



**THE LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND)
REGULATIONS 2018**

**RESPONSE FROM ICAS TO THE SCOTTISH PUBLIC PENSIONS
AGENCY**

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Background

ICAS is a professional body for more than 21,000 world class business men and women who work in the UK and in more than 100 countries around the world. Our members have all achieved the internationally recognised and respected CA qualification (Chartered Accountant). We are an educator, examiner, regulator, and thought leader.

Almost two thirds of our working membership work in business; many leading some of the UK's and the world's great companies. The others work in accountancy practices ranging from the Big Four in the City to the small practitioner in rural areas of the country.

We currently have around 3,000 students striving to become the next generation of CAs under the tutelage of our expert staff and members. We regulate our members and their firms. We represent our members on a wide range of issues in accountancy, finance and business and seek to influence policy in the UK and globally, always acting in the public interest.

ICAS was created by Royal Charter in 1854.

Introduction

The ICAS Pensions and Charities Panels welcome the Scottish Public Pensions Agency's (SPPA's) consultation on 'The Local Government Pension Scheme (Scotland) Regulations 2018: proposed consolidated amendments to the Local Government Pension Scheme (Scotland) Regulations 2014'.

Our interest in the proposed 2018 Regulations is their potential impact on the relationship between Local Government Pension Scheme (LGPS) Funds and Community Admission Bodies (CABs), specifically those CABs which are charities.

Charities participating in LGPS as active employers may wish to cease future accrual to manage their risk prudently. However, they are likely to be prevented from doing so as the LGPS (Scotland) Regulations (2014) automatically result in a cessation debt being triggered at a level which is likely to be unaffordable. We are aware that a small number of charities have been able to negotiate with Scheme Funds to exit the LGPS, but we believe many more would do so if this could be achieved without the automatic exit (or cessation) debt, calculated on a gilts basis, being triggered and imposed. We are also aware of very different approaches taken by Scheme Funds across Scotland which has led to inconsistent treatment and a lack of clarity for charities.

Our comments, therefore, focus on proposed 'Regulation 62: Special circumstances where revised actuarial valuations and certificates must be obtained', specifically the changes proposed to update Regulation 62 of the 2014 Regulations: we are wholly supportive of the intention of the proposed changes to Regulation 62.

Our main recommendations, set out in our detailed comments below, are the inclusion of further changes which enable CABs to either:

- cease future accrual, become an exiting employer, triggering a cessation debt that is paid in instalments, with consistent standards across all Scheme Funds based in Scotland, in effect paying down its debt over a period of time that is affordable to both the CAB and the Scheme Fund. Parameters should be set for all Scheme Funds on the factors which should be taken into account to ensure consistency of treatment across Scotland; or
- cease future accrual without triggering a cessation debt that is immediately payable in full and continuing to make ongoing payments in respect of accrued liabilities (specific to the CAB). We believe this can be achieved by the admission agreement between the Scheme Fund and the CAB remaining in place, and the recognition of a funding agreement which enables the CAB to make deficit contributions to the Scheme Fund on a 'closed on-going' basis until the last member's beneficiaries have ceased to receive payments.

In our [response of September 2017](#) to the SPPA to its LGPS (Scotland) Employer Data Collection Exercise, we made several proposals. The recommendations we make for further changes to Regulation 62 would go some way to implementing **Proposal 4** that:

- The LGPS Regulations 2014 should be amended to prevent the automatic trigger of a cessation debt on the exit of the last active member.
- LGPS funds should provide greater flexibility in the payment terms offered when exit debts are triggered.
- A maximum level of prudence should be established to calculate exit payments.
- We believe that where it is proven (possibly through an independent assessment, if there is any doubt) that an employer will be unable to fully fund their cessation debt, that employer should be permitted to exit based upon affordability.

In addition, we cannot see how it can be described as equitable that the latest LGPS employer should inherit all past service liabilities unless these liabilities are allocated on a fully funded gilts basis, as would be the liability valuation should, ultimately, the employer look to exit the Fund. We also believe that arrangements could be made within the Fund to have these liabilities shared between employers under the Fund to avoid the imposition of a cessation debt which places responsibility for these liabilities on the latest employer.

Therefore, we would also welcome the implementation of three further proposals we made in September as part of a reform package and the legislation could be amended now to allow for this. Such amendments would be best introduced simultaneously, avoiding multiple changes over a period of time.

Proposal 1: All LGPS funds apply a consistent basis to those liabilities previously inherited from another LGPS employer participating in the same LGPS fund.

Proposal 2: All other inherited public service liabilities, i.e. those inherited from employers participating in another LGPS fund or another public service scheme should be dealt with on a consistent basis across all LGPS funds.

Proposal 3

- As a minimum, cessation liabilities inherited by an admission body should be actuarially adjusted to reflect the on-going basis for public service liabilities transferred to them by any LGPS fund or from any other public service scheme.
- In addition to admission bodies with inherited public service liabilities having all liabilities treated as on-going, all public sector out-sourced arrangements should be carried out on a pass-through basis. This would mean that employer contributions borne by the admission body for staff engaged on a particular contract are fixed for the duration of that contract and all liabilities relating to staff employed on the contract are returned to the local authority commissioner when the contract ends.
- It should be compulsory for all LGPS funds to provide admission bodies with a note of their estimated cessation value annually. This could easily be provided along with accounting disclosures and indeed several LGPS funds already offer this service.

