Cessations policy

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# Introduction

The purpose of this policy is to set out the administering authority’s approach to dealing with circumstances where a scheme employer leaves the Fund and becomes an exiting employer (a cessation event).

It should be noted that this policy is not exhaustive. Each cessation will be treated on a case-by-case basis, however certain principles will apply as governed by the regulatory framework (see below) and the Fund’s discretionary policies (as described in Section 3 - Policies).

## 1.1 Aims and objectives

The administering authority’s aims, and objectives related to this policy are as follows:

* To confirm the approach for the treatment and valuation of liabilities for employers leaving the Fund.
* To provide information about how the Fund may apply its discretionary powers when managing employer cessations.
* To outline the responsibilities of (and flexibilities for) exiting employers, the administering authority, the actuary and, where relevant, the original ceding scheme employer (usually a letting authority).

## 1.2 Background

As described in Section 7 of the Funding Strategy Statement (FSS), a scheme employer may become an exiting employer when a cessation event is triggered e.g. when the last active member stops participating in the Fund. On cessation from the Fund, the administering authority will instruct the Fund actuary to carry out a valuation of assets and liabilities for the exiting employer to determine whether a deficit or surplus exists. The Fund has full discretion over the repayment terms of any deficit, and the extent to which any surplus results in the payment of an exit credit.

## 1.3 Guidance and regulatory framework

The Local Government Pension Scheme Regulations 2013 (as amended) contain relevant provisions regarding employers leaving the Fund ([Regulation 64](https://www.lgpsregs.org/schemeregs/lgpsregs2013/timeline.php#r64)) and include the following:

* Regulation 64 (1) – this regulation states that, where an employing authority ceases to be a scheme employer, the administering authority is required to obtain an actuarial valuation of the liabilities of current and former employees as at the termination date. Further, it requires the Rates & Adjustments Certificate to be amended to show the revised contributions due from the exiting employer
* Regulation 64 (2) – where an employing authority ceases to be a scheme employer, the administering authority is required to obtain an actuarial valuation of the liabilities of current and former employees as at the exit date. Further, it requires the Rates & Adjustments Certificate to be amended to show the exit payment due from the exiting employer or the excess of assets over the liabilities in the Fund.
* Regulation 64 (2ZAB) – the administering authority must determine the amount of an exit credit, which may be zero, taking into account the factors specified in paragraph (2ZC) and must:
1. Notify its intention to make a determination to-
	1. The exiting employer and any other body that has provided a guarantee to the Exiting Employer
	2. The scheme employer, where the exiting employer is a body that participated in the Scheme as a result of an admission agreement
2. Pay the amount determined to that exiting employer within six months of the exit date, or such longer time as the administering authority and the exiting employer agree.
* Regulation (2ZC) – In exercising its discretion to determine the amount of any exit credit, the administering authority must have regard to the following factors-

a) The extent to which there is an excess of assets in the Fund relating to that employer in paragraph (2)(a)

b) The proportion of this excess of assets which has arisen because of the value of the employer’s contributions

c) Any representations to the administering authority made by the exiting employer and, where that employer participates in the scheme by virtue of an admission agreement, anybody listed in paragraphs (8)(a) to (d)(iii) of Part 3 to Schedule 2 of the Regulations: and

d) Any other relevant factors

* Regulation 64 (2A) & (2B)– the administering authority, at its discretion, may issue a suspension notice to suspend payment of an exit amount for up to three years, where it reasonably believes the exiting employer is to have one or more active members contributing to the Fund within the period specified in the suspension notice.
* Regulation 64 (3) – in instances where it is not possible to obtain additional contributions from the employer leaving the Fund or from the bond/indemnity or guarantor, the contribution rate(s) for the appropriate scheme employer or remaining Fund employers may be amended.
* Regulation 64 (4) – where it is believed a scheme employer may cease at some point in the future, the administering authority may obtain a certificate from the Fund actuary revising the contributions for that employer, with a view to ensuring that the assets are expected to be broadly equivalent to the exit payment that will be due.
* Regulation 64 (5) – following the payment of an exit payment to the Fund, no further payments are due to the Fund from the exiting employer.
* Regulation 64 (7A-7G) – the administering authority may enter into a written deferred debt agreement, allowing the employer to have deferred employer status and to delay crystallisation of debt despite having no active members.
* Regulation 64B (1) – the administering authority may set out a policy on spreading exit payments.

