



# Small Business, Enterprise and Employment Act 2015

## 2015 CHAPTER 26

### PART 11

#### EMPLOYMENT

##### *Public sector exit payments*

#### **[<sup>F1</sup>153A Regulations to restrict public sector exit payments**

- (1) Regulations may make provision to secure that the total amount of exit payments made to a person in respect of a relevant public sector exit does not exceed £95,000.
- (2) Where provision is made under subsection (1) it must also secure that if, in any period of 28 consecutive days, two or more relevant public sector exits occur in respect of the same person, the total amount of exit payments made to the person in respect of those exits does not exceed the amount provided for in subsection (1).
- (3) An exit payment is in respect of a relevant public sector exit if it is made—
  - (a) to an employee of a prescribed public sector authority in consequence of the employee leaving employment, or
  - (b) to a holder of a prescribed public sector office in consequence of the office-holder leaving office.
- (4) An exit payment is a payment of a prescribed description.
- (5) The descriptions of payment which may be prescribed 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 or in respect of the cost to a pension scheme of such a reduction not being made;

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- (d) any severance payment or other ex gratia payment;
  - (e) any payment in respect of an outstanding entitlement;
  - (f) any payment of compensation under the terms of a contract;
  - (g) any payment in lieu of notice;
  - (h) any payment in the form of shares or share options.
- (6) In this section a reference to a payment made to a person includes a reference to a payment made in respect of that person to another person.
- (7) For the purposes of subsection (2), a public sector exit occurs when the person leaves the employment or office in question (regardless of when any exit payment is made).
- (8) Regulations may include—
- (a) provision which exempts from any provision made under subsection (1) exit payments, or exit payments of a prescribed description, made in prescribed circumstances;
  - (b) provision which, in consequence of provision made under subsection (1), amends a relevant public sector scheme so as to make any duty or power under the scheme to make exit payments subject to any restriction imposed by regulations under subsection (1) (taking account of any relaxation of such a restriction which may be made under section 153C);
  - (c) provision which makes an amendment of any provision made by or under an enactment (whenever passed or made) which is necessary or expedient in consequence of any provision made by or under this section.
- (9) Regulations may substitute a different amount for the amount for the time being specified in subsection (1).
- (10) Nothing in this section applies in relation to payments made by 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).
- (11) In this section—
- “enactment” includes an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales and Northern Ireland legislation;
  - “prescribed” means prescribed by regulations under this section;
  - “relevant public sector scheme” means—
- (a) a scheme under section 1 of the Superannuation Act 1972 (civil servants);
  - (b) a scheme under section 7 of that Act (local government workers);
  - (c) a scheme under section 9 of that Act (teachers);
  - (d) a scheme under section 10 of that Act (health service workers);
  - (e) a scheme under section 1 of the Public Service Pensions Act 2013 (schemes for persons in public service);
  - (f) a scheme under section 26 of the Fire Services Act 1947 or section 34 of the Fire and Rescue Services Act 2004 (fire and rescue workers);
  - (g) a scheme under section 1 of the Police Pensions Act 1976 or section 48 of the Police and Fire Reform (Scotland) Act 2012 (members of police forces);
  - (h) any other prescribed scheme (whether established by or under an enactment or otherwise).

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### Textual Amendments

**F1** Ss. 153A-153C inserted (1.2.2017) by [Enterprise Act 2016 \(c. 12\)](#), **ss. 41, 44(4)(b)**; [S.I. 2017/70](#), **reg. 2(b)**

