



Small Business, Enterprise and Employment Act 2015

2015 CHAPTER 26

PART 11

EMPLOYMENT

Public sector exit payments

154 Regulations in connection with public sector exit payments

- (1) Regulations may make provision requiring the repayment of some or all of any qualifying exit payment in qualifying circumstances (see section 155).
- (2) The regulations may make such other provision in connection with the repayment mentioned in subsection (1) as the person making the regulations thinks fit.
- (3) A qualifying exit payment is a payment of a prescribed description—
 - (a) made to an employee of a prescribed public sector authority in consequence of the employee leaving employment, or
 - (b) made to a holder of a prescribed public sector office in consequence of the office holder leaving office.
- (4) The descriptions of payment which may be prescribed by virtue of subsection (3) include—
 - (a) any payment on account of dismissal by reason of redundancy (read in accordance with section 139 of the Employment Rights Act 1996),
 - (b) any payment on voluntary exit,
 - (c) any payment to reduce or eliminate an actuarial reduction to a pension on early retirement,
 - (d) any severance payment or other ex gratia payment,
 - (e) any payment in respect of an outstanding entitlement (such as to annual leave or an allowance),

- (f) any payment of compensation under the terms of a contract,
 - (g) any payment in lieu of notice, and
 - (h) any payment in the form of shares or share options.
- (5) If more than one qualifying exit payment is payable to an employee or office holder the provision made in the exit payments regulations is to apply in relation to the aggregated payments.
- (6) For the purposes of this section and sections 155 and 157—
- an “exit payee” is an employee or office holder to whom any qualifying exit payment is payable,
 - the “exit payments regulations” are regulations under subsection (1),
 - a “responsible authority” means an authority by which any qualifying exit payments are payable, and
 - “prescribed” means prescribed by the exit payments regulations.

155 Section 154(1): further provision

- (1) For the purposes of section 154(1) circumstances are qualifying circumstances if—
- (a) an exit payee becomes—
 - (i) an employee or a contractor of a prescribed public sector authority, or
 - (ii) a holder of a prescribed public sector office,
 - (b) less than one year has elapsed between the exit payee leaving the employment or office in respect of which a qualifying exit payment is payable and the event mentioned in paragraph (a), and
 - (c) any other prescribed conditions are met.
- (2) The exit payment regulations may, in particular, make provision—
- (a) exempting an exit payee from the requirement to repay in the prescribed circumstances;
 - (b) exempting some or all of a qualifying exit payment from that requirement in the prescribed circumstances;
 - (c) for the amount required to be repaid to be tapered according to the time which has elapsed between an exit payee leaving employment or office and the event mentioned in subsection (1)(a);
 - (d) imposing duties, in connection with a qualifying exit payment, on—
 - (i) an exit payee,
 - (ii) a responsible authority, and
 - (iii) a subsequent authority;
 - (e) as to the arrangements required to be made by an exit payee to repay to a responsible authority the amount of a qualifying exit payment required to be repaid;
 - (f) for preventing an exit payee from becoming an employee or a contractor, or a holder of a public sector office, as mentioned in subsection (1)(a) until the arrangements required by virtue of paragraph (e) have been made;
 - (g) as to the consequences of an exit payee failing to repay the amount required to be repaid (including the dismissal of the exit payee).
- (3) In subsection (2)(d)(iii) a “subsequent authority” means—

- (a) in relation to an exit payee who becomes an employee or a contractor, a public sector authority of which the exit payee becomes an employee or a contractor, or
 - (b) in relation to an exit payee who becomes a holder of a public sector office, an authority which is responsible for the appointment.
- (4) For the purposes of this section an exit payee becomes a contractor of a public sector authority if the exit payee provides services to the authority under a contract for services.

156 Power to make regulations to be exercisable by the Treasury or Scottish Ministers

- (1) The power to make regulations under section 154(1) is exercisable—
- (a) by the Scottish Ministers in relation to payments made by a relevant Scottish authority;
 - (b) by the Treasury in relation to any other payments, (but this subsection is subject to subsection (2)).
- (2) Where the relevant Scottish authority is the Scottish Administration the power to make regulations under section 154(1) is exercisable by the Treasury (instead of the Scottish Ministers) in relation to payments made to—
- (a) the holders of offices in the Scottish Administration which are not ministerial offices (read in accordance with section 126(8) of the Scotland Act 1998), and
 - (b) the members of the staff of the Scottish Administration (read in accordance with section 126(7)(b) of that Act).
- (3) In this section “relevant Scottish authority” means—
- (a) the Scottish Parliamentary Corporate Body, or
 - (b) any authority which wholly or mainly exercises functions which would be within devolved competence (within the meaning of section 54 of the Scotland Act 1998).
- (4) The first regulations under section 154(1)—
- (a) if made by the Treasury, are subject to affirmative resolution procedure;
 - (b) if made by the Scottish Ministers, are subject to the affirmative procedure.
- (5) Any other regulations under section 154(1)—
- (a) if made by the Treasury, are subject to negative resolution procedure;
 - (b) if made by the Scottish Ministers, are subject to the negative procedure.

157 Power of Secretary of State to waive repayment requirement

- (1) The Secretary of State may waive the whole or any part of any repayment required by regulations made by the Treasury under section 154(1).
- (2) The Scottish Ministers may waive the whole or any part of any repayment required by regulations made by the Scottish Ministers under section 154(1).
- (3) A waiver may be given in respect of—
- (a) a particular exit payee, or
 - (b) a description of exit payees.

Status: This is the original version (as it was originally enacted).

- (4) The exit payments regulations made by the Treasury may—
- (a) make provision for the power under subsection (1) to be exercisable on behalf of the Secretary of State by a prescribed person,
 - (b) make provision for a waiver to be given only—
 - (i) with the consent of the Treasury, or
 - (ii) following compliance with any directions given by the Treasury, and
 - (c) make provision as to the publication of information about any waivers given.
- (5) The exit payments regulations made by the Scottish Ministers may—
- (a) make provision for the power under subsection (2) to be exercisable on behalf of the Scottish Ministers by a prescribed person,
 - (b) make provision for a waiver to be given only—
 - (i) with the consent of the Scottish Ministers, or
 - (ii) following compliance with any directions given by the Scottish Ministers,

(where provision is made by virtue of paragraph (a)), and
 - (c) make provision as to the publication of information about any waivers given.
- (6) The exit payments regulations made by the Treasury may make provision for the power conferred on the Secretary of State by subsection (1) to be exercised instead—
- (a) by the Department of Finance and Personnel in Northern Ireland, in relation to qualifying exit payments made by responsible authorities who wholly or mainly exercise functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);
 - (b) by the Welsh Ministers, in relation to qualifying exit payments made by responsible authorities who wholly or mainly exercise functions which could be conferred by provision falling within the legislative competence of the National Assembly for Wales (as defined in section 108 of the Government of Wales Act 2006).