

Restricting exit payments in the public sector: consultation on implementation of regulations

GMB Union response
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Consultation contacts

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1. Executive summary

- 1.1 GMB, the union for public service workers, is responding to this consultation on behalf of the more than 300,000 public service workers that we represent.
- 1.2 We are disappointed to again be responding to proposals for an exit payments cap that are unnecessary, unworkable in their present form, and may be unlawful.
- 1.3 Our members have already negotiated changes to their pensions and terms and conditions in good faith – agreements that have already delivered significant savings to the Treasury. These regulations would ride roughshod over those past agreements. If Ministers insist on imposing these proposals unilaterally through Parliament then they will engender a serious loss of goodwill and trust that will make it harder for the Government to negotiate reforms in the future.
- 1.4 These proposals put certain groups of workers who shared protected characteristics at a particular disadvantage. As we argued at the time, the Treasury's 2016 Equality Impact Assessment was seriously deficient. It is now also out of date. Ministers may be in breach of the Public Sector Equality Duty on account of their failure to remedy those flaws and conduct a new Equality Impact Assessment.
- 1.5 The inclusion of pension strain costs in the pay cap calculations cannot be justified. This feature will ensure that low-wage, long-serving Local Government Pension Scheme members are captured by the cap.
- 1.6 These proposals are a breach of Ministers' promise to protect low to middle paid workers. Due to the failure to include an earnings floor in the draft regulations, long-serving local government workers earning as little as £23,500 could be caught by the cap.

- 1.7 The negative consequences of the absence of an earnings floor are exacerbated by the absence of plans to uprate the cap, which has remained at £95,000 since 2015. Without a mechanism to link the cap to rises in inflation or earnings, additional low to middle earners will be dragged within the scope of the cap with each year that passes.
- 1.8 The cap risks exacerbating the two-tier workforce divide. The simplest and fairest means of addressing the issue of contracted-out workers, who will not be subject to the cap, is to not proceed with the cap at all.
- 1.9 The regulations, and associated guidance and directions, set out a number of exemptions to the cap, and a procedure for waiving the cap on a discretionary basis in some circumstances. However, administering these exemptions will impose substantial new burdens on public sector employers at a time when there is no capacity in the system to absorb them. The proposed exemption mechanisms are both unclear and overly bureaucratic. Decisions to exempt some groups of workers may be discriminatory on equalities grounds, which could expose employers to legal challenge.
- 1.10 The regulations (and associated directions and guidance) will require a great many consequential changes to employer exit policies, national agreements, and pension scheme rules. Despite this fact, the draft regulations do not contain an implementation period, which could result in body of regulations that are contradictory and are in conflict with each other.
- 1.11 In addition to these substantive objections, the draft regulations contain a large number of technical deficiencies. The draft regulations are not fit for purpose and they require substantial redrafting before they can reasonably be considered by Parliament or implemented by employers.

2. About GMB

- 2.1 GMB is the union for public sector workers. We represent over 300,000 members in public services in a wide range of public sector employers and occupations across the whole of the UK.
- 2.2 In local government, GMB members likely to be affected by the cap extend from Chief Officers to low to middle income members of the Local Government Pension Scheme (LGPS). GMB NHS members from Band 5 upwards are expected to be affected (a nurse in receipt of High Cost Area Supplements and unsociable hours payments could find themselves in breach of the cap).
- 2.3 Civil service members may be affected in middle management roles within the National Probation Service. The cap may also affect outsourced GMB members who transfer back into the civil service.

3. Background

- 3.1 The public sector workforce is enduring an unprecedented assault on jobs and terms and conditions. Over a million jobs have been lost in the public sector since 2010 (net), the majority of which have been in local government services, while demand for these services has continued to rise. Pay was capped below inflation for the best part of a decade, and central government cuts have been cited as a justification by employers who seek to undermine our members' contractual entitlements.
- 3.2 GMB has opposed proposals to cap exit payments since they were first mooted four years ago, and we responded in detail to the previous 2016 consultation. In our view, the exit cap proposals are ill-conceived, unnecessary, and harmful to the living standards of the low to middle paid public sector workers that Ministers say they want to protect.

