

**Report for:** Staffing and Remuneration Committee

**Item number:** 12

**Title:** Workforce Legislation update

**Report**

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**Lead Officer:** Julie Amory, HR Policy Manager, Human Resources

**Ward(s) affected:** All

**Report for Key/**

**Non Key Decision:** N/A

**1. Describe the issue under consideration**

- 1.1 This paper looks at the legislation planned to become law in 2016 that may affect the Council as an employer.

**2. Cabinet Member Introduction**

Not applicable.

**3. Recommendations**

- 3.1 That the Committee notes the information provided.
- 3.2 The strategic implications will be considered as part of the Workforce Plan Year 2.

**4. Reason for decision**

- 4.1 Although these are only anticipated changes that may alter as the Bills progress through Parliament, this report recognises that the proposed changes may have workforce implications and will require strategic planning.

**5. Alternative options considered**

Not applicable.

**6. Background information**

- 6.1 This paper report covers the following legislative changes:
- a. Trade Union Bill
  - b. Enterprise Bill
  - c. Changes to the Tax and National Insurance Treatment of Termination Payments
  - d. The Repayment of Public Sector Exit Payments Regulations

- e. Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015
- f. Extremism Bill
- g. Immigration Bill
- h. National insurance increases 2016

6.2. As an employer we will manage the potential policy changes and the communications to our employees through the appropriate governance arrangements already in place, however, when a cluster of policy changes are making their journey through parliament at the same time the pivotal question is; How will this affect the current workforces strategies being deployed to achieve the workforce the Council will require in the next three to five years?

6.3. The key focus is to continue to attract and retain the skills and talent to deliver the Corporate Plan, however the levers available to expedite change may no longer have the same impact, and at the pace required.

#### 6.4. **Trade Union Bill**

6.4.1. The Trade Union Bill will introduce significant new requirements that will affect how the Council engages with Trade Union representatives.

#### 6.4.2. **Industrial action ballot thresholds – Proposed changes**

Amendment to s226 of the Trade Union and Labour Relations (Consolidation) Act 1992 the Bill will introduce 50 per cent voting threshold for union industrial action ballots and a requirement that 40 per cent of those entitled to vote support industrial action, before it can legally go ahead in “important public services”. “Important public services” will be defined by regulations but will be limited to health, education of those aged under 17; fire, transport, border security, nuclear decommissioning and the management of radioactive waste and spent fuel.

#### 6.4.3. **Managing the threat of industrial action**

The amount of notice to the employer to call industrial action will be increased from 7 days to 14 days with proposals to lift the ban in regulations on using agency workers to replace permanent staff during strikes . These proposals are not part of the Bill but are being considered alongside the Bill.

#### 6.4.4. **Expiry of ballot mandate**

The Bill will introduce a new time limit on the validity of the mandate given by a ballot for industrial action, meaning a ballot will only be valid for industrial action that takes place within four months from the date of the ballot.

#### 6.4.5. **Trade union officials’ facility time**

The Bill proposes requiring “relevant public sector employers” (including local authorities) to publish details about how many employees are union officials, the percentage of employees who are given union facility time and details of the cost of facility time as a percentage of the employer’s wage bill. The Bill also proposes a power to set limits on the amount of working time that may be paid facility time.

#### 6.4.6. **Prohibition of check off arrangements**

The Bill proposes that “relevant public sector employers” (to be defined in regulations) will be prohibited from making trade union subscription deductions from wages payable to workers.

#### 6.4.7. **Considerations and potential required actions**

##### HR Implications

There is a plan in place to review the Council’s Facility Time Agreement and is waiting for the outcome of these proposals to do so.

The Council may have to end its current check-off arrangements whereby it deducts trade union subscriptions from the pay of its employees who have agreed to such deductions.

##### 6.4.7.1. The potential HR related actions required:

- a) Identify current union membership levels and review facility time levels.
- b) Update the Trade Unions Facilities, Duties, Activities and Time Off Arrangements procedure to comply with the changes. General Purposes Committee last approved this agreement on 4 May 2011.