## **153B Supplementary provision about regulations under section 153A**

- (1) Subject to subsection (2), the power to make regulations under section 153A is exercisable—
  - (a) by the Scottish Ministers, in relation to payments made by a relevant Scottish authority;
  - (b) by the Welsh Ministers, in relation to relevant Welsh exit payments;
  - (c) by the Treasury, in relation to any other payments.
- (2) Where the relevant Scottish authority is the Scottish Administration (or a part of it) the power to make regulations under section 153A is exercisable by the Treasury (instead of the Scottish Ministers)—
  - (a) in relation to payments made to 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) in relation to payments made to members of the staff of the Scottish Administration (read in accordance with section 126(7)(b) of that Act).
- (3) The power to make provision of the kind mentioned in section 153A(8)(b) (power to amend public sector schemes), so far as exercisable by the Treasury, is also exercisable concurrently by any other Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975) with the consent of the Treasury.
- (4) Regulations under section 153A—
  - (a) if made by the Treasury, are subject to the affirmative resolution procedure;
  - (b) if made by the Scottish Ministers, are subject to the affirmative procedure;
  - (c) if made by the Welsh Ministers, may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (5) In this section “relevant Scottish authority” means—
  - (a) the Scottish Parliamentary Corporate Body, or
  - (b) any authority which wholly or mainly exercises functions within devolved competence (within the meaning of section 54 of the Scotland Act 1998).
- (6) In this section “relevant Welsh exit payments” means exit payments made to holders of the following offices—
  - (a) member of the National Assembly for Wales;
  - (b) the First Minister for Wales;
  - (c) Welsh Minister appointed under section 48 of the Government of Wales Act 2006;
  - (d) Counsel General to the Welsh Government;
  - (e) Deputy Welsh Minister;
  - (f) member of a county council or a county borough council in Wales;
  - (g) member of a National Park Authority in Wales;

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- (h) member of a Fire and Rescue Authority in Wales.

#### Textual Amendments

- F1** Ss. 153A-153C inserted (1.2.2017) by [Enterprise Act 2016 \(c. 12\)](#), **ss. 41, 44(4)(b)**; S.I. 2017/70, reg. 2(b)

### 153C Power to relax restriction on public sector exit payments

- (1) A Minister of the Crown may relax any restriction imposed by regulations made by the Treasury under section 153A.
- (2) The Scottish Ministers may relax any restriction imposed by regulations made by the Scottish Ministers under section 153A.
- (3) The Welsh Ministers may relax any restriction imposed by regulations made by the Welsh Ministers under section 153A.
- (4) A requirement may be relaxed—
  - (a) in respect of a particular employee or office-holder or a description of employees or office-holders;
  - (b) in relation to the whole or any part of an exit payment, or a description of exit payments.
- (5) Regulations under section 153A made by the Treasury may—
  - (a) make provision for the power under subsection (1) to be exercisable on behalf of a Minister of the Crown by a person specified in the regulations;
  - (b) except in relation to exit payments made by a [<sup>F2</sup>devolved Welsh authority], make provision for a requirement to be relaxed only—
    - (i) with the consent of the Treasury, or
    - (ii) following compliance with any directions given by the Treasury;
  - (c) make provision as to the publication of information about any relaxation of a requirement granted.
- (6) Regulations under section 153A 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 person specified in the regulations;
  - (b) where provision is made by virtue of paragraph (a), make provision for a requirement to be relaxed only—
    - (i) with the consent of the Scottish Ministers, or
    - (ii) following compliance with any directions given by the Scottish Ministers;
  - (c) make provision as to the publication of information about any relaxation of a requirement granted.
- (7) Regulations under section 153A made by the Welsh Ministers may—
  - (a) make provision for the power under subsection (3) to be exercisable on behalf of the Welsh Ministers by a person specified in the regulations;
  - (b) where provision is made by virtue of paragraph (a), make provision for a requirement to be relaxed only—
    - (i) with the consent of the Welsh Ministers, or

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- (ii) following compliance with any directions given by the Welsh Ministers;
  - (c) make provision as to the publication of information about any relaxation of a requirement granted.
- (8) Regulations made by the Treasury under section 153A(1)—
- (a) must, if they make provision in relation to exit payments made by a [<sup>F3</sup>devolved Welsh authority], provide for the power conferred on a Minister of the Crown by subsection (1) to be exercised instead by the Welsh Ministers in relation to those exit payments;
  - (b) may provide for the power conferred on a Minister of the Crown by subsection (1) to be exercised instead by the Welsh Ministers in relation to exit payments made by any other authority who is not a [<sup>F4</sup>devolved Welsh authority] but who wholly or mainly exercises functions in relation to Wales (but this does not limit the provision that may be made under subsection (5) (a)).
- (9) In this section—
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
- [<sup>F5</sup>“devolved Welsh authority” has the same meaning as in the Government of Wales Act 2006 (see section 157A of that Act).]