3.3 This response sets out the GMB's main concerns regarding the proposed regulations and associated guidance and directions as drafted.

4. Failure to honour past agreements

"I have worked since the age of 16 ... I have now worked for 44 years. I live alone and any money I have paid into my pension NHS contributions has been to be able to survive when I retire.

"We were promised when we started contributing to a pension, this money was ours, however this is now being taken from us in an underhand way. It isn't right!"

GMB NHS member

- 4.1 The regulations threaten to impose unilateral changes to our members' terms and conditions. This planned imposition is not just contrary to the principle of good faith negotiation – it would override and devalue the outcomes of past agreements.
- 4.2 A number of changes to public sector pension schemes and exit payment systems have already been collectively agreed, particularly during the 2010 to 2015 Parliament. We would like to impress upon Treasury Ministers, in the strongest possible terms, the anger and disappointment that our members feel having entered those negotiations in good faith, only to later find that the same terms and conditions are to be undermined through an Act of Parliament and its associated regulations.
- 4.3 The regulations are contrary to assurances given by Ministers in the past. The then Chief Secretary to the Treasury, Danny Alexander, said that the 2011 changes to public sector pension schemes were 'a

sustainable deal that will endure for at least 25 years.¹ Similarly, the 2010 reforms to civil service exit payments, which were introduced following prolonged and difficult negotiations, were described at the time as being ‘right for the long term.’²

- 4.4 As the name suggests, changes to the NHS Mutually Agreed Resignation Scheme should be agreed collectively. The negotiated changes to the LGPS, enacted in 2014, which were called ‘outstanding’³ by the Government, would also be negatively affected by the cap, which was introduced as a policy proposal shortly after those changes were implemented.
- 4.5 The proposals represent a clear breach of collective bargaining arrangements. The decision of Ministers to pursue them has already resulted in a loss of trust and goodwill amongst the public sector workforce which will only grow as the Parliamentary process continues. This will make it harder for the Government and public sector employers to negotiate changes in the future, and it will raise the risk of public sector industrial action.
- 4.6 Partly as a consequence of those past agreements, the cost of exits to the Exchequer has already been substantially reduced over recent years (**Figure 1**). The costs that the Treasury is seeking to address are already diminishing, including amongst public sector workers in leadership roles, and these costs could be naturally reduced further without intervention. As discussed under section 8 of this response,

¹ House of Commons, Official Record, 2 Nov 2011 : Column 929
<https://publications.parliament.uk/pa/cm201011/cmhansrd/cm111102/debtext/111102-0001.htm#11110289002111>

² The Cabinet Office, Civil Service Compensation Scheme reformed, 22 December 2010
<https://www.gov.uk/government/news/civil-service-compensation-scheme-reformed>

³ Department for Communities and Local Government, Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014: Government Response to the Consultation, March 2014
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/288363/LG_Pension_Scheme_2014_-_government_response.pdf

without an index link, over time the main effect of the cap will instead be to capture low-paid, long-serving workers within the £95,000 limit.

Figure 1 UK public sector exits (costs in cash terms) ⁴

	Number of exits	Cost of exits (£bn)
2011/12	108,234	2.7
2012/13	72,286	2
2013/14	72,445	1.8
2014/15	63,708	1.5
2015/16	61,976	1.5
2016/17	52,025	1.2
2017/18	42,927	0.9
Change	-60%	-67%

