

A Severance Policy for Scotland

**Consultation on severance arrangements
across the devolved public sector**

March 2017



Scottish Government
Riaghaltas na h-Alba
gov.scot

About this consultation

Consultation is an essential part of the policy making process. It gives us the opportunity to get your opinion and expertise on a proposed area of work. You can find all Scottish Government forthcoming, open and closed consultations online at: <http://gov.scot/publications>.

Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post. After a consultation is closed we publish all responses where we have been given permission to do so.

Responses are analysed and used as part of the policy making process, along with a range of other available information and evidence. Responses to this consultation will help to inform whether reform of severance arrangements is required in the devolved public sector in Scotland

To inform this consultation and provide a picture of exit payment activity across the devolved public sector, Scottish Government officials sourced data using a number of different methods. One data source utilised a pre-consultation data gathering exercise which sought details on severance schemes, number and cost of exits by salary band and length of service from a range of devolved public bodies, including Health bodies, Non-Departmental Public Bodies, Police Scotland the Scottish Fire and Rescue Service and the Further Education (college) sector. Separately, additional data was sourced from NHSScotland Annual Accounts and received from Audit Scotland in respect of local authorities.

The results of the data gathering exercise forms the basis for the tables and statistics referred to in Section 3. The response rate to the pre-consultation data gathering was 77 per cent of those public bodies surveyed. While not presenting a complete position, it does provide an indicative picture on exits in the devolved public sector in Scotland.

Deadline

The consultation was published on 31 March 2017 and closes at midnight on **23 June 2017**.

How to respond

You can respond to this consultation online, by email or by post:

Respond online

To respond online please use the Scottish Government's Consultation Hub, Citizen Space at <http://consult.scotland.gov.uk>.

You can save and return to your response at any time while the consultation is open. But please ensure your response is submitted before the consultation closes at midnight on 23 June 2017. You will automatically be emailed a copy of your response after you submit it.

If you choose this method you will be directed to complete the Respondent Information Form.

The Respondent Information Form lets us know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public.

Respond by email

You can respond by email to: severance-policy-for-scotland@gov.scot.

If you respond by email, please ensure you complete the Respondent Information Form provided at Annex A and attach it alongside your response.

Respond by post

If you prefer you can also submit a written response in hard copy to:

Susan Gray
Financial Strategy Division
Area 3C-North
The Scottish Government
Victoria Quay
Edinburgh
EH6 6QQ

If you respond by post, please ensure you complete the Respondent Information Form provided at Annex A and attach it alongside your response.

Next Steps

After the consultation has closed all the responses received will be analysed to help inform whether reform of severance arrangements is required and if so what shape the changes may take.

Where permission has been given, we will make all responses available to the public at <https://consult.scotland.gov.uk/>. The responses to the consultation and analysis will be published during summer 2017.

Enquiries and complaints

If you have a query about the consultation process or a complaint about how this consultation has been conducted you can send your query by email to: severance-policy-for-scotland@gov.scot or by hard copy to the address above.

Executive Summary

The Scottish Government seeks to ensure severance arrangements are fair and equitable while providing value for money for the people of Scotland. Severance continues to play an essential role in ensuring employers across the public sector in Scotland deliver services efficiently and effectively by enabling them to manage changes to workforces in reaction to changing organisational circumstances - while at the same time helping leavers bridge the gap into new employment.

Scottish Ministers want to hear your views on whether recent powers should be used - or other reforms taken forward - to achieve better outcomes by delivering best value to taxpayers, flexible and responsive public services and a fair deal for public sector employees, through changing exit payments arrangements, in particular through the introduction of an exit payment cap, recovery of exit payments and changing exit payment terms.

Across the devolved public sector in Scotland, over 3,000 exit payments at a cost of £119 million were made in 2015-16. In most cases, the cost of this exit payment is recovered from the year-on-year savings from no longer paying salary for such posts. This consultation represents an opportunity to provide assurance this is money well spent and assess whether reform is required.

To do this, the Severance Policy for Scotland consultation will set out current practice across the public sector landscape to manage and control severance arrangements and the underpinning policy set out by the UK Government. It will ask you to consider four policy options and whether there is **a case for change** to severance arrangements in the devolved public sector in Scotland and if so, what that change could look like.

Following your response to this consultation, Scottish Ministers will consider all responses and decide what option to take forward; balancing the maintenance of constructive relationships with unions and employers, value for money for the taxpayer and the fair treatment of the public sector workforce.

1 Introduction

In December 2016, as part of Scotland's Budget for 2017-18, Scottish Ministers announced their intention to consult on severance policy across the devolved public sector in Scotland.

This is, in part, as a result of powers conferred on Scottish Ministers (by way of Westminster Acts for which legislative consent motions were agreed by the Scottish Parliament) in relation to capping and recovery of exit payments in devolved public sector bodies and existing powers that relate to exit payment terms. Combined, they create the opportunity to review existing practices and consider the best approach for the devolved public sector in the future.

The Scottish Government approach to public sector terms and conditions, which includes severance schemes and public sector pay policy, is based on a commitment that they are fair, affordable, offer value for money. We remain committed to a policy of no compulsory redundancy for those bodies which Scottish Ministers control pay and to the promotion of a consistent approach across the public sector, effective governance and control over severance schemes and meets the needs of employers and employees.

The Scottish Government places a high value on the role of trade unions, encouraging partnership working between employers and trade unions around the delivery of flexible and responsive public services and the support offered to those employed in public service, including in the design and application of severance schemes.

This consultation is intended to support this overall approach, in the interests of the sustainability of the public finances and the effectiveness of public services.

2 Background

2.1 UK Government reforms and Scottish Ministers' powers

The UK Government's reform of public sector exit payments includes: the ending of six-figure exit payments for public sector workers by **capping** the total cost of an **exit payment to £95,000**; and the **recovery** (clawback) of public sector exit payments when a high earner (defined as someone who was on a salary of £80,000 or more) returns to work in the public sector within 12 months, based on the premise that it is right to examine whether there is sufficient assurance to the taxpayer that these exit pay arrangements are fair and represent value for money.

