

# ENTERPRISE BILL 2015–16: cap on redundancy payments for public sector workers



union for professionals

[www.prospect.org.uk](http://www.prospect.org.uk)

Prospect briefing for MPs ahead of the second reading in the Commons

*The Enterprise Bill 2015-16 will have its second reading in the House of Commons on 2 February 2016. Part 8 of the Bill provides for regulations to restrict redundancy payments for public sector workers. The proposed cap on redundancy payments will affect the terms and conditions of millions of employees, including tens of thousands of Prospect members. This document outlines the potential impact of Part 8 of the bill and the case for revising it*

## SUMMARY

PROSPECT acknowledges the Conservative Party manifesto commitment to “end taxpayer-funded six-figure payoffs for the best paid public sector workers”. The government clearly has a mandate to restrict very large redundancy payments to high earners in the public sector.

It is unfortunate that this policy is being pursued through legislation that overrides contractual and other rights. It would have been preferable for government to negotiate changes to the redundancy schemes concerned with the employees affected and their representatives.

However Prospect believes that aspects of Part 8 of the Bill as it currently stands, and the regulations it provides for, go beyond the mandate given to the government at the general election.

The Bill treats many employees unfairly and will result in significant practical problems for employers within its scope.

As a result, Prospect is calling on MPs to support amendments to the Bill that will address how the cap will operate in practice. The amendments Prospect is calling for are explained in more detail later in this briefing. The two main areas Prospect members want to see movement on are:

**(1) Removal of “any payment to reduce or eliminate an actuarial reduction to a pension on early retirement” from the list of types of payments covered by the cap**

Including these payments brings workers earning less than £27,000 per annum into the scope of this proposal. This is contrary to the manifesto commitment to cap payments for the “best paid” employees. It also targets the measure at those of a particular age and with long service rather than the highest earners.

This element of the proposed cap will also greatly inhibit employers’ ability to successfully deliver the significant reductions in workforces required by the government’s latest spending review. The inability to use early retirement as a tool to manage the job cuts public sector employers are required to deliver (which is what will happen if these payments are counted against the cap) will make it

much more difficult for employers to deliver what is required of them or to refresh management structures or skills bases.

Removing early retirement costs is the simplest way to deal with these issues, but Prospect is open to a discussion about alternative ways to achieve the same aims.

**(2) Narrowing the wide range of employers covered by the cap on exit payments**

Currently it is proposed that secondary legislation will list all central and local government employers and all non-financial public corporations as determined by the Office for National Statistics for National Account purposes (with a small number of exemptions) as being covered by the cap.

This will result in tens of thousands of employees of companies operated by private sector owners being affected. These workers never expected that the manifesto commitment to cap exit payments to “public sector workers” would extend to them. Government has no idea whether including these companies in the scope of the proposal will be practical, value for money for taxpayers or even legal.

Prospect is seeking a commitment for certain non-financial corporations to be exempted from the proposal where it can be shown that including them results in significant unfairness or will detrimentally impact on delivering important projects.

**The proposed cap on redundancy payments will have a significant impact on the terms and conditions of millions of employees.**

**Huge numbers of public servants will be made redundant as a result of the cuts arising from Spending Review 2015.**

**Many thousands will see their compensation reduced because of the provisions of this Bill.**

**Prospect members are not asking MPs to reject the proposed cap. They are calling for reasonable amendments to ensure that it operates fairly and is in line with the manifesto commitment made before the general election. ▶**

## BACKGROUND

This Bill was introduced in the Lords, meaning the Commons is the revising chamber responsible for ensuring that scrutiny of the bill is complete. We have provided a summary showing the current position, the emergence of this policy and the consultation and parliamentary scrutiny it has undergone to date.

### Current arrangements

Employees affected by the proposed cap are currently covered by a number of different redundancy schemes.

In general terms, the schemes tend to offer compensation that is related to salary and length of service. People often have the ability to draw pension benefits on an unreduced basis if they are over minimum pension age when they are made redundant.

These terms are similar to those that operate in organisations of similar size in the private sector – as the Treasury acknowledged in its document published at the launch of the consultation on 31 July 2015. Prospect represents members working with many private sector employers who offer more generous terms.