#### Textual Amendments

- F1** Ss. 153A-153C inserted (1.2.2017) by [Enterprise Act 2016 \(c. 12\)](#), **ss. 41, 44(4)(b)**; S.I. 2017/70, reg. 2(b)
- F2** Words in s. 153C(5)(b) substituted (1.4.2018) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 109(2)** (with [Sch. 7 paras. 1, 6](#)); S.I. 2017/1179, reg. 3(r)
- F3** Words in s. 153C(8)(a) substituted (1.4.2018) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 109(2)** (with [Sch. 7 paras. 1, 6](#)); S.I. 2017/1179, reg. 3(r)
- F4** Words in s. 153C(8)(b) substituted (1.4.2018) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 109(2)** (with [Sch. 7 paras. 1, 6](#)); S.I. 2017/1179, reg. 3(r)
- F5** Words in s. 153C(9) substituted (1.4.2018) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 109(3)** (with [Sch. 7 paras. 1, 6](#)); S.I. 2017/1179, reg. 3(r)

#### Modifications etc. (not altering text)

- C1** S. 153C(1): transfer of functions (4.11.2020) by [The Restriction of Public Sector Exit Payments Regulations 2020 \(S.I. 2020/1122\)](#), regs. 1(2), **10** (with reg. 11)

### 154 Regulations in connection with [<sup>F6</sup>repayment of] 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

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- (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 [<sup>F7</sup>or in respect of the cost to a pension scheme of such a reduction not being made] ,
  - (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.

[<sup>F8</sup>(7) In this section a reference to a payment made to a person includes a reference to a payment made in respect of that person to another person.]

#### Textual Amendments

- F6** Words in s. 154 heading inserted (1.2.2017) by [Enterprise Act 2016 \(c. 12\), s. 44\(4\)\(b\), Sch. 6 para. 1\(c\)](#); [S.I. 2017/70, reg. 2\(c\)](#)
- F7** Words in s. 154(4)(c) inserted (1.2.2017) by [Enterprise Act 2016 \(c. 12\), s. 44\(4\)\(b\), Sch. 6 para. 1\(a\)](#); [S.I. 2017/70, reg. 2\(c\)](#)
- F8** [S. 154\(7\)](#) inserted (1.2.2017) by [Enterprise Act 2016 \(c. 12\), s. 44\(4\)\(b\), Sch. 6 para. 1\(b\)](#); [S.I. 2017/70, reg. 2\(c\)](#)

#### Commencement Information

- I1** S. 154 in force at 1.1.2016 by [S.I. 2015/2029, reg. 2\(b\)](#)

### 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

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- (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.

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**Commencement Information**

**12** S. 155 in force at 1.1.2016 by [S.I. 2015/2029](#), [reg. 2\(b\)](#)

**156 Power to make regulations [F9] under section 154(1) 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)).

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- (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).
- [<sup>F10</sup>(4) The first regulations made by the Treasury under section 154(1) are subject to the affirmative resolution procedure.
- (4A) The first regulations made by the Scottish Ministers under section 154(1) 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.

#### Textual Amendments

**F9** Words in s. 156 heading inserted (1.2.2017) by [Enterprise Act 2016 \(c. 12\)](#), s. 44(4)(b), [Sch. 6 para. 2\(b\)](#); [S.I. 2017/70](#), reg. 2(c)

**F10** [S. 156\(4\)\(4A\)](#) substituted for [s. 156\(4\)](#) (1.2.2017) by [Enterprise Act 2016 \(c. 12\)](#), s. 44(4)(b), [Sch. 6 para. 2\(a\)](#); [S.I. 2017/70](#), reg. 2(c)

#### Commencement Information

**I3** [S. 156](#) in force at 1.1.2016 by [S.I. 2015/2029](#), reg. 2(b)

## 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.
- (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



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- (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 <sup>F11</sup>are devolved Welsh authorities within the meaning given by section 157A of the Government of Wales Act 2006.]

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#### Textual Amendments

**F11** Words in s. 157(6)(b) substituted (1.4.2018) by [Wales Act 2017 \(c. 4\), s. 71\(4\)](#), [Sch. 6 para. 110](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179, reg. 3\(r\)](#)

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#### Commencement Information

**I4** S. 157 in force at 1.1.2016 by [S.I. 2015/2029, reg. 2\(b\)](#)

**Changes to legislation:**

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