The UK Government is likely to deliver some of these reforms through regulations under the Small Business, Enterprise and Employment Act 2015 ("the 2015 Act"). The Scottish Ministers have powers under the 2015 Act which enable them to make Regulations on whether to cap and/or recover exit payments in the devolved sector. These add to existing controls over exit payment terms for that sector. The Scottish Government is under no obligation to use the 2015 Act powers.

Furthermore, the UK Government initiated a cross public sector reform of **exit payment (severance) terms** with the aim of reducing costs of redundancy payments and ensuring greater consistency between workforces. This UK Government initiative does not extend to the devolved public sector.

2.2 Changes to Civil Service Compensation Scheme

Changes to the exit payment terms of the Civil Service Compensation Scheme have already been made. The exit cap will come into force for most staff covered by the Civil Service Compensation Scheme when relevant Regulations are made by a UK Minister. As the terms of the Civil Service Compensation Scheme are reserved to the UK Government, changes to it apply to around 19,200 civil servants working for the Scottish Government and to those working for devolved Scottish bodies who elected to be part of the Civil Service Compensation Scheme.

2.3 Fair Work

The Scottish Government is committed to ensuring severance packages are fair and equitable while also providing value for money for the people of Scotland. Exit payments associated with the loss of employment are an important part of an employer's ability to flex their organisational structure

to react to new circumstances and they also provide important support for employees as they find new employment. All such compensation arrangements should be proportionate and offer value for money.

Public sector workers play a crucial role in delivering services essential for the country and supporting our economy. The Scottish Government supports the independent Fair Work Convention's vision to embed a culture of fair work throughout all workplaces in Scotland and is committed to being an exemplar of fair work itself. The Fair Work Convention's Framework recognises fair work as that which offers effective voice, opportunity, security, fulfilment and respect. For employees, fair work brings increased financial security, better physical health and greater psychological wellbeing. Employers will, in turn, see less absence, greater productivity and enjoy a good reputation as a fair employer.

2.4 Exit payment value for money and affordability

As part of the Scottish Ministers' commitment to no compulsory redundancy, employers make every effort to find alternative employment for employees as part of re-shaping workforces to support service delivery or underpin public service reforms. Where this is not possible they offer voluntary exit schemes.

Exit payments should represent value for money to the tax payer, be affordable to the public purse and facilitate the sustainable delivery of public services through an engaged, committed and flexible workforce. Exit payments help unlock substantial reductions in staff costs in the medium to long term which are needed to meet the continuing challenge of budget pressures across the public sector. In most cases, the cost of this exit payment is recovered from the year-on-year savings from no longer paying salary for such posts.

In 2013, the Audit Scotland report *Managing Early Departures from the Scottish Public Sector* acknowledged that

“voluntary exit schemes can provide significant savings and that public bodies generally provide good practices”.

Given the scale of costs associated with the exit payments it is vital that they continue to offer best value. The Audit Scotland report also commented

“there is evidence to show that Scotland's public sector generally follows the principles of good practice. Many have up-to-date policies on their early departure schemes. Wider workforce strategies are used by organisations to help decide where they need to reduce staff numbers or

which grades they need to reduce. Most use some form of business case to help decide if early departure will lead to savings.” (‘Key Messages’, page 4)

Ensuring that exit packages offer flexibility to employers, support to employees and value for money to the taxpayer, are key drivers of any decision around the implementation of an exit cap or recovery arrangements.

2.5 Devolved powers over exit payment caps, recovery and reform of payment terms

Under these powers, Scottish Ministers can decide whether to adopt an exit payment cap and/or recovery measures similar to those being implemented by the UK Government or set a different level of cap and/or salary ceiling in relation to recovery provisions. They could also specify the types of payments to be included in that cap and/or recovery provisions.

In addition, the Scottish Ministers could choose to delegate powers to a body in respect of exit payments made by the body or to exempt particular bodies or sectors from the cap or recovery measures.

The table below provides the underpinning policy approach being taken by the UK Government in applying exit payment cap (to the total cost of exit payments to the employer) and recovery provisions as well as outlining their approach to reforming exit payment terms.

UK GOVERNMENT POLICY POSITION	
Exit Payment Cap	<ul style="list-style-type: none"> • Cap the total cost of exit payments available to individuals leaving employment to £95,000 • Apply the cap to all types of arrangements for determining exit payments • To cover payments made in relation to leaving employment including: <ul style="list-style-type: none"> ○ Voluntary and compulsory exits ○ Other voluntary exits with compensation packages ○ Ex gratia payments and special severance payments ○ Other benefits granted as part of exit process that are not payments in relation to employment ○ Employer costs of providing early unreduced access to pensions (or any form of pension ‘top-up’) ○ Payments or compensation in lieu of notice and cashing up of outstanding entitlements • Where a number of payments are made these will be aggregated together to be measured against the cap

	<p>Payments out of scope</p> <ul style="list-style-type: none"> • Compensation payments in respect of death or injury attributable to the employment, serious ill health and retirement and certain fitness requirements • Payments made in compliance with an order of court or tribunal <p>Relaxation process</p> <ul style="list-style-type: none"> • The relaxation of the cap would require consent from relevant Minister • Full council to take decisions on waiver in cases involving local authorities <p>Compliance and transparency</p> <ul style="list-style-type: none"> • Requires bodies to maintain records and publish annual details of all exit payments relaxed within a financial year
UK GOVERNMENT POLICY POSITION	
<p>Recovery of Exit Payments</p>	<ul style="list-style-type: none"> • Exit payments are recovered on return to any part of the public sector, including for members of the Civil Service Compensation Scheme in Scotland and reserved public sector in Scotland • The minimum salary at which recovery of exit provisions apply is £80,000 per annum • Exit payments recovery will be tapered from date of exit up to 12 months. None after 12 months • Payments included for loss of employment, including discretionary payments and to buy-out actuarial reductions to pensions and severance payments <p>Excluded payments</p> <ul style="list-style-type: none"> ○ Potential if not actual monetary value ○ Payments and compensation in lieu of notice ○ Payments equal to minimum statutory redundancy ○ Payments made in respect of incapacity or death as a result of accident, injury or illness ○ Payments made in respect of leave not taken ○ Payments made in compliance with an order of court or tribunal <ul style="list-style-type: none"> • Mechanism for enforcement are that former employer is entitled to take an individual to court to reclaim money. • Transparency - bodies that grant a waiver disclose this as part of annual reports and accounts
UK GOVERNMENT POLICY POSITION	
<p>Exit Payment Terms</p>	<ul style="list-style-type: none"> • A maximum tariff for calculating exit payments of three weeks' pay per year of service. Employers could apply tariff rates below these limits • A ceiling of 15 months on the maximum number of months' salary that can be paid • A maximum salary on which an exit payment can be based, as a starting point of the NHS scheme salary limit of £80,000 • A taper on the amount of lump sum compensation an individual is entitled to receive as they get closer to pension age • Act to limit or end employer-funded early access to pension within exit packages. Proposals could be: <ul style="list-style-type: none"> ○ Cap the amount of employer funded pension 'top-up' payments to no more than the amount of the redundancy lump sum to which that individual would otherwise be entitled