### Civil service redundancy terms

Table 1 gives an overview of the scheme that covers most Prospect members affected by the proposed cap on exit payments, the Civil Service Compensation Scheme:

<b>Redundancy</b>	<b>Under minimum pension age</b>	<b>Between minimum and normal pension age</b>	<b>Over normal pension age</b>
<b>Voluntary</b>	One month's pay per year of service, subject to a maximum of 21 months	As per under minimum pension age, lump sum can be used to put pension into payment unreduced. The employer makes up the difference if cost of unreduced pension is greater than lump sum	One month's pay per year of service, subject to a maximum of six months' compulsory redundancy
<b>Compulsory</b>	One month's pay per year of service, subject to a maximum of 12 months	As per under minimum pension age. Lump sum can be used to buy out reduction on pension, but employer not responsible if there is a shortfall	One month's pay per year of service subject to a maximum of six months

In practice the terms are more complicated than indicated above but the table gives a broad overview of the scheme. Voluntary terms are deliberately more generous than compulsory terms to help employers restructure their workforces as efficiently as possible (anyone being made compulsorily redundant will first be offered voluntary terms to ensure they are treated fairly).

The scheme compensates members for the loss of their job. Compensation for those over pension age is capped at a much lower level than for younger members. This is intended to reflect the fact

that members over pension age can draw their pension without reduction, which lessens the impact of the job loss.

Members close to pension age are more impacted by the loss of a job because statistics show they will find it more difficult to find re-employment and they are not entitled to draw an unreduced pension.

Compensation in the form of buying out the reduction on a pension payable over minimum pension age is intended to reflect this. Including the cost of buying out the actuarial reduction in calculating of the cap has a particular impact on this group.

### Reneging on 2010 agreement

The current civil service redundancy terms were agreed by Prospect and other civil service unions and the last Minister for the Cabinet Office, Francis Maude, just four years before the Conservative party's announcement that it would seek to renege on that agreement.

The minister stated at the time: "what the new scheme shows is that constructive negotiations with the unions can work and the result is a package that is fair for civil servants and fair for other taxpayers". He also said: "I believe we now have a scheme which is fair, protects those who need the most support, addresses the inequities in the current system and is right for the long term."

Prospect members who voted to accept changes to their terms that greatly reduced compensation in many circumstances are extremely disappointed that the current government is seeking to renege on that agreement by unilaterally imposing changes through legislation.

### Redundancy compensation for nuclear workers

Similarly, redundancy compensation for other groups of employees affected by the proposed cap is the result of agreements between the relevant workforces and their employers. In many cases, the government was not a party to the agreements it is now seeking to override through legislation.

A good example is the "Lifetime Partnership Agreement" between Magnox Ltd and its recognised trade unions. Like many companies operating in the nuclear decommissioning field, Magnox Ltd has to plan for the closure and safe decommissioning of sites.

The agreement with the trade unions helps the company achieve this. Its purpose was "to retain and motivate staff over a long period when they know their current role will eventually end".

Extending the proposed cap to Magnox employees would completely undermine the certainty the agreement was intended to deliver. This will seriously impact on the company's ability to retain the skills it needs to safely deliver the decommissioning of nuclear facilities.

Interfering with the terms in this way will also blight attempts by companies in the sector to come to similar agreements in other key areas with known, long-term end dates.

A cap would also be extremely unfair to staff who have kept to the agreement – only to have it unilaterally changed by a third party at the point they need their employer to keep to it.

Many employees of Magnox Ltd, and other companies currently in the scope of the cap, have an unqualified right to an unreduced pension from minimum pension age on redundancy. Capping the amount the employer can pay in relation to this simply weakens the funding of their private sector pension scheme. Many employees in the nuclear decommissioning area have rights to retain pension provision under various Electricity Acts and the Energy Act 2004.

For these reasons, Prospect is seeking a commitment that the

schedule of employers covered by the legislation excludes companies involved in nuclear decommissioning, those who have restructuring needs or who are subject to agreements that government is not party to.

## Policy announcement

The Conservative party policy of capping public sector exit payments was announced by Priti Patel, then Exchequer Secretary to the Treasury, in early 2015. In her announcement Priti Patel said that those earning less than £27,000 would be exempted. No such exemption is provided for in the Enterprise Bill 2015-16 or in the draft secondary legislation. Prospect believe MPs should rectify this.

