform your LGPS administering authority that the employee is capped but a waiver request has been made.

If the waiver request is accepted, the pension is payable immediately without reduction for early payment. Your normal process for meeting the strain cost continues to apply.

You must inform your LGPS administering authority that the cap has been waived in respect of this exit.

If you decide a waiver is not applicable or the waiver request is denied move to **step 5**.

Step 5: Consider the elements that make up the total exit payment. Decide if any exit payments other than pension strain cost, statutory redundancy payment (SRP) and any other payments you are obliged to make can be reduced to bring the total to no more than £95,000.

If the new total of the exit payments being made to or in respect of the individual is less than or equal to £95,000, go to **step 6**. If the total is over £95,000 when the pension strain, statutory redundancy pay and any other payments you are obliged to make are left, go to **step 7**.

Step 6: The uncapped employee will be entitled to immediate payment of their LGPS pension without reduction for early payment in line with the LGPS regulations. Your normal process for meeting the strain cost continues to apply.

You must inform your LGPS administering authority that the employee is not capped. You need take no further action under the exit cap regulations in respect of this exit.

Step 7: If the total exit payment is over £95,000 when just the pension strain, statutory redundancy payment and any other payments you are obliged to make remain, there is a conflict between the exit cap regulations and the LGPS regulations.

The LGPS regulations still require the member to take payment of an unreduced pension, but the exit cap regulations prevent the employer from paying the full strain cost.

You must inform your LGPS administering authority that the employee is capped.

As an employer you need to decide whether to make a cash alternative payment under regulation 8 of the exit cap regulations. To assist you with this decision, the Scheme Advisory Board (SAB) has obtained legal advice. You can read a commentary on that legal advice on the Public Sector Exit Payments page of the SAB website. You should also have regard to the letter from MHCLG to LGPS administering authorities dated 28 October 2020.

Although you must make your own decision regarding a cash alternative, the SAB recommends you delay any decisions until the employee's pension is confirmed based on the following considerations:

- If your LGPS administering authority decides to pay an unreduced pension they will ask for a strain cost payment, payable up to the cap. You will not be able to make this payment if you have paid a cash alternative. You could end up paying twice, once as a cash alternative and once as increased scheme costs.
- If the employee is denied an unreduced pension, they are likely to lodge a claim. If they win, they could be awarded payment of an unreduced pension. Your LGPS administering authority will then ask you for a strain cost payment, payable up to the cap. You will not be able to make this payment if you have paid a cash alternative. In this case you could end up paying twice, once as a cash alternative and once as increased scheme costs.

- A cash alternative payment attracts both income tax and employer's National Insurance where the total termination payment is above £30,000. An employee who receives a reduced pension may prefer you to pay the cash alternative to the LGPS administering authority to purchase extra pension.

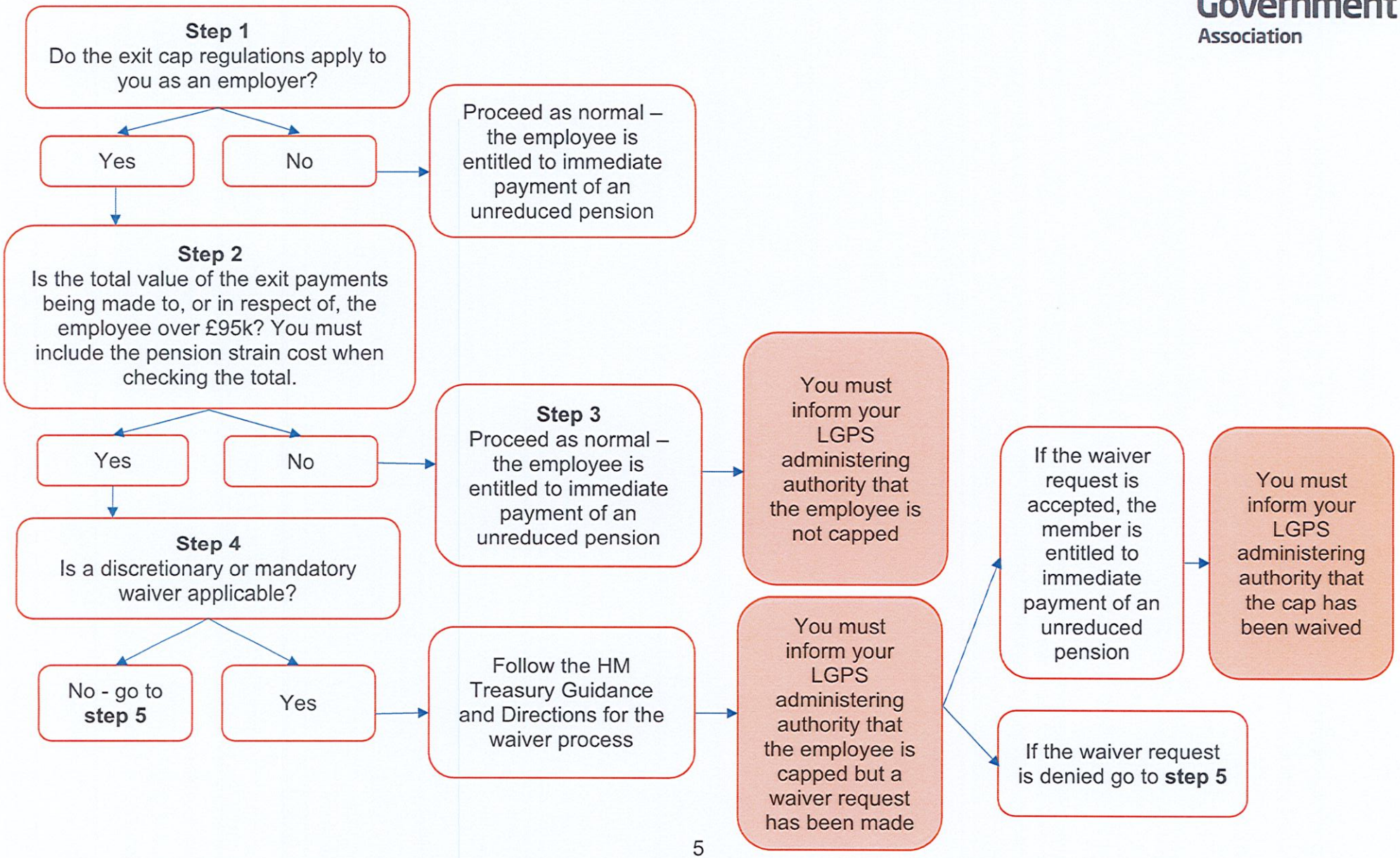
If you decide to make a cash alternative payment regardless of the potential outcomes mentioned above, you should inform your LGPS administering authority.