	<ul style="list-style-type: none"> ○ To remove the ability of employers to make 'top-up' payments altogether • Increase the minimum age at which an employee is able to receive an employer funded pension 'top-up', so that this minimum age is closer to or linked to Normal Pension Age <p>Payments in Scope</p> <ul style="list-style-type: none"> • General limits would be imposed on most employer-funded payments made in relation to leaving employment, including compensation packages for exits whether in impending or declared redundancy situations or in other situations where individuals leave the public sector employment with an employer-funded exit package • Any increase in the minimum age at which an employee might be able to receive a pension 'top-up' on voluntary or compulsory exit may apply to payments under the major public sector compensation or schemes • These reforms will not affect any payments made in relation to death or injury attributable to duty or ill-health retirement.
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2.6 Definition of exit payments related to severance

Exit payment is the term used within this document to refer to any financial or non-financial transfer to an employee or employer which does not represent remuneration for normal on-going activities that are part of their employment. This excludes, for example: wages, salary, allowances and regular non-financial benefit packages such as a company car.

Exit payments may come in a number of different forms including (this list is not exhaustive):

- Cash lump sum- such as a redundancy payment, normally calculated on the basis of salary at the point of exiting the organisation and length of service
- Early access to unreduced pension- some employers offer the option for employees who have reached the relevant age to take early retirement on an 'unreduced' pension, in place of, or in addition to, a cash lump sum compensation payment. In these instances, employers bear the cost of 'buying out' the actuarial reduction that would normally apply to a pension that was taken early
- Non-financial and other benefits- in a smaller number of instances employers may offer other benefits such as additional paid annual leave at the end of an individual's employment
- Payments in lieu of notice - employers may also offer a cash payment equivalent to the sum that would otherwise have been earned had a notice period been worked by the employee

2.7 Aim of the consultation - policy options

The Scottish Government recognises the role of severance arrangements in enabling organisations to re-shape workforces and ensuring continued delivery of flexible and responsive public services. At a time when budgets are under pressure and as part of their continued commitment to fair work, Scottish Ministers are considering whether there is a case for reform of severance arrangements across the devolved public sector.

The Scottish Government is not consulting on the basis of a preferred way forward, but instead wishes to ensure that decisions about a **Scottish Approach** to future policy are informed by as many voices as possible. This consultation seeks to explore four broad policy options:

Option 1 Status quo

Current compensation arrangements meet best value and deliver against fair work principles, accepting a level of continuing variance of practice across workforces that reflects the devolution of responsibilities to individual sectors and employers; **or**

Option 2 Non-legislative change

Consider reforms to current devolved compensation arrangements that would improve value for money and the delivery of fair work principles but which do not require the use of powers conferred on Scottish Ministers by the 2015 Act; **or**

Option 3 Replicating UK arrangements

Agree to make reforms along the lines of the UK Government proposals: to implement a £95,000 exit payment cap; recovery of exit payments where someone earned more than the £80,000 threshold and returned to work in the public sector within 12 months; and make changes to exit payment terms; **or**

Option 4 A hybrid approach

Agree to reform using the powers conferred on Scottish Ministers and implement a hybrid of legislative and non-legislative change which could, for example, strengthen existing severance arrangements and/or introduce some form of different cap and/or recovery arrangements.

In taking forward these four options, consideration will be given to the impact that changes to compensation arrangements can make on the following factors:

- Industrial relations and Fair Work principles
- On delivering flexible and responsive public services
- A desire to ensure that severance payments are not excessive and offer value for money
- Ability to ensure there is greater consistency of application across sectors, including between the reformed Civil Service Compensation Scheme and devolved schemes, where that is seen to be valuable
- Ability of employers to continue to re-shape organisations and deliver services
- The risks and opportunities presented by taking different approaches where there is a UK-wide labour market

Your response to this consultation will help Scottish Ministers to consider whether reform of severance arrangements across the devolved public sector is required and, if so, which policy option should be developed by Scottish Ministers.

We are particularly interested in hearing from:

- Public sector employers and their representative associations
- Employees and their representative bodies
- Members of the academic community with expertise in this area
- Pay, pension, remuneration and HR professionals in both private, public sector and third sector.

Following any decision to make changes to current severance arrangements, we will seek further engagement with workforces across the devolved public sector on the implementation of these changes.

2.8 Which bodies are in scope

All devolved public sector bodies (employees and office holders) are in scope. There is a list of entities classified as within the central and local government and non-financial public corporation sectors by the Office for National Statistics for National Account purposes, on which the UK Government base their scope for capping and recovery (subject to exemptions).

The list includes the main bodies listed below;

- Non-Departmental Public Bodies (who are not part of civil service pension arrangements)
- 22 NHSScotland bodies
- 26 Further Education institutions (colleges)
- 32 local authorities
- Police Scotland and the Scottish Police Authority
- Scottish Fire and Rescue Service
- 6 public corporations

Furthermore, a number of new bodies will be established after 1 April 2017 and any provisions may also cover them.

