Suggestions for amendments to Part 8 of the Enterprise Bill

There are four main issues in relation to the proposed cap on redundancy compensation that trade unions would like to see addressed. These are:

(1) Removing the cost of early retirement from the calculation of the proposed cap so those with long service but on low or moderate earnings are not impacted.

(2) Excluding employees of companies operated by the private sector from the scope of the proposed cap.

(3) Protecting against the threat that government will impose a lower cap in the future through regulations and the risk that the level of the cap will not be maintained in real terms.

(4) Ensuring redundancy schemes underway before regulations implementing the cap take effect are not interfered with retrospectively.

We are also keen to have reassurance that nothing in the Bill overrides TUPE protected terms as announced in the consultation response.

Amendments to the Bill that would achieve the above aims are suggested below. We would welcome alternative suggestions that achieved the same aims.

(1) Removing the cost of early retirement from the calculation of the proposed cap so those with long service but on low or moderate earnings are not impacted.

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This revision: https://library.prospect.org.uk/id/2016/00448/2016-02-22

The simplest way to do this would be to delete this element of compensation from the list of payments that regulations will be allowed to prescribe. ie Delete (c) from the proposed 153A (5) to be inserted in the Small Business, Enterprise and Employment Act:

(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;

(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.

There are more complicated ways of achieving the same aim that Treasury might be more willing to compromise on. These could include excluding the cost of unreduced pension from calculation of the cap but also deducting the same amount from the cap as well (thereby allowing early retirement as an option when it costs more than the cap but not allowing people in the right age range to avoid the cap by choosing to take some of their compensation in the form of buyout of actuarial reduction). The above approach would be the most beneficial for members.

(2) Excluding employees of companies operated by the private sector from the scope of the proposed cap

The employers covered by the cap will be listed in a schedule to the secondary legislation rather than in the Bill. One approach to this issue would be to argue for the employers in question to be left out of that list.

However employees of the companies in question would prefer to have more reassurance on this point. Our preferred approach would be to include a list of employers exempted from the regulations on the face of the Bill. A new 153A (10) with renumbering and a new Schedule 3 could achieve this. We have listed companies that we are aware of so far; we will ensure you are informed of any proposed additions to it as soon as possible.

New 153A (10):

(10) Nothing in this section applies in relation to payments made by authorities listed in schedule 3.

New Schedule 3:

Schedule 3

(i) **Sellafield Ltd**

(ii) **Westinghouse Springfields Fuels Ltd**

(iii) **Magnox Ltd**

(iv) **National Nuclear Laboratory**

(v) **International Nuclear Services**

(vi) **Atomic Weapons Establishment Ltd**

(vii) **Low Level Waste Repository Ltd**

(viii) **Dounreay Site Restoration Ltd**

(ix) **RSRL Winfrith**

(x) **RSRL Harwell**

(3) Protecting against the threat that government will impose a lower cap in the future through regulations and the risk that the level of the cap will not be maintained in real terms.

We are wary of the possibility of regulations introducing a lower cap than currently being debated and of the value of the cap being eroded over time.

The easiest way to protect against this is to revise the proposed 153A (1) and also 153A (9).

Currently 153A (1) states:

(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.

The following amendment should achieve the first aim here:

(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 a maximum of no less than £95,000.

Currently 153A (9) states:

(9) Regulations may substitute a different amount for the amount for the time being specified in subsection (1).

The following amendment should achieve the second part (also gets rid of current subsection (9) which appears to be a hostage to fortune for our members):

(9) (a) The amount for the time being specified in subsection (1) shall be increased by order every year by a revaluation percentage.

(b) The revaluation percentage to be specified is the percentage increase in the general level of earnings in Great Britain in that year.

(4) Ensuring redundancy schemes underway before regulations implementing the cap take effect are not interfered with retrospectively.

A new 153A (2) and renumbering could achieve this.

(2) Regulations may not take effect before 1 April 2018.