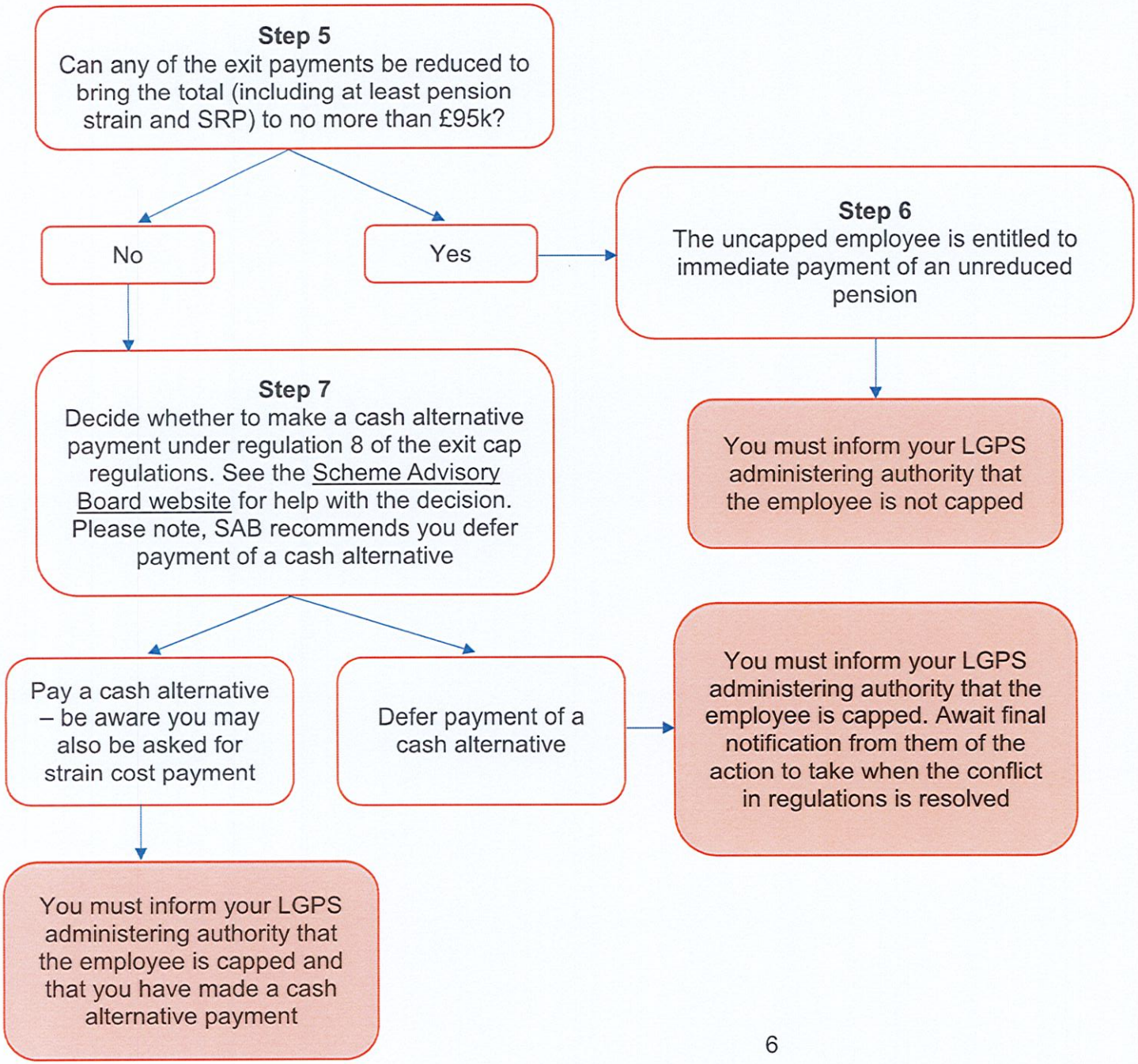
Please note, it is for your LGPS administering authority to decide if a full or reduced pension is payable in these circumstances. Your LGPS administering authority will inform you once the employee's pension is confirmed.