The list of bodies can be found on the Office for National Statistics website at:

www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/datasets/publicsectorclassificationguide.

Question 1

What types of bodies or bodies themselves do you think SHOULD be covered?

Please give reasons for your response.

Question 2

What types of bodies or bodies themselves do you think SHOULD NOT be covered?

Please give reasons for your response.

2.9 Bodies covered by reserved arrangements

Devolved public sector bodies employing civil servants or those who do not employ civil servants but whose staff are part of the civil service pension arrangements will be subject to Civil Service Compensation Scheme rules set by the UK Government. Such bodies would not be affected directly by the findings of this consultation and any future policy decisions. However, we recognise that these bodies will have an interest in the consultation and severance and would welcome their contribution.

3 Severance arrangements across the devolved public sector in Scotland

In assessing the case for reform, understanding the effectiveness of the current landscape can provide clear indicators on whether or not change is required and, if so, where any change is necessary.

This section of the consultation document sets out the current severance landscape, across the devolved public sector in Scotland. This includes what controls are in place for severance arrangements, the terms of severance schemes, costs and savings of exits and outlines the length of service and pay bands of those who have exited.

Control of severance schemes in the devolved public sector

3.1 The Scottish Public Finance Manual

Severance payments in bodies accountable to Scottish Ministers must comply with requirements in Scottish Public Finance Manual. Scottish Ministers, sign-off exit payments in such bodies. The Scottish Public Finance Manual emphasises the need for economy, efficiency and effectiveness, and promotes high standards of propriety.

In considering terms for settlement agreements, severance, early retirement or redundancy packages - whether compulsory or voluntary - public bodies to which the Scottish Public Finance Manual applies should ensure that issues of legal and regulatory compliance, propriety and value for money are fully taken into account, alongside employee relations issues:

- In order to secure voluntary resignation of an employee out with an existing or approved scheme, any voluntary exit or other severance (including settlements) a business cases needs to be submitted and approved by the Scottish Government.
- In arriving at a decision on approval the Scottish Government will consider comparability to Scottish Government equivalent schemes and to the overarching Civil Service Compensation Scheme rules currently in force, along with an assessment of the regularity, propriety and value for money offered by the proposals.
- The benefit structure and terms of compensation schemes for severance, early retirement or redundancy provided by Scottish Government sponsored bodies - or separately by any constituent parts of the Scottish Administration - should be broadly similar to the arrangements in place within the core Scottish Government and set out in the Civil Service Compensation Scheme - as amended or replaced periodically.

- The public body must obtain prior approval from the Scottish Government for a new scheme or changes to a previously approved scheme.
- Comply with specific requirement to disclose remuneration relating to exit costs in annual accounts.

The Scottish Government made improvements to the regulation of severance payments in the public sector following the Audit Scotland report in May 2013. This included bringing more public bodies within the scope of the Scottish Public Finance Manual.

For those organisations that are not subject to the Scottish Public Finance Manual, such as local authorities, the Scottish Government expects them to meet their duties to deliver best value while also ensuring fairness to their staff.

In local authorities, decisions on exit payments are reported at a full council level annually, with reports providing information on the costs and savings of all exit payments. The Local Government in Scotland Financial Overview Report 2015-16 by Audit Scotland acknowledges the role exit packages play in managing workforces and stated:

“Councils’ decisions on reducing their workforce numbers through exit packages are supported by business cases which set out the associated costs and potential savings. Councils will typically expect to recoup the costs and start making savings within a few years.” (page 18)

3.2 Existing severance schemes by workforce

This section of the consultation sets out key details of the severance schemes by workforce. This was provided using data gathered from across the devolved public sector prior to this consultation.

NHSScotland - covered by the Agenda for Change terms and conditions. All severance schemes are on a voluntary basis and based on an individual’s contractual terms and conditions.

- Number of weeks’ pay: One month’s pay for each year of NHS service, up to a maximum of 24 years (giving a maximum of 104 weeks).
- Voluntary early retirement (access to pension): At the employer’s discretion, employees may also be offered early retirement in the interests of the efficiency of the service. In these situations, the employer covers the costs of providing full pension benefits early.
- Payback period: A key affordability indicator (how long it takes to recoup the costs of the exit) the majority of NHSScotland bodies use a

payback period of between one and two years, with some having either a case by case payback period or no formal payback period in place.

Police - both Police Scotland and the Scottish Police Authority are covered by the same severance arrangements. Severance schemes only apply to police staff and not police officers.

- Number of weeks' pay: For voluntary redundancy: A maximum of five weeks' per year, up to a limit of 66 weeks and a maximum lump sum of £10,000.
- Voluntary early retirement (access to pension): After the age of 50, employees receive an employer 'top-up' of up to four compensatory added years to pension as well as a service based lump sum up to a maximum of 30 weeks.
- Payback period: Both Police Scotland and the Scottish Police Authority use a payback period of three years.

Local Government and Teachers - covered by similar severance policy, although some differences exist in their pension arrangements. A recent survey undertaken by Fife Council into local government severance schemes indicated some variance in practice in the terms of the scheme.

- Number of weeks' redundancy pay: 76 per cent of respondents (to the data gathering exercise) used between 30 and 66 weeks' pay to calculate an exit payment with 24 per cent above this threshold. The highest number of weeks' pay was 82.
- Voluntary early retirement (access to pension): 75 per cent of respondents give employees exiting in such circumstances Compensatory Added Years (this is a discretionary element of exit payments i.e. 'top-up'). Of the councils offering added years: 11 gave up to five added years, with seven councils offering six added years.
- Payback period (value for money test): Used by all local authorities. The majority of which (75 per cent) used a payback period of between two and three years. Five councils have a payback period of up to five years, or on a case by case basis.

Uptake of voluntary early severance / voluntary early retirement can be a concern for employers seeking to re-shape their workforce. Although employers' views on uptake were generally positive, with over 80 per cent saying they felt they could "attract sufficient volunteers to meet required workforce reductions at present and in future, based on projected needs". (Fife Council survey results)

Some councils expressed concern for the future and the need to balance the ongoing cost of schemes against the need for them to remain sufficiently attractive to manage workforce reduction consensually. (Fife Council survey results)

Further Education sector - all severance schemes are overseen by the Scottish Funding Council.