#### 6.4.8. **Status / timeline of Trade Union Bill**

The Bill passed the Committee stage of the House of Lords on 25 February 2016 and was scheduled to proceed to the Report Stage of the House of Lords on 16<sup>th</sup> March. It is likely to obtain Royal Assent in the autumn of 2016.

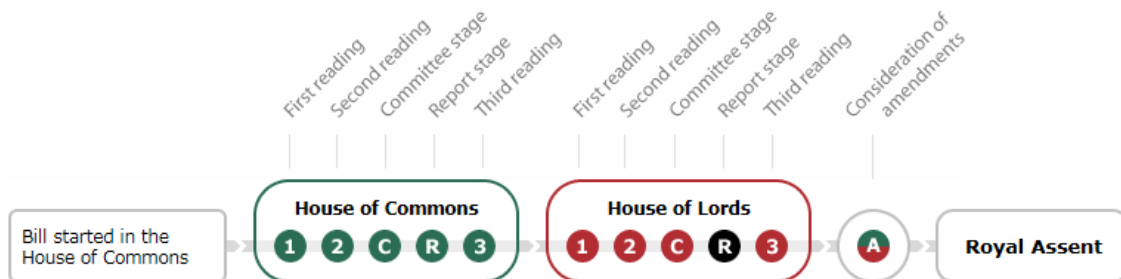


Figure 1: Trade Union Bill Progress through Parliament

#### 6.5. **Enterprise Bill**

6.5.1. The Enterprise Bill contains various measures of which the following are most likely to impact on the Council as an employer:

##### 6.5.2. **Exit payments cap for public sector workers**

The proposal will place a £95k cap on exit payments in 2016; with a possible implementation date of 1<sup>st</sup> October 2016. There are no plans for a transitional period; therefore all exits after its introduction will be subject to the cap. The cap will include all payments in relation to exits from relevant employments that occur within a 28-day period this will include:

- Redundancy payments;
- Payments on voluntary exits;
- Pension strain costs;
- Severance or ex-gratia payments;

- Payment for outstanding entitlement (includes payment made where the Council provides additional paid leave);
- Compensation under the terms of a contract;
- Payments made to extinguish liability to pay money under a fixed term contract ;
- Pay in lieu of notice;
- Shares or share options;
- Payments made under a compromise agreement involving the employee agreeing to leave the employer.

#### 6.5.3. **Exit payments cap - Pension strain costs**

The Bill includes changes to the Local Government Pension Scheme (LGPS), which would limit the pension payable on redundancy by applying a deduction necessary to bring the total exit payment within the cap. There are also provisions to allow the individual to pay all or part of the strain cost to receive an unreduced pension. It is yet to be determined whether the cap will apply to flexible retirement, the 85-year rule protections and/ or payment of pension on compassionate grounds.

#### 6.5.4. **Exit payments cap – exemptions**

There are a limited number of exempt payments which are payments made due to incapacity or death, as a result of accident, injury of illness, contractual leave not taken and contractual bonuses and payments made in compliance with an order of any court . The draft Bill proposes to provide Full Council with the power to waive the cap subject to Treasury directions, which are yet to be published.

#### 6.5.5. **Exit payments cap - Duty to notify receipt of received exit payment(s)**

The onus is on the individual to notify all other public sector employers who proceed to employ the individual the date the individual left and received an exit payment. This notification must also state the amount of the exit payment/ received and identity of the paying employer.

#### 6.5.6. **Exit payments cap - Individuals who hold multiple public sector posts**

The Regulations apply to all relevant employments that occur within a period of 28 days if a person has two employments, exits both at the same time and a payment is made in relation to each then both payments must be added together and checked against the cap even if those employments are with different employers. Where one employment ends more than 28 days before the other then the cap applies to each employment separately.