5. Failure to conduct a meaningful Equality Impact Assessment

- 5.1 The Government is obliged to have ‘due regard’ to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. In our view, by virtue of their failure to conduct a fresh or sufficient equality impact assessment (EIA), Ministers may be in breach of that duty.
- 5.2 HMT published what it describes as an EIA in 2016. This is referenced, in lieu of a new EIA, in the most recent consultation document. It is concerning that the consultation document indicates that a new EIA will be conducted only if a two-step implementation process is determined upon – suggesting that equalities impacts will not have been adequately considered at the point the decision to proceed is taken.
- 5.3 The original EIA is brief and deficient. It consists of three paragraphs, which note that older workers are more likely to be affected owing to

⁴ Figures taken from the HMT Whole of Government Accounts series.

the proposal's nature, and that the Office for National Statistics' Labour Force Survey (LFS) is unable to measure the relevant protected characteristics of sexual orientation, gender reassignment status, pregnancy, or maternity. It does not contain any actual analysis of the likely impacts of the proposals on persons who share a relevant protected characteristic, nor does it provide evidence that Ministers have adequately considered equality impacts.

5.4 When the exit cap proposals were first raised in 2016, we expressed our concern that no full EIA had been undertaken. We were, and remain, convinced that these proposals would impact disproportionately on older longer serving employees, and that those employees most likely to be adversely effected by the cap will be female (two thirds of public sector workers are female, rising to 69 per cent of local government workers).⁵

5.5 GMB has contacted a leading employment lawyer to comment on the position, and their view is that the EIA undertaken to date is inadequate, and that the changes in the workforce alone would mean that the failure to consider a new EIA would leave the proposals open to challenge if the Government goes ahead and implements these changes despite the opposition to them.

6. Failure to exclude pension strain costs

6.1 As noted above, the impact of the cap will be particularly hard felt amongst local government workers due to the inclusion of pension strain costs in the cap's calculations.

6.2 If they are a member of the LGPS, a worker who is made compulsorily redundant aged 55 or over is entitled to receive their full, unreduced pension. The resulting gaps in anticipated pension contributions are referred to as strain costs. These costs are captured by section 6(b)

⁵ Figures taken from fourth quarter 2018 Labour Force Survey data.

of the draft regulations, which state that:

'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 [should be included in the cap].'

6.3 The majority of GMB members who will be affected by the cap are long-serving members of the LGPS, aged 55 or over, who are made compulsorily redundant. These workers will be negatively affected to due their age – we believe that this is contrary to the spirit, and potentially also to the letter, of the Equality Act. The Local Government Association has calculated that a female worker who earns as little as £23,500 could fall within the cap, resulting in unfair reductions to their pension (it should be stressed that this is a low modelled estimate and not necessarily an absolute limit).⁶ This finding is consistent with the Government's previous admission, made in 2016, that its own modelling found that workers earning in the region of £25,000 could be capped.⁷

6.4 Although it has been widely assumed that exit costs take the form of up-front payments, evidence from individual employers suggests that much of the apparent cost to the public sector is made up of strain costs. In Camden, 15 out of 16 reported exits that would have breached the cap would have done so due to strain costs.⁸ If strain costs are excluded then a more informed debate can be held about the cost of severance payments in the public sector.

6.5 Inclusion of strain costs within the cap could have other, less intended consequences. Under the LGPS, there are other events that

⁶ LGA response to the exit payments cap – July 2019, page 40 <https://www.local.gov.uk/our-support/workforce-and-hr-support/employment-relations>

⁷ House of Commons, Official Report, 02 Feb 2016 : Column 886 https://publications.parliament.uk/pa/cm201516/cmhansrd/cm160202/debtext/160202-0004.htm#160/202-0004.htm_snews14

⁸ London Borough of Camden response to this consultation, July 2019

are not redundancies that can lead to a pension strain cost which are not exits, and are therefore not covered by the Regulations. These events include:

- Early payment of deferred benefits and all or part of the early payment reductions are waived.
- Flexible retirement – providing the member’s pay reduction is achieved by changing the employees contract.

6.6 If an LGPS member takes flexible retirement and the pay reduction is achieved by ending their current employment contract and starting a new one, then an exit has occurred and the exit payment restrictions will apply.