- Number of weeks' pay: There is a variation between 30 weeks' pay (statutory) with a maximum of 60 weeks' pay recorded.
- Voluntary early retirement (access to pensions): Practice varied across respondents with the majority saying that they did not offer this. Those who did offer early access to unreduced pensions did so, where pension rules allowed.
- Payback period: Almost all colleges who responded used a payback period of between one and two years. Very few colleges have a payback period of either 18 months or a maximum of three years.

Non-Departmental Public Bodies, public corporations and the Scottish Fire and Rescue Service - there are variety of arrangements in place. All severance schemes are on a voluntary basis and agreed by the Scottish Government.

- Number of weeks' pay: Across public bodies who responded there is a variation between 30 weeks' pay (statutory) with a maximum of 104 weeks' pay.
- Voluntary early retirement (access to pensions): Practice varied across bodies with the majority of respondents saying that they did offer this, with similar provisions as in local authorities.
- Payback period: Almost all bodies who responded used a payback period of between one and two years. Very few bodies had a payback period of either 18 months or a maximum of three years.

In some circumstances, there was no qualifying period for voluntary severance set out and in all circumstances there are no recovery of exit payment arrangements in place.

Question 3

Given the variation exit in schemes across the public sector, is there benefit in seeking to make this more consistent to deliver best value and Fair Work outcomes? Yes / No

Please give reasons for your response.

3.3 Exit payment costs

To inform the consultation, Scottish Government officials gathered data on exit payment activity across the devolved public sector, using a number of different methods. One data source utilised a pre-consultation data gathering exercise (response rate of 77 per cent) which sought details on severance schemes, number and value of exits by salary band and length of service from a range of devolved public bodies, including Health bodies, Non-Departmental Public Bodies, Police Scotland the Scottish Fire and Rescue Service and the Further Education (college) sector. Separately, additional data was sourced from NHSScotland Annual Accounts and received from Audit Scotland in respect of local authorities. This provides an indicative picture of exits in the devolved public sector.

From the results of the data gathering exercise, between 2014-15 and 2016-17, the indicative cost of exits across the devolved public sector showed over 1,000 voluntary early severance / voluntary early retirement cases reducing to 264, with related costs coming down from £46 million to £11 million.

From Table 1, in 2015-16, only 17 out of 560 exits (around three per cent) cost employers over £100,000.

Table 1 Number of exits by cost band 2014-17 (excluding local government)

Exit cost by band	2014-15	2015-16	2016-17	Total exits by cost band
< £10,000	119	95	36	250
£10,001 - £49,999	727	348	165	1,240
£50,000 - £99,999	143	100	43	286
>£100,000	76	17	20	113
Total	1065	560	264	1,889

Source: Scottish Government data gathering exercise and NHSScotland Annual Accounts
Local Government information sourced did not break down exits using the exit cost band summarised above and therefore were excluded from this analysis

Table 2 Number and cost of exits by sector 2015-16

Devolved public sector body	Number of exits	Total cost £	Average cost £
Police	111	6,244,074	56,253
Further Education colleges	171	4,979,913	29,122
NHSScotland	159	6,140,000	38,616
Public bodies (NDPBs, public corporations, SFRS)	119	4,686,555	39,383
Local government	2,660	97,142,387	36,520
Total	3,220	119,192,929	37,016

Source: Audit Scotland, NHSScotland and Scottish Government data gathering exercise

Table 2 above shows the average exit payments by sector with an overall average exit cost of £37,016.

Furthermore, when adding local government exit payment data we can see total costs of exits rise to £119 million. It is important to note that local government exit costs are proportionate to the volume of exits that occur in that sector.

3.4 Salary and length of service indicators

An issue which could be raised in relation to an exit payment cap is whether longer serving, mid- to low-income employees could be impacted unfairly by the introduction of any cap. For instance, if the calculation of the exit payment for a low-income, long-serving employee breached a cap on exit payments.

An examination of the distribution of exit payments across the public sector is provided below. This gives an indication of the proportion of longer serving employees more likely to exit and be impacted by a cap if it were to be introduced.

Table 3 Number of exits by length of service 2015-16
(excluding local government)

Length of service at exit	10 years or less	11 to 20 years	21 to 30 years	31 to 40 years	More than 40 years	Total
Police	45	36	24	6	0	111
Further Education colleges	62	61	38	10	0	171
NHSScotland	16	44	29	18	5	112
Public bodies (NDPBs, public corporations, SFRS)	36	44	27	5	7	119
Total	159	185	118	39	12	513

Source: Scottish Government data gathering exercise only

The data from Table 3, suggests fewer than ten per cent of all exits (excluding local government) occur where employees have more than 30 years' service.

Table 4 Number of exits by salary at exit 2015-16
(excluding local government)

Salary band (£)	0 to 22,000	22,000 to 43,429	43,430 to 69,999	70,000 to 99,999	100,000 to 149,999	150,000 to 199,999	More than 200,000	Total
Police	49	55	7	0	0	0	0	-
Further Education colleges	53	98	19	*	0	0	0	-
NHSScotland	13	52	33	8	5	*	0	-
Public bodies (NDPBs, public corporations, SFRS)	38	51	24	*	*	0	0	-
Total	153	256	83	12	*	*	0	513

Source: Scottish Government data gathering exercise only

Note: Counts of less than five have been suppressed and shown as * to prevent the possible disclosure of information about individuals. Secondary data suppression has also been necessary to prevent the calculation of the suppressed values by differencing (also shown as *)

The data in Table 4 suggests less than three per cent of exits exceeded the £80,000 threshold beyond which recovery arrangements might begin.

Equally, this data suggests the overall picture in the devolved public sector in Scotland is one where there are fewer exits in long serving or high earning employees.