#### 6.5.7. **Exit payments cap - Impact on Schools**

The Bill contains provisions to amend the Teachers' Pension Scheme to limit the amount of strain cost to ensure that when added to other exit costs the total remains within the £95k cap. It is yet to be determined who will have the ability to waive the cap in relation to schools.

#### 6.5.8. **Considerations and potential required actions**

##### 6.5.8.1. HR Implications

In light of the proposed legislative changes, the Council will have to consider how it retains the right people with the vital skills needed to assist in achieving its Corporate

Priorities as it is recognised that some employees may choose voluntary redundancy to avoid the impact of the new legislation earlier than anticipated.

6.5.8.2. The exit payment cap will not only impact on high earners. The impact will be felt by middle earners starting from PO3 spinal point 39 who have paid into the LGPS for thirty years plus as seen in the example below:

Illustrative example: Impact of exit payment cap on middle manager An employee is 55 with 30 years service with a Local Authority having paid into the LGPS since joining the Council. The individual is earning £40,000 and is made redundant on 1st October 2016 (the earliest date of proposed implementation of the cap).

Pension Strain cost	=	£88,790
Redundancy	=	£ 12,825 (statutory figures used)
Pay in lieu of notice	=	<u>£1,846</u>
Total costs	=	£103,461 (exceeding the £95k cap)

6.5.8.3. The potential HR related actions required:

- a) Consider how the Council will retain the right people with the right skills;
- b) Create a process within the Recruitment and Selection that allows individuals to notify that they were a former public sector employee that received an exit payment;
- c) Strengthen Haringey's employer brand to attract and retain the right people;
- d) Ensure 'My Conversation' is effective in identifying the strengths, development needs and weak spots of employees;
- e) Review and refine the Council's recruitment and selection process – may include refining job descriptions and clearly defining essential skills to assist in identifying good candidates.

6.5.9. Constitutional Implications

It is proposed that there will be the ability to waive the cap in exceptional circumstances subject to Ministerial, Treasury or Full Council approval depending on the nature of the organisation. This power must be exercised in accordance with Treasury guidance.

The potential Constitutional related actions required:

- a) Update the Constitution to provide Full Council with the power to waive the cap.

6.5.10. **Apprenticeship quotas**

It is anticipated that the Bill will require public sector bodies with 250 staff to have an apprenticeship target of 2.3% of the workforce per year by 2020. It is unlikely that the regulations will come into force before September 2016. Under the regulations the public sector bodies will be required to publish and to send to the Secretary of State information to allow monitoring of their progress towards meet the apprenticeship targets set for them.

These changes would require the Council to increase the annual number of apprenticeship positions that it offers, unless it can demonstrate a good reason for not doing so. Based on the current workforce headcount, in order to meet the 2.3% of the workforce target the Council would need to offer 62 apprenticeship positions compared to the current target of 20.

6.5.11. **Considerations and potential required actions**

6.5.11.1. HR Implications

An increase in apprenticeship posts will place pressures on the Council's reducing resources. As many young people commence apprenticeships straight from school they tend to have little or no experience of the work environment and therefore require more hand-holding and support than other employee groups.

6.5.11.2. To ensure that apprentices that join learn the skills they need to successfully compete for permanent roles in the Council on completion of their apprenticeship position. The Council needs a sufficient number of managers/supervisors who are skilled and equipped to manage this unique employee group. Management of apprentices generally requires a manager to manage whilst also coaching/mentoring individuals who due to their lack of experience need assistance to navigate in a work environment.

6.5.11.3. In providing the increased apprenticeship positions, the Council will require a more robust approach to workforce planning to ensure that these roles are targeted at providing young people with the skills that are needed for the future Council design.

6.5.11.4. As many of the apprenticeship posts currently offered by the Council are in Business Administration, a framework that teaches the apprentice skills related to supporting the organisation through administrative duties; increasing the number of apprenticeship posts has to be considered in light of the Business Infrastructure Programme. This programme is reviewing many of the Council's corporate functions with the view to reducing headcount and increasing efficiencies through process re-engineering and co-location of tasks.