6.7 All local authorities have had to make financial savings and, as a result, many employers offer a variety of early leavers schemes as an option to cut costs without making compulsory redundancies. These schemes will be in jeopardy as staff choose not to leave early due to exit cap, this in turn will add more pressure to councils trying to make savings.

“[My employer] has to save money and the easiest way to do this without cutting services is through reducing staff. With the £95k cap this will force people to postpone leaving early which would put pressure on service spend”

GMB Local Government member

6.8 As discussed below, the decision to include strain costs in the calculation of the cap raises employers’ legal liability on equalities grounds. As the Chief Executive of the Northern Ireland Local Government Officers’ Superannuation Committee warned in 2015:

‘It would be simpler not to include the pension scheme redundancy costs in the total that should be less than the £95,000 cap. Not only

would this reduce the limitations that the legislation would place on Employers but [it] also removes the potential of challenges on the grounds of Equality as the pension cost is dependent on each individual's age and gender.⁹

6.9 Pension strain calculation methodology can vary depending on which Administering Authority LGPS members fall under. This means that the experience of the cap is likely to vary, potentially significantly, depending on geography. This factor will introduce an unfair postcode lottery element to the operation of the cap.

6.10 We note that the Scottish Government will reportedly exclude pension strain costs from its own planned non-statutory cap.¹⁰ If UK Ministers do not follow suit then a significance divergence in terms and conditions will be created between England and Scotland, which may have implications for recruitment and retention (particularly in border areas).

6.11 If these flawed proposals to introduce an exit cap are pursued then it is essential that section 6(b) of the regulations is deleted and that strain costs are excluded from the cap.

7. Failure to honour promise to protect low paid workers

7.1 In principle, low to middle income earners in the LGPS, who are caught by strain costs, could have been protected if the originally promised earnings floor had been included.

⁹ LCM – Cap on Public Sector Exit Payments – Email from Chief Executive NI Local Government Officers' Superannuation Committee (NILGOSC), 29 October 2015
<http://www.niassembly.gov.uk/globalassets/documents/finance-2011-2016/legislative-consent-motions/10-nilgosc---lcm-public-sector-exit-payment-cap.pdf>

¹⁰ The MJ, Scotland to exclude pension strain from exit cap, 26 June 2019
<https://themj.co.uk/Scotland-to-exclude-pension-strain-from-exit-cap/214005>

- 7.2 It has long been implied that the policy would only affect highly paid workers. The 2015 Conservative Party manifesto stated that: ‘We will end taxpayer-funded six-figure payoffs for the best paid public sector workers’¹¹ [emphasis added].
- 7.3 This impression has been continued to be imparted during the current consultation period, with the Chief Secretary to the Treasury stating that ‘we are capping exit payments to stop unacceptably large pay-outs for senior managers.’¹² In fact, as we have seen, low to middle earners will also be affected by the cap.
- 7.4 Incidentally, we note that the policy commitment to introduce an exit cap was not repeated in the 2017 Conservative Party manifesto.

“My concern with the exit payments cap is that it will affect people who are not necessarily on a manager grade ... it will be people who are in their mid to late 50s and who face being made redundant that will be penalised for their lifetime’s contribution to public service. It is an absolute disgrace.”

GMB Local Government member

- 7.5 The original proposal to introduce a cap, which was announced in January 2015, included a floor to protect public sector workers on low incomes. The Exchequer Secretary at the time said that: ‘Crucially, those earning less than £27,000 will be exempted to protect the very small number of low earning, long-serving public servants.’¹³ It is deeply regrettable that the promised floor has been excluded from

¹¹ Conservative Party Manifesto 2015, printed page 49.

