Consultation response: the Local Government Pension Scheme (Scotland) (Amendment) (No. 2) Regulations 2024

Hymans Robertson LLP provides independent pensions, investments, benefits and risk consulting services, as well as data and technology solutions, to LGPS stakeholders, employers, trustees and financial services institutions.

Our comments as part of the consultation on these draft regulations are set out below.

Regulatory wording

Whilst we are not lawyers, we believe that the proposed regulations are sufficient to create a discretion for administering authorities to determine the amount of exit credit which should be payable to an employer leaving the Scottish LGPS.

The wording of the Transitional Provision is:

4. The amendments to the 2018 Regulations made by regulation 3 do not apply to exit credits that have been paid on or after 1 June 2018 and before 29 June 2024.

To clarify how this is intended to work in practice and ensure a consistent approach across funds, could a note be added to confirm how 'live' cessation valuations (i.e. those where the cessation date was triggered prior to 30 June 2024) that are in surplus should be treated where an exit credit has not been paid by 29 June? It typically takes funds a few months to settle cessations after they have been triggered due to the need to gather data and carry out actuarial calculations.

For example, will such 'live' cases automatically be subject to the new discretion? Or should funds continue to process and settle the exit credits on these cases based on the legislation that was in force at their actual cessation date? The latter approach may be deemed to be fairer to ceasing employers as they have little control over the pace of the settlement process.

Governance requirements

These amendment regulations bring the Scottish Regulations in line with those that are place in England and Wales. We are supportive of this discretion being proposed for the Scottish LGPS on the grounds of consistency across the countries.

That said, we recognise that giving funds the discretion to determine the amount of the exit credit creates extra work. Currently, the fund actuary effectively sets any exit credit, as the amount payable is equal simply to the surplus identified at the cessation valuation. This responsibility will pass across to the fund under the new regulations who will need to consider:

- Policies – updates to the Funding Strategy Statement (including any cessation policy) and the employer consultation process.
- Decision-making – how officers exercise their discretion, and the extent of any committee involvement and input from advisers e.g. actuarial. legal.
- Administration - changes to accommodate the required legislative steps.

Supporting guidance

There is currently no supporting statutory or non-statutory guidance covering the English and Welsh equivalent of the proposed regulations. SPPA and the Scottish SAB may wish to consider whether any supporting guidance is needed for Scottish funds to consider when exercising their new discretionary power. Care will be needed around the wording in any such guidance to avoid fettering the fund's discretion to make a determination that reflects the individual circumstances of a ceasing employer.

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