In addition to the 2013 Regulations summarised above, [Regulation 25A](https://www.lgpsregs.org/schemeregs/tpregs2014/timeline.php#r25A) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (“the Transitional Regulations”) give the Fund the ability to levy a cessation debt on employers who have ceased participation in the Fund (under the previous regulations) but for whom a cessation valuation was not carried out at the time. This policy document describes how the Fund expects to deal with any such cases.

This policy also reflects [statutory guidance](https://www.gov.uk/government/consultations/local-government-pension-scheme-changes-to-the-local-valuation-cycle-and-management-of-employer-risk/outcome/guidance-on-preparing-and-maintaining-policies-on-review-of-employer-contributions-employer-exit-payments-and-deferred-debt-agreements) from the Department for Levelling Up, Housing and Communities on preparing and maintaining policies relating to employer exits. Interested parties may want to refer to an accompanying [guide](https://lgpsboard.org/index.php/empflexm) that has been produced by the Scheme Advisory Board.

These regulations relate to all employers in the Fund.

# 2 Statement of principles

This Statement of Principles covers the Fund’s approach to exiting employers. Each case will be treated on its own merits but in general:

* it is the Fund’s policy that the determination of any surplus or deficit on exit should aim to minimise, as far as is practicable, the risk that the remaining, unconnected employers in the Fund have to make contributions in future towards meeting the past service liabilities of current and former employees of employers leaving the Fund.
* the Fund’s preferred approach is to request the full payment of any cessation debt (an exit payment by the employer), which is calculated by the actuary on the appropriate basis (as per Section 7 of the FSS and Section 3.1 below). This would extinguish any liability to the Fund by the exiting employer.
* the Fund’s key objective is to protect the interests of the Fund, which is aligned to protecting the interests of the remaining employers. A secondary objective is to consider the circumstances of the exiting employer in determining arrangements for the recovery of the exit debt.

# 3 Policies

On cessation, the administering authority will instruct the Fund actuary to carry out a cessation valuation to determine whether there is any deficit or surplus as defined in Section 4.3 of the FSS.

Where there is a deficit, payment of this amount in full would normally be sought from the exiting employer. The Fund’s normal policy is that this cessation debt is paid in full in a single lump sum within 30 days of the employer being notified.

However, the Fund will consider written requests from employers to spread the payment over an agreed period, in the exceptional circumstance where payment of the debt in a single immediate lump sum could be shown by the employer to be materially detrimental to the employer’s financial situation (see [3.2 Repayment flexibility on exit payments](#_3.2_Repayment_flexibility)).

In circumstances where there is a surplus, the administering authority will determine, at its sole discretion, the amount of exit credit (if any) to be paid to the exiting employer (see [3.3 Exit credits](#_3.3_Exit_credit)).

## 3.1 Approach to cessation calculations

Cessation valuations are carried out on a case-by-case basis at the sole discretion of the Fund depending on the exiting employer’s circumstances. However, in general the following broad principles and assumptions may apply, as described in Section 7.2 of the FSS and summarised below:

|  |  |  |
| --- | --- | --- |
| **Type of employer** | **Cessation exit basis**  | **Responsible parties for unpaid or future deficit emerging** |
| Local Authorities, Police, Fire | Low-risk basis1 | Shared between other Fund employers  |
| Colleges & Universities  | Low-risk basis | Shared between other Fund employers |
| Academies | Low-risk basis | DfE guarantee may apply, otherwise see below |
| Admission bodies (TABs) | Ongoing basis2 | Letting authority (where applicable), otherwise shared between other Fund employers |
| Admission bodies (CABs) | Low-risk basis | Shared between other Fund employers (if no guarantor exists) |
| Designating employers  | Low-risk basis | Shared between other Fund employers (if no guarantor exists) |

1 Cessation is assumed not to be generally possible, as Scheduled Bodies are legally obliged to participate in the LGPS. In the rare event of cessation occurring (e.g. machinery of Government changes), these cessation principles would apply.

2 Where a TAB has taken, in the view of the administering authority, action that has been deliberately designed to bring about a cessation event (e.g. stopping future accrual of LGPS benefits), then the cessation valuation will be carried out on a low-risk basis.

### Low-risk cessation basis

The fund uses a risk-based approach to set employer funding strategies, including within cessation calculations. In particular, the likelihood of the fund’s assets achieving particular future investment returns is analysed.