¹² HM Treasury, Six-figure taxpayer-funded public sector exit payments to end, 10 April 2019 <https://www.gov.uk/government/news/six-figure-taxpayer-funded-public-sector-exit-payments-to-end>

¹³ The Daily Telegraph, Priti Patel: Taxpayer-funded golden goodbyes are just not fair, 03 January 2015 <https://www.telegraph.co.uk/news/general-election-2015/11322703/Priti-Patel-Taxpayer-funded-golden-goodbyes-are-just-not-fair.html>

the draft regulations.

- 7.6 Even if the principle of an exit cap was to be accepted, it is clear that the Treasury's current proposals fail to strike, in the words of the original proposals, 'the right balance between cracking down on excessively high payments and protecting long serving public servants, on moderate salaries who are made redundant.'¹⁴
- 7.7 The floor must be restored – but it will not be enough to write that figure into the regulations. The real value of the floor has increased to around £30,000 since 2015 (if measured against the RPI). This increase in value should be reflected in the regulations, and a mechanism to uprate the floor in line with inflation or average earnings should be included to protect low-paid workers from the effects of inflation.

8. Failure to index-link the cap

- 8.1 We are extremely disappointed by the omission of an index link that would tie the value of the cap to inflation or another suitable measure (such as average earnings).
- 8.2 The value of cap has already been significantly eroded since 2015. If OBR forecasts are correct – and it should be noted that Brexit has introduced a very high degree of uncertainty into inflation forecasts – then the real value of the cap will be reduced to £75,300 or £81,200 by 2023, depending on which inflation measure is used (**Figure 2**).
- 8.3 In other words, measured against 2015 values, the cap will potentially have been devalued by between 15 per cent and 21 per cent within four years of its implementation.

¹⁴ The Daily Telegraph, 'Conservatives call time on taxpayer-funded six-figure 'golden goodbyes,' 03 January 2015
<https://www.telegraph.co.uk/news/politics/11322583/Conservatives-call-time-on-taxpayer-funded-six-figure-golden-goodbyes.html>

Figure 2 Forecast real value of the unindexed cap (£000s)¹⁵

	2015	2016	2017	2018	2019	2020	2021	2022	2023
RPI	95	93.3	90.1	87.2	84.7	82.4	80.0	77.6	75.3
CPI	95	94.3	91.9	89.6	87.8	86.1	84.5	82.8	81.2

8.4 Without an inflation link, it is likely that a higher number of low to middle earners will be caught by the cap in each year that passes. We are disturbed by this example of what we perceive to be a growing tendency to not index-link financial floors or caps, as shown by the recent decision not to uprate the free school meals household eligibility limit.

8.5 An index link should be introduced into the regulations. We acknowledge that the Treasury faces a potential problem in this area – albeit a problem of its own making – as the £95,000 figure is now written into the Small Business, Enterprise and Employment Act 2015 (as amended). However, the primary legislation does not indicate whether that figure should be specified in current or constant prices.

8.6 We believe that it would be compliant to include an index link in the regulations; and if the Treasury comes to a different conclusion, then it should commission and publish independent legal advice on that point.

9. Failure to address the problem of a two-tier workforce

9.1 The trend towards the outsourcing of public services over the last forty years has been accompanied by a widespread fragmentation of terms and conditions.

¹⁵ GMB analysis based on ONS consumer inflation tables and Table 3.8 of the OBR's Economic and Fiscal Outlook, March 2019. Using recorded and predicted GDP growth produced the same results as the CPI by 2023.

- 9.2 Figures recently produced for GMB by Tussell, a consultancy that specialises in analysing outsourcing data, reveal that outsourcing contracts worth £20 billion have been awarded by local authorities (and associated bodies) alone in the UK over the last three years. Facilities management and waste management were the sectors at the highest risk of outsourcing.¹⁶
- 9.3 The regulations as written will introduce further inconsistency and complications, and potentially add perverse incentives, into the outsourcing process, which would run contrary to the Cabinet Office's recent attempts to standardise approaches to service procurement decision-making.¹⁷
- 9.4 The already existing two-tier workforce divide would be exacerbated by the regulations, which do not cover contracted-out workers. It would be inconsistent to introduce two standards of treatment for workers who share membership of the same pension scheme.
- 9.5 This is not an argument for extending the cap: the Government has already conceded the principle that privatised workers who perform a public service should not be subject to it. The only fair and consistent way to avoid widening the already stark gap in terms and conditions between directly employed and contracted out public service workers is to not introduce the cap at all.