## Conservative party manifesto

The Conservative party manifesto commitment was: “We will end taxpayer-funded six-figure payoffs for the best paid public sector workers”.

Including the cost of early retirement in calculating the cap brings employees with long service but low earnings, who are made redundant at an age at which it is more difficult to find re-employment, into the scope of the cap.

This cannot be consistent with the manifesto commitment. The cap should be amended to exclude the cost of early retirement for those made redundant over minimum pension age so that those earning less than £27,000 per annum are not impacted.

Few employees of companies operated by private sector owners will have expected this manifesto commitment to apply to them. The scope of the measure should be restricted to public sector workers as per the manifesto commitment.

## Inadequate consultation

The inclusion of the cap in the Enterprise Bill 2015-16 was announced in the Queen’s speech.

Consultation on the cap was announced by Greg Hands, Chief Secretary to the Treasury, on 31 July 2015. Despite the significance of the consultation for millions of employees, the Treasury disregarded the government’s consultation principles that holiday periods be considered in setting timescales and the public was given just four weeks in August to respond.

The Treasury received more than four thousand responses in that short period. It published a twenty-four page response to the consultation just two and a half weeks after the deadline for responding. This casts significant doubt about whether the responses had been properly analysed or whether the process had been a sham. When it was first published, the Treasury’s response failed to even list Prospect as an organisation that had responded despite having made a substantial submission.

A significant number of respondents to the consultation echoed Prospect’s argument that it is unfair to include the cost of early retirement in the calculation of the cap.

In its response, the Treasury argued that the approach outlined in the consultation document was “fair and is not subject to avoidance through individuals taking early retirement”.

Prospect’s arguments for why it is unfair have been set out elsewhere. The Treasury does not support its argument that allowing early retirement costs would enable avoidance.

Early retirement can only be accessed by people being made redundant between minimum pension age and normal pension age

so it would not be an option for most public sector workers facing redundancy.

If the Treasury’s point is that some high paid workers can use part of their compensation to buy out reduction on their pension and effectively increase the level of the cap that applies to them, this can easily be worked around by allowing for the cost of unreduced pension in setting the cap.

## Private sector employers

Many respondents also objected to the inclusion of employees working for companies operated by the private sector. Treasury argued that statutory independence rather than the degree of day-to-day government involvement in the running of an organisation would result in a measure that was more consistent with the manifesto commitment.

Prospect believes that Treasury is being inconsistent. When the nuclear decommissioning estate was “contractorised”, Prospect members in, for example, Sellafield Ltd were told that their new status meant that they could no longer have access to the public sector pension scheme they had been in up to that point.

However when seeking to define who is in the public sector for the purposes of a cap on exit payments, employees of Sellafield Ltd find that they qualify.

Thousands of Prospect members in Sellafield Ltd and organisations with similar status, such as AWE Ltd, did not expect the manifesto commitment to cover them and feel that removing them would be more consistent with the manifesto.

Prospect has already covered how government-imposed changes to the terms and conditions of employees of companies it has little knowledge of, and no involvement in running, can have detrimental consequences.

## House of Lords

The Bill was introduced to the House of Lords on 16 September 2015 and had its second reading on 12 October.

The second reading debate covered the public sector exit cap at a high level. Labour and Liberal Democrat peers who touched on the cap indicated their opposition to aspects of its implementation. Conservative peers who mentioned the cap supported it.

The Delegated Powers and Regulatory Reform Committee issued a report covering the Enterprise Bill on 21 October. The committee commented that the regulations provided for under the Bill “could override accrued contractual or legislative entitlements to exit payments” and that this was not “simply a management of personnel issue that requires only a modest level of Parliamentary scrutiny”.

Ministers later accepted the committee’s recommendations that regulations covering important matters such as the type of payments and type of employees covered by the cap should be subject to affirmative rather than negative procedure. Prospect does not believe this protection goes far enough.

The Small Business, Enterprise and Employment Act 2015 allows for the recovery of exit payments when a high earner returns to the public sector. It was initially indicated that the minimum earnings threshold for this measure would be £100,000. Recent draft regulations have lowered this to £80,000.

The implications for individuals working for employers covered or even potentially covered by the powers in the Enterprise Bill are stark: this or a future government could do away with their redundancy entitlement altogether through regulation. ➤

This is particularly unsatisfactory given possible changes arising from the Strathclyde Review. To protect employees, a minimum level of cap and a process for maintaining its value must be included on the face of the Bill.