The process described above is summarised in a flow chart on the following page. The flowchart is not accessible to screen reader software, but all the information is contained in the text above.

Disclaimer
This document has been prepared by the LGA. It should not be treated as a complete and authoritative statement of the law. Employers may wish, or will need, to take their own legal advice. No responsibility whatsoever will be assumed by the LGA for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained in this document.

Exit cap information for LGPS employers – flowchart




Step 5
Can any of the exit payments be reduced to bring the total (including at least pension strain and SRP) to no more than £95k?
No
Yes
Step 6
The uncapped employee is entitled to immediate payment of an unreduced pension
You must inform your LGPS administering authority that the employee is not capped
Step 7
Decide whether to make a cash alternative payment under regulation 8 of the exit cap regulations. See the Scheme Advisory Board website for help with the decision. Please note, SAB recommends you defer payment of a cash alternative
Pay a cash alternative – be aware you may also be asked for strain cost payment
Defer payment of a cash alternative
You must inform your LGPS administering authority that the employee is capped. Await final notification from them of the action to take when the conflict in regulations is resolved
You must inform your LGPS administering authority that the employee is capped and that you have made a cash alternative payment

Sarah Groom

From:	Vickie Hampshire <vickie.hampshire@westsussex.gov.uk> on behalf of LGPS Employers <employers.lgps@westsussex.gov.uk>
Sent:	05 November 2020 17:54
Cc:	Vickie Hampshire
Subject:	West Sussex Pension Fund - Exit cap information update
Attachments:	LGA - Information for employers.pdf

Hello,

The Government is making changes to the way in which exit payments are dealt with when an individual is subject to redundancy or business efficiency. These changes have been introduced via statutory regulations which came into effect yesterday, Wednesday 4 November 2020. Unfortunately, these regulations are currently out of line with the existing Local Government Pension Scheme regulations, consequently, until the two sets of regulations are brought into line, there will be a significant amount of uncertainty about which statutory regulations take legal precedence.

The Local Government Association has published the attached information note for employers on the exit cap to help you as an employer meet your responsibilities under the regulations in force from 4 November 2020. The document sets out a process for you to follow from 4 November 2020 for redundancy and efficiency exits, where your employee is a member of the Local Government Pension Scheme (LGPS) and aged 55 or over.

As it mentions in the document, it is particularly important that you maintain close contact with us at the West Sussex Pension Fund throughout the redundancy or business efficiency exit process for any members aged over 55.

The regulations do not apply to all employers. The Schedule at the end of the Restriction of Public Sector Exit Payments Regulations 2020 sets out the employers involved. Employers should also review contractual relationships with their associated employers to determine if they are also affected.

Details of the new regulations regarding exit payments and the impact they will have in cases of redundancy or business efficiency can also be found via the following links;

- West Sussex County Council Pensions Committee Presentation
- Change of Pension Regulations - Exit Payment Cost Cap
- Hymans webinar

The West Sussex Pension Fund is seeking further legal advice about how it should administer redundancy or business efficiency related exit payments, whilst the discrepancies between the two sets of statutory regulations exists, which should be received within the next couple of weeks. The West Sussex Pension Fund has also been advised that there will need to be changes made to the strain cost factors used to calculate exit payments, details of which are expected imminently.

As a consequence of the above circumstances, the West Sussex Pension Fund has decided to **suspend** the issuing of any further exit payment calculations until the legal advice has been received and the calculation changes are in place. As soon as we have further information and clarity about how to move forward, we will be in touch with you again.

There are some Pension Fund members who may have agreed exit dates with effect from yesterday or in the near future, we will be writing separately to those employers that we know are affected as a consequence, but all employers are strongly recommended to review the situations in regard to their own operations and to make contact with the West Sussex Pension Fund if they identify any Members that might be affected by these changes.

Thanks,

Vickie

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