6.5.11.5. An option available to the Council is to use its procurement processes to spread the increased number of apprentices posts across its supply chain. This has the benefit of strengthening the local skills base, however, this would have to be weighed against the potential impact that such clauses may have on the cost of contracts. This would also have to be considered via a secondment arrangement where the apprentice is employed by the Council and subsequently seconded to a sub-contractor as the Government has recently stated that apprentices employed by sub-contractors who supply goods and services to the public body cannot count towards the target.

6.5.11.6. Talent management of younger employees and succession planning to address the potential gaps left by exiting experienced employees will be considered and taken forward within the Workforce Plan Year 2.

6.5.11.7. Traditional career mapping is the way in which an individual can develop and progress within their chosen occupation, trade or profession. Historically organisations that have facilitated career paths enjoy greater workforce engagement because employees feel that their employer is concerned about their personal growth while at the same time achieving the organisations objectives.

6.5.11.8. The potential HR related actions required:

- a) Work with Procurement to assess ability to include apprenticeship targets in contracts;

- b) Conduct a review of the apprenticeship scheme to identify how the Council would meet this quota while producing high quality apprenticeship positions e.g. set allocation per directorate;
- c) Tie the apprenticeship scheme into the overall workforce and business planning process – use as an opportunity to develop own talent and future leaders;
- d) Consider the various Apprenticeship Frameworks to ensure more are offered in health and social care to assist in current skill shortages;
- e) Review and identify how the apprenticeship scheme will be managed as the increase will require a rethink of how the Council manages its apprenticeship programme.

**6.5.12. Apprenticeship levy**

The mechanism to introduce the apprenticeship levy is the Finance Bill 2016 which if it receives Royal Assent will require local authorities and other employers from April 2017 to pay a Levy of 0.5 percent of their payroll to fund the three million apprenticeship roles that the Government is committed to introducing. Contributing employers will receive an allowance of £15,000 to offset their levy. The levy only applies to businesses with an annual pay bill of over £3 million.

**6.5.13. Considerations and potential required actions**

6.5.13.1. The potential Finance related actions required:

- a) Identify and set aside funds to cover the levy which based on the proposed 0.5% levy on payroll is estimated to be in the region of £395,000.
- b) The levy will affect the Council’s budgets at a time when it is already seeing a reduction in Government funding. This will need strategic planning.

**6.5.14. Status / timeline of Enterprise Bill**

The Bill completed the committee stage of the House of Commons on 25 February and is likely to obtain Royal Assent in the Autumn of 2016.

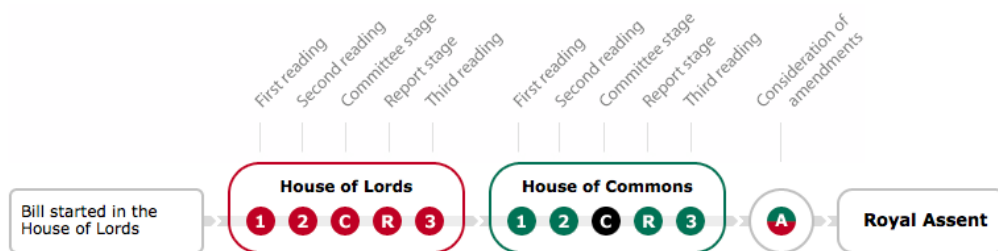


Figure 2: Enterprise Bill's progress through Parliament

**6.6. The Repayment of Public Sector Exit Payments (Public Sector Exit Payment Regulations 2016)**

These draft regulations are being made under the Small Business, Enterprise and Employment Act 2015 and will require certain public sector workers to repay some or all of any ‘qualifying exit payment’ in certain circumstances. In particular, they will require the individual to notify their new and previous employer where they propose to return to the public sector after they have received a ‘qualifying exit payment’ within the previous 12 months. They will also require the previous employer to make arrangements with individuals where exit payments are due to be recovered. Subject



to amendments made as a result of consultation, the Regulations are set to come into force on 1 April 2016.

