SCOTTISH STATUTORY INSTRUMENTS

2018 No. 141

The Local Government Pension Scheme (Scotland) Regulations 2018

PART 2

Administration

Actuarial valuations

Special circumstances where revised actuarial valuations and certificates must be obtained

61.—(1) Subject to paragraph (3), if a person—

(a) ceases to be a Scheme employer (including ceasing to be an admission body participating in the Scheme); or

(b) is or was a Scheme employer, but, irrespective of whether that employer employs active members contributing to one or more other funds, no longer has an active member contributing towards a fund which has liabilities in respect of benefits in respect of current and former employees of that employer,

that person becomes "an exiting employer" in relation to the relevant fund for the purposes of this regulation and is liable to pay the exit payment or to receive the exit credit.

(2) When a person becomes an exiting employer, the appropriate administering authority must obtain—

(a) an actuarial valuation as at the exit date of the liabilities of the fund in respect of benefits in respect of the exiting employer's current and former employees; and

(b) a revised rates and adjustments certificate showing the exit payment due from the exiting employer, or exit credit payable to the exiting employer, in respect of those benefits.

[[F1](2A) A person proposing to become an exiting employer may request the appropriate administering authority to obtain—

(a) an indicative actuarial valuation at a specific date of the liabilities of the fund in respect of benefits in respect of that person's current and former employees, and

(b) a revised rates and adjustments certificate showing the exit payment that would be due from such employer, or exit credit payable to such employer in respect of those benefits,

and the indicative actuarial valuation must for a period of up to 90 days from the specific date be used in substitution for any valuation at the employer's exit date carried out under paragraph (2).**]**

[[F2](2B) Compensation paid by the scheme to a person by virtue of section 82(1) of PSPJOA 2022 or additional benefits payable by virtue of regulation 4Q of the Transitional Provisions and Savings Regulations 2014 are liabilities for the purpose of the actuarial valuation under paragraph (2)(a).**]**

[F3(2C) an administering authority must provide an indicative actuarial valuation when requested by a person under paragraph (2A), unless that person has made a previous request under paragraph (2A) within the preceding 12 months.**]**

(3) An administering authority may by written notice ("suspension notice") to an employer suspend that employer's liability to pay an exit payment starting from the date when that employer would otherwise become an exiting employer. **[**F4A suspension notice must specify the period during which the suspension notice is to apply, but an administering authority may withdraw a suspension notice prior to the expiry of the suspension period, at its discretion.**]**

(4) If an administering authority serves a suspension notice the employer must continue to make such contributions towards the liabilities of the fund in respect of benefits for the employer's current and former employees until a new and satisfactory valuation is carried out and the suspension notice is withdrawn.

[F5(4A) An administering authority may enter into a written agreement with an exiting employer for that employer to defer their obligation to make an exit payment and continue to make contributions at the secondary rate ("a deferred debt agreement").

(4B) An administering authority may only enter into a deferred debt agreement with an exiting employer where—

(a) the last active member in respect of that Scheme employer has left the fund;

(b) the funding strategy mentioned in regulation 56 (funding strategy statement) has set out the administering authority's policy on deferred debt agreements; and

(c) the administering authority has—

(i) consulted the exiting employer; and

(ii) had regard to the views of an actuary appointed by the administering authority.

(4C) Where a deferred debt agreement has been entered into under paragraph (4A)—

(a) the exiting employer becomes a deferred employer on the date specified in the agreement;

(b) the deferred employer must—

(i) meet all requirements on Scheme employers except the requirement to pay the primary rate of contributions as determined under regulation 60(8)(a) (actuarial valuations of pension funds); and

(ii) pay the secondary rate of contributions as determined under regulation 60(8)(b) as revised from time to time following an actuarial valuation until the termination of the deferred debt agreement.

(4D) A deferred debt agreement must include express provision for it to remain in force for a specified period, which may be varied by agreement of the administering authority and the deferred employer.

(4E) A deferred debt agreement terminates on the first date on which one of the following events occurs—

(a) the deferred employer enrols new active members in the relevant fund;

(b) the period specified, or as varied, under paragraph (4D) elapses;

(c) the take-over, amalgamation, insolvency, winding up or liquidation of the deferred employer;

(d) the administering authority serves a notice on the deferred employer that the administering authority is reasonably satisfied that the deferred employer's ability to meet the contributions payable under the deferred debt agreement has weakened materially or is likely to weaken materially in the next 12 months; or

(e) an actuary appointed by the administering authority assesses that the deferred employer has paid sufficient contributions at the secondary rate to cover the exit payment that would have been due under paragraph (1) if the employer had become an exiting employer on the calculation date.

(4F) Paragraph (4E)(c) does not apply where the administering authority serves a notice on the deferred employer that the administering authority is reasonably satisfied that the event would not be likely to materially weaken the deferred employer's ability to meet the contributions payable under the deferred debt agreement in the next 12 months.