10. Failure to provide clarity on cap exemptions

- 10.1 The regulations (and their associated guidance and directions) set out the circumstances for the mandatory or discretionary waiver of

¹⁶ GMB, Local Government and Austerity: GMB Congress 2019 CEC Special Report, pages 12 and 13 <https://www.gmb.org.uk/sites/default/files/GMB19-LocalAusterity.pdf>

¹⁷ See the Cabinet Office, The Outsourcing Playbook: Central Government Guidance on Outsourcing Decisions and Contracting, February 2019 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780361/20190220_OutourcingPlaybook_6.5212.pdf

the cap.

- 10.2 While we think that employers should have the right to disapply the cap if the regulations are introduced, we are concerned that the criteria and procedures set out in the consultation documents are both onerous and unclear.
- 10.3 As discussed above, public sector workers have endured a period of financial cutbacks that is unprecedented in its duration and intensity. Public sector employers have been forced to severely restrict their functions, in some cases to the point of being unable to fulfil statutory duties, and to cut back their internal capacity. Public sector organisations are in little shape to absorb substantial new burdens after a decade of austerity. These factors will have a serious impact on employers' ability to administer the waiver procedures in a fair and transparent manner.

i Mandatory relaxation of the cap

- 10.4 Payments arising from TUPE transfers are exempt, but it is unclear whether 'TUPE-like' transfers are also excluded (or whether it is expected that employers will apply a discretionary waiver in these circumstances). Clarity should be provided on this issue.
- 10.5 Payments arising from an Employment Tribunal judgement are exempt from the cap. The draft Treasury Directions make provision for the (mandatory) relaxation of the cap in cases where the employer believes that a Tribunal would be likely to respond to a complaint made on discrimination or whistleblowing grounds by making an award above the value of the cap. However, it seems inconsistent not to include other categories of cases (such as health and safety complaints) in this criteria. It may be simpler and fairer to include all awards likely to be made if a complaint was brought before a tribunal or court in the mandatory category.

10.6 If employers are unable to consider making an award above £95,000 then it is likely that more cases will be taken to an Employment Tribunal, despite the well-known pressures on a system that is still struggling to adapt to the rise in demand following the end of the fees regime.

10.7 One unintended consequence of the decision not to link the cap to inflation or earnings is that, over time, the incentive for workers to bring cases to a Tribunal will grow, even in cases where both parties would prefer to avoid this outcome.

ii Discretionary relaxation of the cap

10.8 The consultation documents set a cumbersome approvals procedure for cases where an employer wishes to relax the cap. Even in the case of a local authority that approves a waiver proposal at full council, that proposal must still be approved by the Treasury. As discussed above, public sector employers are in little shape to absorb these new burdens.

10.9 It is unclear how a decision to apply a discretionary relaxation of the cap would work in the case of organisations that are one step removed from their parent public body, such as schools or arms-length management organisations. The position of academy schools and free schools, which now lack a formal link to their local authority, is particularly ambiguous.

10.10 The criteria for initiating a disapplication of the cap in the draft directions – where not engaging the power would cause undue hardship’ or ‘significantly inhibit workforce reform’ – are unnecessarily ambiguous. Given the additional burdens of time and bureaucracy that the regulations will impose on employers and trade unions during restructuring negotiations and consultations, it could be argued that any restructure could engage the exemption.

10.11 Conversely, other unforeseen circumstances may arise which require a discretionary waiver, but which are not covered by either stipulation. These problems could be resolved if employers were permitted to engage the exemption for any reason that they reasonably see fit to do so.

