Ministry of Housing,
Communities &
Local Government

Local Government Pension Scheme:

Partial Government Response on Changes to the Local Valuation Cycle and the Management of Employer Risk

February 2020
Ministry of Housing, Communities and Local Government

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1. Introduction

1.1 On 8 May 2019 the Secretary of State for Housing, Communities and Local Government opened a consultation[1] which outlined a number of proposals to amend the Local Government Pension Scheme in England and Wales. These proposals comprised:

i. amendment of the local fund valuations from the current 3-year (triennial) to a 4-year (quadrennial) cycle;

ii. a number of measures aimed at mitigating the risks of moving from a triennial to a quadrennial cycle;

iii. proposals for greater flexibility for employers making exit payments;

iv. proposals for further changes to the rules on exit credits;

v. proposals for changes to the category of employers required to offer local government pension scheme membership.

1.2 This document summarises the responses received on the proposals for further changes to the rules on exit credits only. We are grateful to all the 116 individuals and organisations who took the time to respond on these proposals. A number of responses called on us to resolve this issue as a matter of urgency. We are therefore issuing this response now. A further response will be made in relation to the other proposals in the consultation in due course.

[1] https://www.gov.uk/government/consultations/local-government-pension-scheme-changes-to-the-local-valuation-cycle-and-management-of-employer-risk?=7

2. Summary of consultation responses

Background

2.1 In April 2018, the Government announced a change to the LGPS Regulations 2013[2] to allow exit credits to be paid for the first time. Where an employer leaves the LGPS, an exit credit is now due if their pension liabilities have been overfunded at their date of exit. Prior to this change, the 2013 Regulations had provided that a scheme employer would be responsible for any shortfall and where such a shortfall occurred they would be responsible for paying an exit payment.

2.2 In the months after the changes were made, concerns were raised about unforeseen consequential impacts from the introduction of exit credits, specifically where scheme employers had outsourced services or functions to service providers. These situations tended to arise where employers and their service providers had entered into side agreements based on the 2013 rules. Under these agreements, the contracting authority may have shared the pensions risk with their contractors in various ways, for example by picking up the risk of contributions increasing beyond a certain amount or by picking up the risk of an exit payment arising at the end of the contract, in exchange for a lower contract price.

2.3 With the introduction of exit credits from 14 May 2018, it became clear that service providers were becoming entitled to exit credits where this would not have been the intention by the parties involved when the side agreement was made. We therefore proposed to change the 2013 Regulations to provide that an LGPS administering authority must take into account the level of risk that an employer has borne in determining the amount of any exit credit. It was proposed that this change be applied retrospectively to when the regulations were first changed, 14 May 2018.

Responses received

Question 16 – Do you agree that we should amend the LGPS Regulations 2013 to provide that administering authorities must take into account a scheme employer's exposure to risk in calculating the value of an exit credit?

Question 17 – Are there other factors that should be taken into account in considering a solution?

2.4 The responses received were as follows:

Fully support	96
Support with reservations	18
Cannot support	2

[2] https://www.gov.uk/government/consultations/local-government-pension-scheme-regulations

2.5 The overall approach was strongly supported, while 13 respondents felt that the changes should not be retrospectively applied. Many respondents highlighted that there are a wide range of risk sharing arrangements and it would be difficult to determine the appropriate level of an exit credit. In addition, administering authorities would not necessarily be aware of or have access to the detailed agreements reached between contracting authorities and their suppliers.

2.6 Other views expressed by respondents included:

- any changes to the rules should not lead to administering authorities being involved in contractual disputes;

- exit credits should only be payable on admission agreements which began after 14 May 2018, with no retrospective application to agreements before that date, as this could lead to an unforeseen liability to pay a credit;

- administering authorities should have a discretion rather than duty to pay an exit credit;

- the current three-month time-frame to pay exit credits is too short and should be extended.

3. Government response

3.1 In response to the representations received, the Government has amended the consultation proposal. We now intend to amend the 2018 regulations so that administering authorities may determine, at their absolute discretion, the amount of any exit credit payment due, having regard to any relevant considerations. In addition, we have extended the period in which an exit credit, where due, has to be paid to six months.

3.2 We also intend to ensure that while administering authorities will be required to take into account representations made by the parties, they will not be obliged to enquire into the precise risk sharing arrangements adopted. It will be for those parties to set out why the arrangements made by them make payment of an exit credit more or less appropriate.

3.3 In addition, the amended regulations will make clear that any exit credits that have not been paid (even if overdue) shall only be due following the administration authority's exercising of its discretion. Any payments which have been paid shall be treated as if the administering authority had exercised its discretion to pay that amount, and the administering authority may not seek to change the amount due or exercise its discretion retrospectively. Any amount already paid as an exit credit will be an authorised payment in terms of section 176 of the Finance Act 2004 (payments by public service pension schemes).

3.4 In the event of any dispute or disagreement on the amount of any exit credit paid and the process by which that has been considered, the appeals and adjudication provisions contained in Regulations 74-78 of the LGPS Regulations 2013 would apply. The Pensions Ombudsman also has jurisdiction to hear complaints of maladministration arising between those involved in running a scheme, if the internal dispute resolution process is unsuccessful.

3.5 Administering authorities should adopt a fair and reasonable exit credits policy which should be set out in their Funding Strategy Statement. The policy should aim to protect the interests of the members and employers as a whole and look wider than the interests of the single employer in question. Administering authorities should also seek actuarial and legal advice where appropriate and act consistently with the approach set out in their Funding Strategy Statement.

3.6 A statutory instrument giving effect to these proposals has been signed by the Minister and Lords Commissioners of Her Majesty's Treasury and this will be laid before Parliament at the earliest opportunity, alongside an Explanatory Memorandum.