(4G) On the termination of a deferred debt agreement under paragraph (4E)(b), (c), (d) or (e), a deferred employer becomes an exiting employer in relation to the relevant fund for the purposes of this regulation.**]**

(5) Where for any reason it is not possible to obtain all or part of the exit payment due from the exiting employer, or from an insurer, or any person providing an indemnity, bond or guarantee on behalf of the exiting employer, the administering authority must obtain a further revision of any rates and adjustments certificate for the fund showing—

(a) in the case where a body is an admission body falling within paragraph 1(d) of Part 2 of schedule 2 of these Regulations (Scheme employers: bodies providing services as a result of transfer of a service), the revised contribution due from the body which is the related employer in relation to that admission body; and

(b) in any other case, the revised contributions due from each Scheme employer which contributes to the fund,

with a view to providing that assets equivalent to the exit payment due from the exiting employer are provided to the fund over such period of time as the administering authority considers reasonable.

(6) Where in the opinion of an administering authority there are circumstances which make it likely that a Scheme employer (including an admission body) will become an exiting employer, the administering authority may obtain from an actuary a certificate specifying the percentage or amount by which, in the actuary's opinion—

(a) the contribution at the primary rate should be adjusted; or

(b) any prior secondary rate adjustment should be increased or reduced,

with a view to providing that assets equivalent to the exit payment that will be due from the Scheme employer are provided to the fund by the likely exit date or, where the Scheme employer is unable to meet that liability by that date, over such period of time thereafter as the administering authority considers reasonable.

(7) When an exiting employer has paid the exit payment into the appropriate fund (or received the exit credit), no further payments are due from that employer in respect of any liabilities relating to the benefits in respect of any current or former employees of that employer as a result of these Regulations.

(8) **[**[F6]Paragraph (9)**]** applies where—

(a) a Scheme employer agrees to pay increased contributions to meet the cost of an award of additional pension under regulation 30 (award of additional pension); or

(b) it appears likely to an administering authority that the amount of the liabilities arising or likely to arise in respect of members in employment with a Scheme employer exceeds the amount specified, or likely as a result of the assumptions stated, for that authority, in a rates and adjustments certificate by virtue of regulation 60(6) (actuarial valuations of pension funds: assumptions).

(9) The administering authority must obtain a revision of the rates and adjustments certificate concerned, showing the resulting changes as respects that Scheme employer.

(10) For the purposes of this regulation—

"exiting employer" means an employer of any of the descriptions specified in paragraph (1);

"exit payment" means the amount as set out in the rates and adjustments certificate referred to in sub-paragraph (2)(b) required to be paid by the exiting employer over such period of time as the administering authority considers reasonable, to meet the liabilities specified in paragraph (2);

[[F7]"deferred employer" means an exiting employer which enters into a deferred debt agreement with an administering authority.**]**

"exit credit" means the amount required to be paid to the exiting employer by the administering authority to meet the excess of assets in the fund relating to that employer over the liabilities specified in paragraph (2)(a);

"exit date" means the date on which the employer becomes an exiting employer; and

"related employer" means any Scheme employer or other such contracting body which is a party to the admission agreement (other than an administering authority in its role as an administering authority).

Textual Amendments

F1 Reg. 61(2A) substituted (28.3.2024 with effect from 28.3.2024) by The Local Government Pension Scheme (Scotland) (Amendment) Regulations 2024 (S.S.I. 2024/37), regs. 1(2)(b), **8(2)(a)**

F2 Reg. 61(2B) inserted (1.10.2023) by The Local Government Pension Scheme (Remediable Service) (Scotland) Regulations 2023 (S.S.I. 2023/240), regs. 1(2), **3(12)**

F3 Reg. 61(2C) inserted (28.3.2024 with effect from 28.3.2024) by The Local Government Pension Scheme (Scotland) (Amendment) Regulations 2024 (S.S.I. 2024/37), regs. 1(2)(b), **8(2)(b)**

F4 Words in reg. 61(3) inserted (1.6.2022) by The Local Government Pension Scheme (Scotland) (Miscellaneous Amendments) Regulations 2022 (S.S.I. 2022/153), regs. 1, **10(1)(b)**

F5 Reg. 61(4A)-(4G) inserted (1.6.2022) by The Local Government Pension Scheme (Scotland) (Miscellaneous Amendments) Regulations 2022 (S.S.I. 2022/153), regs. 1, **10(2)**

F6 Words in reg. 61(8) substituted (with effect from 1.6.2018) by The Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2019 (S.S.I. 2019/161), regs. 1(2), **2(21)**

F7 Words in reg. 61(10) inserted (1.6.2022) by The Local Government Pension Scheme (Scotland) (Miscellaneous Amendments) Regulations 2022 (S.S.I. 2022/153), regs. 1, **10(3)**

Status:
Point in time view as at 28/03/2024.

Changes to legislation:
There are currently no known outstanding effects for the The Local Government Pension Scheme (Scotland) Regulations 2018, Section 61.