Any enquiries should be addressed to Christine Scott, Head of Charities and Pensions, at cscott@icas.com.

Detailed comments on Regulation 62

Regulation 62(1) – Exit credit

We welcome the addition to Regulation 62(1) of the reference to “an exiting employer” being able to receive an “exit credit”. While it may be a relatively rare occurrence for an employer to exit an LGPS Scheme Fund with a surplus, we believe that it is important that the potential for an employer to have a surplus is recognised.

Should CABs be able to exit a Scheme Fund after contributing to it on a closed on-going basis for a period of years or until their last retired member dies, the potential for a CAB to have a surplus is likely to increase.

We also believe that this is a positive change for Scheme Funds as it should encourage admitted bodies to commit to funding liabilities earlier as there is no risk of incurring a trapped surplus.

Regulation 62(3) and (4) – suspension notice

We welcome the capacity for a Scheme Fund to issue a “suspension notice” when an employer becomes an exiting employer. This could be a helpful flexibility when a cessation debt is triggered unexpectedly, for example, due to the loss of a local authority contract.

However, we do not believe that this mechanism is sufficient to address the circumstances of the many CABs which may wish to cease future accrual in a planned way, for example, by remaining in the Scheme Fund on a closed on-going basis. Our reasons for this are three-fold:

- The Scheme Fund which is the administering authority is not obliged to suspend the employer’s exit debt.
- The Regulation provides a broad latitude to the Scheme Fund to determine how contributions under a suspension notice are measured.
- There is no Regulation or guidance around how any suspension notice can be brought to an end.

These factors do not provide clarity and consistency and ultimately give the Scheme Fund a high degree of discretion with the exiting employer being in a relatively weak position in negotiating contributions to be paid under a suspension notice. Amendments to the Regulations are needed to address this.

Payments of cessation debts in instalments on a consistent basis across Scotland

It is recognised that such arrangements necessarily involve a payments schedule that reflects specific parameters round timing of payments, affordability and account being taken of any security available.

We propose the following wording is added to Regulation 62 to enable CABs to become exiting employers and pay the debts on an instalment basis:

“The appropriate administering authority shall, acting reasonably, agree with the exiting employer whether the exit payment is payable in one lump sum or in a series of instalments. Such agreement shall take account of the exiting employer’s financial circumstances and the relative affordability of the exit payment.”

We would recommend that the Regulations are further expanded to embed the consistent parameters which will apply to the timescale for payments, review of the exiting employer’s financial circumstances, affordability and to any security offered. As an alternative these parameters could be set down in Guidance to be applied for all Scheme Funds to enable transparency, consistency and flexibility should a further review of process be required without the need for Regulations to be amended.

Cessation of accrual and continued participation on a closed on-going basis

We are aware of LGPS Funds in England which interpret the Local Government Regulations 2013 in such a way that a CAB can cease future accrual but continue to participate in LGPS on a closed on-going basis.

This interpretation means that the admission agreement remains in place and the CAB, while being made aware of the value of its exit debt, continues to use a rates and adjustments schedule prepared based on the employer's financial position and the level of security which can be made available. This usually results in contributions being set on an 'on-going' or 'pay-as-you-go' basis.

The extant LGPS (Scotland) Regulations are similar to the LGPS Regulations which apply in England and may be capable of similar interpretation. However, we believe that LGPS (Scotland) Funds are unlikely to interpret the Regulations so flexibly. In view of this, we believe it is desirable for the LGPS (Scotland) Regulations 2018 to include amendments to the Regulations which enables this practice without the requirement for interpretation.

The advantage of such an approach would be that CABs would be able to cease accruing further potentially unaffordable liabilities and focus their future contributions on continuing to make ongoing payments which are not based on a cessation debt. This would benefit the Scheme Fund and other participating employers as the risk of the CAB defaulting would be reduced. It would also increase the likelihood that the CAB would remain financially sustainable and therefore could continue to provide public services and other services to beneficiaries. There are benefits too for local authorities as there would be less risk of having to step in to provide public services in the event of a CAB insolvency.

For the drafting of additional amendments to address this point we would recommend that:

1. An additional type of Scheme employer is included – for example “Closed Scheme Employer”. The Regulations should make clear that this type of employer would have been a Scheme Employer and be able to cease future accrual to become a Closed Scheme Employer.
2. A Scheme Employer would become a Closed Scheme Employer on a specified period of notice being given.
3. The exiting employer terms would not apply, unless agreed at a future date between the Closed Scheme Employer and the Scheme Fund.
4. Ongoing contribution payment terms, based on the amount due by the Closed Scheme Employer in respect of accrued liabilities and any security offered, would be specified to apply on the basis of a rates and adjustments schedule which is prepared using the same assumptions applying to the most recent certificate produced for the Scheme under Regulation 60.

We appreciate a full check would require to be made of the interaction between the applicability of the Regulations to a Scheme Employer and a Closed Scheme Employer, in recognition that the term Scheme Employer is used throughout the Regulations (175 times) but this would seem to be the most appropriate route to enable the issues we have identified to be addressed satisfactorily.