3.5 Severance payments associated with pension

Individuals in the public sector who have reached the required age may be offered, or in certain circumstances have a contractual entitlement to, early retirement on an 'unreduced pension' or be provided additional pension. Employers making this offer as part of early retirement may make a contribution ('top-up') to an individual's pension that 'buys out' some or all of the reduction in pension benefits.

Pension costs related to early exits could, therefore, be included which would mean more members of the workforce would be caught by a cap.

3.6 Existing recovery arrangements

Currently some public sector bodies can choose to include recovery measures (including limitations on return to work) in the design of their

severance schemes. For example, NHSScotland has recovery arrangements, whereby if an individual secured employment elsewhere within NHSScotland, within four weeks of receiving a payment the previous employer would seek recovery.

While some public sector bodies do not re-engage the services of former employees, this is only within their own organisation. It is therefore difficult to assess the number of instances of re-engaging former employees shortly after receiving an exit payment across the sector as a whole.

There is not a requirement for recovery measures to be applied consistently across the devolved public sector in Scotland.

4 Severance policy for the devolved public sector

Scottish Ministers are seeking your views on whether better outcomes can be achieved for taxpayers, public sector employers and employees, by introducing a cap on exit payments, recovering exit payments for high earners and changing the way in which exit payments are calculated.

This section will go through each element of the UK Government's underpinning policy and offer you the chance to have your say.

Exit payment cap

4.1 Level of exit payment cap

An exit payment cap is a limit on the total cost of exit payments available to an individual leaving employment to a set amount. The UK Government is proposing a limit of £95,000.

Scottish Ministers can set the level of the exit payment cap and determine which payments would be included in that cap, as well as provide for relaxations, namely, circumstances where the cap can be waived.

Scottish Ministers are seeking your views on whether there would be a policy benefit in setting a standardised cap on exit payments and, if so, what level of cap would be appropriate, balancing best value with re-shaping of services and flexibility to manage workforces. An exit cap would apply as a consequence of leaving employment to all existing and future employees of a devolved public body.

Question 4

Do you think it is necessary to set an exit payment cap for the devolved public sector? Yes / No

Please give reasons for your response.

If yes, do you think it should be set at the same level as per UK Government policy (at £95,000)? Yes / No

Please give reasons for your response.

If no, what level would be appropriate?

Please give reasons for your response.

4.2 Severance arrangements covered by a cap

The UK Government's proposals for an exit cap applies to all arrangements which determine an exit payment. These are:

- voluntary early severance / redundancy
- voluntary early retirement
- compulsory redundancy
- contractual arrangements and collective agreements

Question 5

Which of the following exit payment arrangements (included in the UK Government's exit payment cap proposals) should Scottish Ministers include in the event that a cap was to be introduced in Scotland for the devolved public sector? Please select all you think should be included.

- Voluntary early severance / redundancy
- Voluntary early retirement
- Compulsory redundancy
- Contractual arrangements
- Collective agreements

Please give reasons for your response.

Question 6

Are there any other exit payments situations where you think a cap should apply?

Please give reasons for your response.

4.3 Payments included in a cap

The Scottish Government is considering carefully whether pension 'top-up' should be included in any future cap. Any cap which included this type of payment could potentially make exit payments less attractive to employees and tie employers' hands further in their ability to re-shape workforces.

Exit payments included in the UK Government's exit payment cap are:

- Voluntary and compulsory exits
- Other voluntary exits with compensation packages
- Ex gratia payments and special severance payments (settlement agreements)
- Other benefits granted as part of exit process that are not payments in relation to employment
- Employer costs of providing early unreduced access to pensions

- Any form of pension ‘top-up’
- Payments or compensation in lieu of notice and cashing up of outstanding entitlements

Question 7

Which of the following exit payments (included in the UK Government’s exit payment cap proposals) should Scottish Ministers include if a cap were to be introduced for the devolved public sector? Please select all you think should be included.

- Voluntary and compulsory exits
- Other voluntary exits with compensation packages
- Ex gratia payments and special severance payments (settlement agreements)
- Other benefits granted as part of exit process that are not payments in relation to employment
- Employer costs of providing early unreduced access to pensions
- Any form of pension ‘top-up’
- Payments or compensation in lieu of notice and cashing up of outstanding entitlements
- Other (please specify)

Please give reasons for your response.

4.4 Payments excluded from an exit payment cap

Under the UK Government proposals, compensation payments in respect of death or injury attributable to employment, serious ill health and ill health retirement would be excluded, as would payments made following litigation for breach of contract or unfair dismissal.

Question 8

Which of the following payments should Scottish Ministers exclude, if a cap were to be introduced in the devolved public sector? Please select all that apply.

- Death or injury attributable to employment
- Serious ill health and retirement and certain fitness requirements
- Litigation for breach of contract for unfair dismissal
- Compliance with an order of court or tribunal
- Other (please specify below)

Please give reasons for your response.

Exit payment recovery

4.5 Recovery of exit payments

Scottish Ministers are seeking your views on recovery arrangements, based on fairness and value for money, whereby former employers can recover exit payments made to employees who are subsequently re-engaged in another public sector body within 12 months of leaving.

UK Government proposals for the recovery of exit payments (clawback) requires higher-earning public sector employees or office holders to re-pay exit payments on a tapered bases (for example: if nine months between posts, only 75 per cent of monies are recovered should they return to any part of the public sector). High earners are defined as those who earned over £80,000. This is not applied pro rata for part-time employees.

Question 9

Should Scottish Ministers introduce a threshold for recovery arrangements for high-earners in the devolved public sector? Yes / No
If yes, at what threshold should recovery arrangements be set?

- At £80,000
- Lower than £80,000
- Higher than £80,000

Please give reasons for your response.

Question 10

Over what time period should recovery arrangements apply?

- At 12 months
- Earlier than 12 months
- Beyond 12 months

Please give reasons for your response.

4.6 Payments to be included

Scottish Ministers could also determine what types of payments are included. Recovery payments included as part of the UK proposal include:

- those for loss of employment, including discretionary payments
- to buy-out actuarial reductions to pensions and
- severance payments

Question 11

Which of the following payments should Scottish Ministers include in the exit payment recovery arrangements, if introduced for the devolved public sector? Please select all those you think should be included.