The Bill was considered at committee stage in the House of Lords on 26 and 28 October and 2 and 4 November. The cap was debated on 4 November.

A Labour amendment that powers to make regulations implementing the cap be removed from the Bill was withdrawn after debate in committee stage. In the debate on that amendment, the minister said the government does not believe it should fund exit payments above £95,000 – regardless of the salary of the employee impacted by this.

### Honouring commitments

This means the government does not believe it should honour its commitment to provide a pension of less than half salary to a specialist earning £30,000 made redundant at the age of 53 after a career in the public sector who has little prospect of retraining or gaining similar employment again. This is a shabby way to treat dedicated and long-serving employees and could be put right at relatively little cost to taxpayers.

### Annual revaluation

The minister also said that provisions for the level of the cap to be revalued annually was unnecessary because the cap can be altered by secondary legislation. Annual revaluation is necessary because government cannot be trusted to maintain the level of the cap in real terms over time.

### Accrued rights

A further group of Labour amendments, that would have, among other things, required ministers to:

- honour current agreements
- implement transitional arrangements, and
- exclude the cost of early retirement

were also withdrawn or not moved after debate at committee stage.

On the cost of early retirement, the minister said the cap will not affect individuals' rights to accrued pension. This is not correct as many people covered by the cap have a right to an unreduced pension on redundancy over minimum pension age. The cap will interfere with this right if it is not adjusted to take account of the cost of early retirement.

### Implementation date

On the uncertainty around when the cap may be implemented, the minister said the cap will take effect after Royal Assent and that she expected it to be summer 2016.

Clarification is needed that this legislation will not interfere with redundancy schemes already underway. The Bill should provide for the regulations to be implemented no earlier than April 2017.

### Impact of the cap

The cap was debated in report stage on 30 November. In debate the minister gave examples of the impact of the cap: "On our assumptions, a 50-year-old health and safety inspector with 20 years'

service on £50,000 a year would receive a pension of £12,000 a year, rather than the £12,500 they would have got before the cap.

"A 52-year-old tax inspector with 25 years' service earning £60,000 a year would have a pension of £17,500 a year instead of £19,000."

These examples were intended to show that the impact of the cap was not disproportionate when in fact they show the opposite.

It is difficult to maintain living standards on an income of less than one third of what had been earned. At these ages, statistics show it is difficult to find an equivalent role after redundancy.

Income in retirement will also be much lower due to the loss of accrual of further pension up to pension age.

In these circumstances, losses of £500 or £1,500 per annum are significant. The minister deliberately chose examples of relatively high earners. But the cap will also affect employees earning much less.

The Bill received its third reading in the Lords on 15 December. There was little debate about the types of employers covered by the cap. It is important that these issues are debated when the Bill is scrutinised in the Commons.

### Legislative consent motions: Northern Ireland and Scotland

On 7 December, the Northern Ireland Assembly rejected a legislative consent motion that would have allowed provisions in the Bill relating to the cap to be extended to Northern Ireland. The main concerns of MLAs in the debate were the inadequate consultation, lack of a proper impact assessment and the effect on low earners.

However, the Scottish government supports a legislative consent motion. The issue has been discussed in committee but not yet by the Scottish Parliament.

## AMENDMENTS

Prospect members are not calling on MPs to block the proposed cap on public sector exit payments. They are looking for amendments that would address unfairness in how the cap is implemented and bring the measure more in line with the commitment made before the general election.

Prospect believes that amendments or commitments that achieved the following would greatly improve the Bill:

- Removing the cost of buying out actuarial reduction on pension for those made redundant over minimum pension age from the calculation of the cap (or otherwise honouring commitments made in relation to early retirement).
- Excluding employees of companies operated by the private sector whose redundancy terms have been agreed between staff and their employers from the scope of the cap.
- Including the amount of the cap, and a mechanism for it to be indexed to retain its value in real terms, on the face of the Bill to protect employees.
- Ensuring that current redundancy schemes are not interfered with by the Bill through a commitment that regulations cannot apply earlier than April 2017.
- A provision that the cap cannot affect employees earning less than £27,000 as stated when the policy was announced.