10.12 We are concerned about the imprecise language used in section 4(c)(iii) of the draft Treasury directions, which states that in cases where a departure occurs after the regulations are enacted, but which were agreed before the regulations come into force occur, a waiver should only be made if the employer is satisfied:

'that any delay to the date of exit was not attributable to the employee or office holder as applicable'

10.13 It is unclear what 'attributable' means in this context. The scope of the term is potentially very wide, and it could capture a range of circumstances where a worker cannot be reasonably said to be at fault (such as an agreed delay to a departure after a period of illness). This provision should be clarified or, preferably, removed.

10.14 We are concerned that exemptions could be granted – intentionally or otherwise – in a manner that discriminates in practice against individuals or groups who share a protected characteristic. This raises the likelihood of legal challenges being made to the decision to exempt some individuals and groups, but not others.

10.15 As the consultation guidance makes clear, the Treasury is seeking to accept no liability beyond its responsibility towards its own workforce – 'it is the responsibility of individual employers and departments to ensure that their exit payment arrangements are fair, proportionate and lawful.'¹⁸ However, given the multiple points of sign-off required to

¹⁸ Annex C, Annex C: Restriction of public sector exit payments: guidance on the 2019 regulations, 10 April 2019 <https://www.gov.uk/government/consultations/restricting-exit->

approve a business case for an exemption (up to four in most cases, or five in the case of academies), the legal liability would be multiplied, as it could be reasonably argued that each legal person in the chain was in breach of the Public Sector Equality Duty.

10.16 These problems – and the wider risk of inadequate or inconsistent waiver policies being introduced – could be challenged through collective action, as well as through the courts. If the Government proceeds with these plans, then it will be raising the risk of industrial disputes in the public sector.

11. Failure to provide an implementation period

11.1 If these regulations are adopted then they will require a large number of consequential changes to policies and pension scheme regulations, including those set out in statute.

11.2 Despite this fact, the Government has given confused and contradictory indications that it will pursue a single or a multi step implementation plan for the regulations, and as drafted they are due to come into force the day after they are enacted.

11.3 This is unlikely to allow sufficient time to amend the Local Government Pension Scheme Regulations 2013, which are not compatible with the cap, and which set out the right of members of the LGPS aged 55 and above who are dismissed for reasons of redundancy or business efficiency to receive their full, unreduced pension ('without reduction'). Indeed, it is unclear whether the Government intends to amend the 2013 Regulations, or whether it intends to rely on the authority of the draft exit cap regulations alone – an approach that would force workers and their representatives to navigate two conflicting and contradictory sets of legislation.

11.4 Section 16 of the NHS Agenda for Change Terms and Conditions Handbook will also have to be amended.

11.5 If Ministers decide to proceed with these proposals then an implementation period of sufficient length, which in our view should be at least a year, should be written into the draft regulations.

12. Failure to adequately proof the draft regulations

12.1 The draft regulations contain a large number of small errors that range from the spelling of The Small Business, Enterprise and Employment Act 2015 to inconsistencies in internal numbering systems. Further work and careful proofing is required before these regulations can be considered by Parliament.

13. Conclusion

13.1 GMB believes that the exit cap proposals are arbitrary, unnecessary, and potentially unlawful in the form set out in the regulations and associated directions and guidance.

13.2 The best policy option for workers and employers is to not pursue the exit cap policy, which violates collective bargaining arrangements.

13.3 If Ministers determine to push ahead with implementation, it is essential that changes are made, including: a new and full Equality Impact Assessment; the exclusion of strain costs from cap calculations; the inclusion of an index-linked earnings floor; the provision of an index link to the cap value; and the inclusion of a meaningful implementation period.

13.4 For reasons of these policy flaws and the drafting errors in the published regulations (and associated documents), it is clear that significant additional time is needed to amend the draft regulations. We urge Ministers to use this time to reconsider their approach and withdraw this damaging proposal.