- Those for loss of employment, including discretionary payments
- To buy-out actuarial reductions to pensions
- Severance payments

Please give reasons for your response.

4.7 Enforcement mechanisms

The UK Government proposals are that a former employer is entitled to take an individual to court to reclaim money. The new employer will be asked to consider dismissal if repayment arrangements are not made within three months of starting employment.

Question 12

Do you think that enforcement mechanisms should be introduced for the devolved public sector? Yes / No

Please give reasons for your response.

4.8 Relaxation process

Under the terms of the UK Government's proposals, in exceptional circumstances and in individual cases where an exit payment exceeds the cap, the default position would be that any relaxation of the cap would require the consent of Ministers. For devolved public bodies on the same basis, Scottish Ministers would approve the relaxation of the cap in individual cases. The same provisions would apply in respect of recovery.

The UK Government policy proposes that the full council take the decision on whether to grant a relaxation of cap in cases involving local government.

Question 13

If in the event of an exit payment cap and recovery should Scottish Ministers have: Please select all those you think should be included.

- The power to waive in exceptional circumstances
- Delegate the power to waive
- Delegation within a certain threshold

Please give reasons for your response.

4.9 Accountability and transparency

To ensure transparency and accountability of severance schemes and re-engagement levels across the public sector, the UK Government's policy

proposals suggest reporting of exit payments and recovery of exit payments in the annual accounts in each organisation.

Current practice in Scotland indicates that exit payments costs and savings are reported annually by local authorities as a result of the 2003 “Bye now, pay later?” Audit Scotland recommendation. Furthermore, local government exit payment costs are reported by Audit Scotland every year in Local Government in Scotland Financial Overview Report 2015-16.

Settlement agreements (defined as payments made to the employee outside the employer’s basic statutory or contractual entitlement, on unplanned termination of employment) for those public bodies under the auspices of Scottish Ministers are scrutinised and reported in the Scottish Government’s annual report to the Scottish Parliament. This demonstrates Scottish Ministers’ commitment to operating openly and transparently, encouraging appropriate scrutiny of public sector operations.

All bodies across the devolved public sector are required to report exit payment activity in their annual accounts.

Question 14

Are there other forms of reporting you think would be helpful, across the devolved public sector in Scotland? Yes / No

Please give reasons for your response.

Exit payment terms

4.10 Changing exit payment terms

Scottish Ministers continue to work with devolved public bodies to consider how severance arrangements can best support maintaining high quality public services while addressing the challenges presented by current constraints on overall public expenditure. This context makes it essential that severance arrangements deliver value for money.

Scottish Ministers are seeking your views on the potential benefits of changes to **exit payment terms** to the devolved public sector in Scotland.

4.11 Changes to the exit payment tariff

An exit payment tariff is the method used to calculate an exit payment usually based on length of service and salary. Scottish Ministers can change the maximum tariff similar to that of the UK Government proposals: to three weeks’ pay per year of service; cap the maximum salary on which the severance payment is based to £80,000; and to cap the number of months’

salary that can be used when calculating exit payments to 15 months. Scottish Ministers could choose to set a different tariff.

Question 15

Do you think there would be value in changing exit payment tariff terms along the lines of the UK Government's proposals: Please select all those you think should be included.

- Three weeks' pay per year of service
- Maximum level of salary on which the payment is based to £80,000
- A ceiling of 15 months on the maximum number of months' salary that can be used
- Other alternative approaches (please specify)

Please give reasons for your response.

4.12 Payback period

Exit payment terms could be more affordable and benefit from being consistent across the wider public sector landscape. Payback period (how long it takes to re-coup the costs of exits) is often used as an indicator of best value in exit payments.

Severance arrangements in devolved public sector bodies subject to the Scottish Public Finance Manual have to be broadly comparable with Civil Service Compensation Scheme terms which are currently 18 months. However, across the devolved public sector there is a broad range of payback periods in use. These range from 18 months to five years. Not all devolved public sector bodies are subject to the Scottish Public Finance Manual, for example, local government.

Question 16

What would be an appropriate payback period for exit payments, that balances affordability with operational effectiveness?

Please give reasons for your response.

4.13 Pension 'top-up' payments

Some employers offer pension 'top-up' payments as part of severance arrangements. The UK Government policy proposals suggest that the cost of employer-funded pension 'top-up' payments can be minimised, for example, by limiting the amount of employer funded 'top-up' payments for early retirement, or removing access to early retirements, but could be limited further by applying one or more of a range of restrictions:

- Cap the amount of employer funded pension 'top-up' payments to no more than the amount of the redundancy lump sum to which that individual would otherwise be entitled

- To remove the ability of employers to make 'top-up' payments altogether
- Increase the minimum age at which an employee is able to receive an employer funded pension 'top-up', so that this minimum age is closer to or linked to Normal Pension Age

'Top-up' payments for ill-health, death in service and physical fitness could be out of scope.

Question 17

Should Scottish Ministers apply any of the following restrictions, for devolved public sector employers?

- Cap the amount of employer funded pension 'top-up' payments to no more than the amount of the redundancy lump sum to which that individual would otherwise be entitled
- Remove the ability of employers to make 'top-up' payments altogether
- Increase the minimum age at which an employee is able to receive an employer funded pension 'top-up', so that this minimum age is closer to or linked to Normal Pension Age
- Other (please specify)

Please give reasons for your response.

If none of the above, please give reasons for your response.

5 Impact analysis

5.1 Economic and fiscal

Between 2010-11 and 2019-20, the Scottish fiscal revenue budget (which funds discretionary expenditure on public goods and services in Scotland) will fall by around nine per cent in real terms. As the public sector paybill represents a large proportion of devolved public expenditure, action to make savings in paybill costs are an important part of the response that all public bodies have been and will continue to make in the challenging financial context.

Question 18

You are invited to provide evidence of where an exit cap or other changes to exit payment terms would further support your organisation's ability to manage paybill costs?

Question 19

What do you think are the positive and negative economic and fiscal impacts of an exit cap, changes to exit payment terms and recovery arrangements?

