# POLICY NOTE

# THE LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND) (AMENDMENT) REGULATIONS 2025

## SSI 2025/48

The above instrument was made in exercise of the powers conferred by sections 1, 2 and 3 and Schedule 2 of the Public Services Pensions Act 2013. The instrument is subject to negative procedure.

**Purpose of the instrument.**

These Regulations amend the principal Scottish Local Government Pension Scheme Regulations 2018 ("the LGPS regulations"), in order to create a discretion for administering authorities to determine the amount of exit credit which should be payable to an employer leaving the Local Government Pension Scheme. These changes are in line with previous amendments made in England & Wales (E&W) by the Department for Levelling up, Housing and Communities (DLUHC).

**Policy Objectives**

These provisions amend the Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2018/141) by creating a discretion for administering authorities to determine the amount of exit credit which should be payable to an employer leaving the Local Government Pension Scheme, in line with changes made in E&W by DLUHC in March 2020.

Under Regulation 61, where a scheme employer ceases to have any active members in the LGPS and is not planning to enrol anyone further in the scheme, an actuarial valuation is carried out. Previously scheme employers were responsible for any estimated shortfall against their liabilities at the point of exit but could not receive any surplus.
A change to the Regulations was made in 2018 to allow pension risks to be shared more fairly between employers and administering authorities. As a result, an exit credit is now due if the employer's pension liabilities are calculated to be less than the assets held by the fund at the date of their exit.

Changes were subsequently made to the Regulations in E&W in 2020, to provide that administering authorities have a discretion to determine the amount of exit credit which should be payable to an employer leaving the Local Government Pension Scheme (the LGPS).

The funding position of LGPS funds has improved significantly, as indicated by the latest 2023 valuations, partly due to the effect of persistent high inflation on gilts.
We have been made aware that the increase in pension exit credits, which funds may be required to pay when an employer leaves the fund, could have a negative impact on cash flow and result in any subsequent risk being passed on to the remaining employers of the fund.

We were asked by stakeholders to make amendments to the regulations in Scotland, similar to those made in E&W. These Regulations will amend the Local Government Pension Scheme Regulations 2018 to create a discretion for administering authorities to determine the amount of exit credit which should be payable to an employer, leaving the Local Government Pension Scheme, based on their own contributions and risk

**Consultation**

A short technical consultation was carried out, commencing on Thursday 9 May until Thursday 30 May 2024. There were twelve responses, some in agreement with the proposed changes and others, primarily those representing charities, were not.

In response to concerns raised by actuaries representing the third sector employers i.e. charities, funds will be required to provide guidelines in their published 'Funding Strategy Statement' (FSS) on their policy for dealing with exit credits, to take all pertinent facts into account and how discretion will be applied to ensure a consistent approach in all cases.

Concerns were also raised about the negative impact of exit credits on a fund's cashflow. However, an employer exit is known and planned for in advance, as required by the LGPS Regulations 2018. These regulations also provide that for 90 days after the valuation of the exit credit (or debit) that amount is fixed to allow for an employer to discuss the exit payment with their finance partners. The 6-month deadline for payment ensures that employers are paid (or pay) the balance within a reasonable time. Others in their consultation response suggested that exit credits/debits are not usually material in the context of the cashflow position of the fund.

Unions are concerned that if the regulations are not changed, the current surplus could lead to an increase in employers leaving the scheme to access a large exit credit and offering a different pension provision to members, resulting in inferior pension benefits on retirement.

The UK Government consulted on and made similar changes to their LGPS regulations for E&W in March 2020.

**Impact Assessments**

A business impact assessment has been carried out by The Government Actuary Department (GAD) on behalf of The Scottish Public Pensions Agency to assess any risk to employers, including those in Third Sector.
The Scottish Government have carried out a Child Rights and Wellbeing Impact Assessment (CRWIA) and this has been published alongside the laying of these Regulations. The CRWIA has concluded that there is no impact on the rights or wellbeing of children.

**UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility**

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Local Government Pension Scheme (Scotland) (Amendment) Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

**EU Alignment Consideration**

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

**Financial Effects**

The GAD assessment makes it clear that Third sector employers can be impacted by the regulation changes from both perspectives; as an exiting employer, but also as a remaining employer when other employers exit the scheme. The considerations are similar to those of other types of scheme employer in that, should there be a scheme deficit, the employers who remain in the LGPS, will share the cost of those resulting liabilities.

**Equality Impact Assessment**

Employers in the LGPS include housing associations, leisure centres, women's aid organisations and providers of mental health services. These non-profit organisations provide a service to local communities, providing support to those in need by reason of age, ill-health, disability and financial hardship. It has been suggested that as a result of this amendment, a reduction in an employer's exit credit could have a negative consequence on that employer's ability to provide services. Conversely, 75% of LGPS members are women, who are the members most likely to take maternity leave, carer's leave, look after children before school age and ageing parents, which limits the amount of pension they will accrue during their working lives. Employers leaving the Scheme to gain access to an exit credit are expected to change their pension provision to a cheaper alternative scheme, resulting in inferior benefits provided to women in retirement.

Scottish Public Pensions Agency
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