6.6.1. **Qualifying exit payments**

A 'qualifying exit payment' will include voluntary or compulsory redundancy, payments in lieu of notice, payments to reduce or eliminate an actuarial reduction to a pension on early retirement, and 'special severance' payments such as those agreed in settlement of threatened litigation payments made consequently upon a voluntary exit from employment and payments made to extinguish any liability to pay money under a fixed term contract. It will not include payments made in respect of incapacity or death as a result of accident, injury or illness, payment made in respect of untaken contractual leave, payments in lieu of notice and payments made in compliance with a court/tribunal order. Repayment could be required if the employee or office-holder is re-employed or engaged as a contractor in the public sector or is appointed to a public sector office within one year of their exit.

6.6.2. The draft Regulations stipulate that exit payments will be recoverable when the individual returns to any part of the public sector (rather than the same part of the public sector as formerly proposed).

6.6.3. It is proposed that the minimum salary threshold should be set at £80,000 with 'tapering' the amount of the exit payment repayable according to the period between receipt of the payment and re-entry into the public sector. The new employer will be required not to employ the individual until repayment arrangements have been finalised.

6.6.4. **Considerations and potential required actions**

6.6.4.1. The potential HR related actions required:

- a) The potential actions required are as stated above within Exit Payments Cap there is a need to create within the Recruitment and Selection process a mechanism that allows individuals to notify that they were a former public sector employee that received an exit payment.

6.6.5. **Status / timeline**

The intention is that these Regulations will take effect from April 2016.

6.7. **Changes to Tax and National Insurance Termination payments**

The Government has launched consultation on its plans to simplify the tax and National Insurance contributions (NICs) treatment of termination payments. The proposals will significantly reduce the tax-free element of redundancy payments.

6.7.1. The current position is that the first £30,000 is generally tax and NICs-free provided it is not a contractual payment. One approach the Government is considering is to create a new exemption which increases proportionately with the number of years service the employee has completed. The employee would qualify for the exemption once they had completed two years of service. The consultation paper gives as an example reducing the exemption to £6,000 for an employee with two years' service, and an extra £1,000 for each additional years' service. It is proposed that the years of service would also include any change of employment that stemmed from a TUPE situation. Another



approach the Government is considering is to provide tax and NICs relief only when the termination payment has been made in connection with a redundancy meeting the statutory definition of a redundancy.

6.7.2. **Unfair and wrongful dismissal and discrimination**

The consultation proposes exempting from tax and NICs payments made in connection with compensation for unfair or wrongful dismissal. As regards discrimination, the Government is considering not imposing a tax or NICs liability on any payment connected with discrimination that has been awarded by a tribunal. It notes that currently only compensation payments for discrimination that are related to the termination of employment are taxable. It is likely that there will be a financial cap, above which income tax is payable in cases of discrimination.

6.7.3. **Considerations and potential required actions**

Although the consultation closed on 16<sup>th</sup> October 2015 the Government has not published its response to the consultation. However if some of the proposals are implemented the Council will need to take into account that the changes could lead to employees demanding increased termination packages to reflect the increased amount of tax and/or NICs payable on termination payments.

6.7.4. If the Government treats awards from an Employment Tribunal (ET) more favourably than settlement payments in respect of tax and NIC relief, this is likely to increase employment tribunal cases as employees have a tax and/or NICs related advantage in receiving an award from an ET. It is likely to reduce the prospect of “out of court” settlements.

6.7.5. **Status / timeline**

The consultation stage closed on 16 October 2015. If the proposals proceed it will require an update to the Income Tax (Earnings and Pensions) Act 2003.

6.8. **Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015**

6.8.1. New regulations applied from 11 January 2016 aimed at addressing avoidance of the ban, give employees the power to make a complaint to an employment tribunal where they have been dismissed or subjected to a detriment following breach of an exclusivity clause. No qualifying period is required to bring such an unfair dismissal claim It is also unlawful to submit a zero hour worker to detriments if they work for another employer in breach of a clause prohibiting them from doing so.