What evidence do you have?

5.2 Social Impact

Scottish Ministers recognise that Scotland's geography means it has a dispersed workforce in rural and island areas. In such areas employers can have more limited recruitment options. Employers may have no option but to consider former public sector employees when filling vacancies and such employees often have valuable skills and experience to offer. However, the recruitment of former public sector employees could be impacted if mandatory recovery of exit payments within 12 months of leaving means that such employment opportunities become less attractive.

Furthermore, due to the size and nature of Scotland's public sector, close relationships exist between certain aspects of the public sector, for example, between NHS and local government, which mean there is a degree of churn across these areas of the public sector. The impact of new provisions on recovery could slow down or hinder this type of workforce movement.

Question 20

What do you think are the positive and negative social impacts of an exit cap, changes to exit payment terms and recovery arrangements?

What evidence do you have?

5.3 Environmental and regulatory impact

The Scottish Government considers there to be no direct environmental or regulatory impact.

Question 21

What do you think are the positive and negative environmental and / or regulatory impacts of an exit cap, changes to exit payment terms and recovery arrangements?

What evidence do you have?

5.4 Financial impact

To enable employers to re-shape services in light of budget challenges, exit packages are one way of achieving this. Ensuring that exit packages offer flexibility to employers, support to employees and value for money to the taxpayer, are key drivers of any decision around the implementation of an exit cap or recovery arrangements.

Question 22

What do you think are the positive and negative financial impacts of an exit cap, changes to exit payment terms and recovery arrangements?

What evidence do you have?

5.5 Equalities impact

Alongside any policy development resulting from this consultation, legislation requires the Scottish Government to equality impact assess any new policy and publish the results. We will therefore be carrying out an Equality Impact Assessment. This is an important part of the policy making process and will assist in the assessment of how any resulting policy impacts on people who share 'protected characteristics': age, disability, sex, gender reassignment, sexual orientation, race, marriage and civil partnership and religion or belief. It also presents an opportunity to promote equality.

Specifically in relation to the three needs of the public sector equality duty in the Equality Act 2010, any new policy will need to have due regard to the need to:

- Eliminating unlawful discrimination
- Advancing equality of opportunity
- Promoting good relations

The Equality Impact Assessment will consider the potential impact of any new policy with each of the key features of the proposed policy on the protected characteristics.

Whatever transpires, individual employers will still be required to ensure that they do not introduce or perpetuate any direct or indirect discrimination for individuals in their application of the policy outcome.

Question 23

What do you think are the positive and negative equalities impacts of an exit cap, changes to exit payment terms and recovery arrangements?
What evidence do you have?

5.6 Unintended consequences

With the exception of maintaining the status quo, there may unintended consequences related to implementing certain options which reduce the value for money aspects or the ability of public bodies to function effectively.

Initial comments on possible consequences have included:

- Lower exit payments may discourage employees from applying for early exits – this could affect the ability for public bodies to manage their staffing levels and cost effectively
- There may be a rise in the number of those seeking to exit before any changes take place - this could impact capacity and the ability of public bodies to operate effectively
- Public bodies may instead engage individuals in ways beyond a normal employer/employee relationship, such as on a consultancy or contractor basis to avoid the need for recovery action

There may be other outcomes which have not been foreseen and we would welcome your thoughts.

Question 24

What unintended consequences do you think might arise from proposals that go beyond the status quo?

6 A case for change

In making final decisions about the issues described in this consultation, consideration will be given to the impact that changes to severance arrangements can make on the following key factors:

- Industrial relations and Fair Work principles
- On delivering flexible and responsive public services
- A desire to ensure that severance payments are not excessive and offer value for money
- Ability to ensure there is greater consistency of application across sectors, including between the reformed Civil Service Compensation Scheme and devolved schemes, where that is seen to be valuable
- Ability of employers to continue to re-shape organisations and deliver services
- The risks and opportunities presented by taking different approaches where there is a UK-wide labour market

Question 25

Do you think these are the appropriate factors to consider when making the case for change to severance arrangements in the devolved public sector? Yes / No

From the following list, please select all those you consider to be priority factors

- Industrial relations and Fair Work principles
- On delivering flexible and responsive public services
- A desire to ensure that severance payments are not excessive and offer value for money
- Ability to ensure there is greater consistency of application across sectors, including between the reformed Civil Service Compensation Scheme and devolved schemes, where that is seen to be valuable
- Ability of employers to continue to re-shape organisations and deliver services
- The risks and opportunities presented by taking different approaches where there is a UK-wide labour market
- Other (please specify)

Please give reasons for your response.

Question 26

Are there any other risks you think should be part of Scottish Ministers decision making on this issue? Yes / No

Please give reasons for your response.

This consultation has sought views on a number of specific policy options that are deliverable through new and existing powers and has examined existing measures for exit payments, recovery arrangements and exit payment terms across the devolved public sector in Scotland.

Question 27

In conclusion, which of the following options best reflects your views of reform of severance arrangements across the devolved public sector?

Please select appropriate option.

- **Option 1. Status quo** - No reform is required as current compensation arrangements meet best value and deliver against Fair Work principles
- **Option 2. Non-legislative change** - Consider reforms to current devolved compensation arrangements that would improve value for money and deliver on Fair Work principles but which do not require use of Regulations
- **Option 3. Replicating UK arrangements** - Agree to make reforms in line with the reformed Civil Service Compensation Scheme arrangements and the UK Government's proposals to implement a £95,000 exit payment cap and recovery of exit payments for those who earned more than £80,000 and return to the public sector
- **Option 4. A hybrid approach** - Agree to reform using the powers conferred on Scottish Ministers and implement a hybrid of legislative and non-legislative change which could, for example, strengthen existing severance arrangements and/or introduce some form of different cap and/or recovery arrangements.

Please give reasons for your response.

Question 28 / final comments

Any other comments please include them here

Respondent Information Form

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

List of references / sources quoted

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- Office of National Statistics, www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/datasets/publicsectorclassificationguide

Local government severance data was sourced from a recent survey undertaken by Fife Council into local government severance schemes across Scotland



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