

## **BARNSLEY METROPOLITAN BOROUGH COUNCIL**

**This matter is not a Key Decision within the Council's definition and has not been included in the relevant Forward Plan.**

**Report of the Director of  
Human Resources,  
Performance &  
Communications**

### **ENTERPRISE ACT 2016 – REPAYMENT OF PUBLIC SECTOR EXIT PAYMENTS**

#### **1. Purpose of report**

- 1.1 The purpose of this report is to apprise Cabinet of the contents of the Small Business Enterprise and Employment Act 2015, its implications in respect of the Repayment of Public Sector Exit Payments regulation and to seek agreement in principle to establish an internal waiver process to deal with this regulation.

#### **2. Recommendations**

- 2.1 That Members note the contents of the report and agree in principle to the establishment of an internal waiver process in regard to Repayment of Exit Payments by former Council employees.
- 2.2 That a further Cabinet Report is submitted should the Treasury Regulations differ from the advice received from the Local Government Association on the indicative regulations to be applied to the waiver process to ensure that the Council complies with the legislation.

#### **3. Introduction**

- 3.1 In Autumn 2015 the Government announced that it had decided to press ahead with further proposals to modernise the terms and conditions of public sector workers by taking forward targeted reforms in areas where the public sector has more generous rights than most of the private sector. Additionally, these reforms are intended to assist in rebalancing the public finances, with the Government focused on delivering maximum value for taxpayers.

As part of this, the Government commenced consultations on a number of issues related to public sector exit payments and these were later confirmed in the Enterprise Act. The Act includes a clause whereby employees earning over £80K who receive an exit payment upon leaving employment and then

subsequently return within 12 months to the public sector are obliged to repay these monies to their the former employer. There is a tapering of payment amount to be recovered during the 12 month period. As a reference point in the Council this would apply to staff on Grade 17 and above.

- 3.2 The following 'exit payments' detailed below are those which are included in payments to be recovered:
- Redundancy payments
  - Payments on voluntary exits
  - Pension strain costs
  - Severance or ex-gratia payments
  - Pay in lieu of notice
- 3.3 Excluded from the Governments proposal are ill health payments, compensation payments in respect of death or injury attributable to the employment and any payments following litigation from unfair dismissal or breach of contract.
- 3.4 There is already a Council policy in place namely the 'Pay Policy' that restricts former Council employees and other former public sector employees who are in receipt of exit payments from returning to the Council either in an employed capacity or as a consultant or agency worker. In these circumstances a return to the Council is only permitted in exceptional circumstances and it has been clearly identified that the individual has specialist skills or knowledge that are vital to the success of the organisation or where recruitment to the post/role has proved especially problematic.
- 3.5 Employees who meet the criteria contained within the Act (i.e. earnings of 80K and above) and who are made redundant by the Council may wish to seek alternative employment with other public sector employers. The introduction of a waiver will remove the barrier to employment that the repayment of exit payments may bring.

#### **4. Proposal and justification**

- 4.1 The Enterprise Act provides an option for Councils to apply a waiver process to the Repayment of Exit Payments regulation however further HM Treasury Regulations have yet to be published which will detail fully the circumstances when a waiver can be applied. On the assumption that this provision remains as advised by the Local Government Association, then it is proposed to utilise the waiver in respect of the Repayment of Exit Payments element of the legislation.

In terms of the recovery of exit payments the waiver will be utilised as detailed above. A further Cabinet Report will be submitted should the Regulations, when published, differ from those anticipated. It is likely that this waiver would be used very rarely as the number of cases where the criteria for repayment will apply would be extremely small.

This waiver will only apply to former Barnsley Council employees and cannot be extended to former employees of other public sector organisations.

**5. Consideration of alternative approaches**

- 5.1 An alternative option would be to not agree to the introduction of a waiver but this could be detrimental to former employees who wish to secure employment within the public sector as they would be required to repay exit payments made as a result of being made redundant.

**6. Financial implications**

- 6.1 There are no direct costs implications arising from this report.

**7. Employee implications**

- 7.1 Council employees will be advised of this provision within the Enterprise Act and the utilisation of a waiver in respect of the repayment of exit payments should they return to public sector employment.

**8. Consultations**

- 8.1 Consultations have taken place with the Senior Management Team and recognised Trade Unions who support this approach.

**9. Risk management issues**

- 9.1 No issues are anticipated in respect of this report.

**10. Promoting equality, diversity, and social inclusion**

- 10.1 The waiver will be applied fairly and consistently across the Council's workforce where the criteria are met.

**11. Glossary**

n/a

**12. List of appendices**

N/A

**13. Background papers**

- 13.1 Contained in working files in Human Resources and are available for inspection.

Officer Contact Alison Brown

Telephone No 773674

Date August 2016

Financial Implications /  
Consultation .....  
*(To be signed by senior Financial Services officer  
where no financial implications)*