6.8.2. **Considerations and potential required actions**

6.8.2.1. The potential HR related actions required:

These regulations are being considered as the Council does not operate zero hour contracts but does have ‘as and when’ contracts. A review of this population will be completed by the end of June 2016.

6.8.3. **Status / timeline**

These regulations came into force on 11 January 2016.

6.9. **Extremism Bill and Immigration Bill**

6.9.1. **Pre-employment checks**

Although not a purely employment related measure, the Bill will contain some employment related aspects. The Bill proposes introducing pre-employment checks, enabling employers to check whether an individual is an extremist and bar them from working with children.

6.9.2. Details on the actual procedure to be adopted are yet to be defined but the intention seems clear: employers will be entitled to refuse to employ someone to work with children if the checks show that the person is an extremist.

6.9.3. At the time of writing no further information exists regarding the status of these proposal. Although it was referred to in the Queen’s speech in May 2015, the Bill has not yet been published.

6.9.4. **Immigration Bill**

This places a duty on public authorities to ensure that everyone who works for them in a customer-facing role speaks fluent English.

6.9.5. **Considerations and potential required actions**

The potential HR related actions required are:

- a) Review the Council’s Recruitment and Selection Policy and the DBS process specifically the pre-employment checklist/procedure;

6.9.6. **Status / timeline**

Immigration Bill

This Bill was at the Report stage of the House of Lords on 09 March 2016.

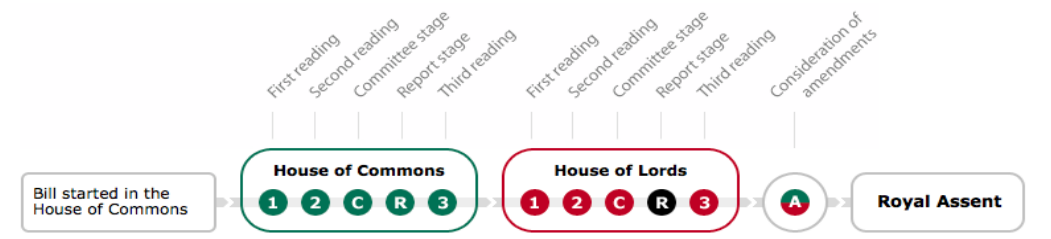


Figure 3: Immigration Bill progress through Parliament

6.10. **National Insurance Contribution increases 2016**

6.10.1. From April 2016 the current 1.4 per cent rebate for employees and 3.4 per cent for employers will be cease. This will occur as part of the Government’s plan to move to a Single Tier State Pension from April 2016. The change will mean that employers who operate contracted out occupational pension schemes will pay National Insurance contributions of 13.8 per cent from April 2016 instead of the current 10.4 per cent.

6.10.2. **Considerations and potential required actions**

The potential Finance related actions required are:

- a) Identify and set aside funds to cover the increase of NI – estimated annual cost is £1.548m.

7. **Contribution to strategic outcomes**

The Council's Corporate Plan sets out an ambitious agenda, and one that will require significant change to deliver. The Council will be smaller and it will need different skill sets in many areas. The proposed legislation will impact on these goals; requiring the Council to provide a strategic approach in response to ensure it has the right people with the right skills.

**8. Statutory Officers' comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities Assistant Director of Corporate Governance)**

8.1 The report accurately summarises the proposed legislation it refers to.

**The Chief Finance Officer**

8.2 The Chief Finance Officer notes the planned legislative changes and confirms that those that have or are likely to have financial implications for the whole or part of the Council have already been considered and will be picked up in the strategic review of the MTFS which is planned to commence in May 2016.

8.3 Considering the potential implications and taking action now to prepare data and scenarios is welcomed as it ensures that the Council is in the best position to effectively manage the changes.

**9. Use of Appendices**

None.

**10. Local Government (Access to Information) Act 1985**

Not Applicable.