Where an employer leaves the Fund on the low-risk basis, the Fund will use this approach to set an upper and lower amount (or “corridor”) in order to consider the amount of assets a ceasing employer must leave behind to pay for its members’ benefits.

Under this approach, an employer is be deemed to have a deficit if its assets are below the lower amount and a surplus if its assets are above the higher amount (ie there will be no deficit or surplus if a ceasing employers assets fall within the “corridor”).

### Cessation of academies and multi-academy trusts (MATs)

A cessation event will occur if a current academy or MAT ceases to exist as an entity or an employer in the Fund.

The cessation treatment will depend on the circumstances:

* If the cessation event occurs due to an academy or MAT merging with another academy or MAT within the Fund, all assets and liabilities from each of the merging entities will be combined and will become the responsibility of the new merged entity.
* If the MAT is split into more than one new or existing employers within the Fund, the actuary will calculate a split of the assets and liabilities to be transferred from the exiting employer to the new employers. The actuary will use their professional judgement to determine an appropriate and fair methodology for this calculation in consultation with the administering authority.
* In all other circumstances, and following payment of any cessation debt, section 7.5 of the FSS would apply.

Further details are included in the Fund’s Academies Policy.

## 3.2 Repayment flexibility on exit payments

### Deferred spreading arrangement (DSA)

The Fund will consider written requests from exiting employers to spread an exit payment over an agreed period, in the exceptional circumstance where payment of the debt in a single immediate lump sum could be shown by the employer to be materially detrimental to the employer’s financial situation.

In this exceptional case, the Fund’s policy is:

* The agreed spread period is no more than three years, unless security is provided, but the Fund could use its discretion to extend this period in extreme circumstances.
* The Fund may consider factors such as the size of the exit payment and the financial covenant of the exiting employer in determining an appropriate spreading period.
* The exiting employer may be asked to provide the administering authority with relevant financial information such as a copy of its latest accounts, sources of Funding, budget forecasts, credit rating (if any) etc. to help in this determination.
* Payments due under the DSA may be subject to an interest charge.
* The Fund will only consider written requests within six months of the employer exiting the Fund. The exiting employer would be required to provide the Fund with detailed financial information to support its request.
* The Fund would take into account the amount of any security offered and seek actuarial, covenant and legal advice in all cases.
* The Fund reserves the right to require that the exiting employer provides some form of security (such as a charge over assets, bond indemnity or guarantee) relating to the unpaid amount of debt at any given time.
* The Fund proposes a legal document, setting out the terms of the exit payment agreement, would be prepared by the Fund and signed by all relevant parties prior to the payment agreement commencing.
* The terms of the legal document should include reference to the spreading period, the annual payments due, interest rates applicable, other costs payable and the responsibilities of the exiting employer during the exit spreading period.
* Any breach of the agreed payment plan would require payment of the outstanding cessation amount immediately.
* Where appropriate, cases may be referred to the Pensions Committee for consideration and considered on its individual merit. Decisions may be made by the Chair in consultation with officers if an urgent decision is required between Committee meetings.
* All costs of the arrangement are to be met by the employer, such as the cost of advice to the Fund, ongoing monitoring or the arrangement and correspondence on any ongoing contribution and security requirements.

**Deferred debt agreement (DDA)**

The Fund’s preferred policy is for the spreading of payments, as detailed above, to be followed in the exceptional circumstances where an exiting employer is unable to pay the required cessation payment as a lump sum in full. However, in the event that spreading of payments will create a high risk of bankruptcy for the exiting employer, the Fund may exercise its discretion to set up a deferred debt agreement as described in [Regulation 64 (7A)](https://www.lgpsregs.org/schemeregs/lgpsregs2013/timeline.php#r64)).

The employer must meet all requirements on Scheme employers and pay the secondary rate of contributions as determined by the Fund actuary until the termination of the DDA.

The administering authority may consider a DDA where all the following circumstances apply:

* The employer requests the Fund consider a DDA.
* The employer is expected to have a deficit if a cessation valuation was carried out.
* The employer is expected to be a going concern.
* The covenant of the employer is considered sufficient by the administering authority.

The administering authority will normally require:

* A legal document to be prepared, setting out the terms of the DDA and signed by all relevant parties prior to the arrangement commencing.(including details of the time period of the DDA, the annual payments due, the frequency of review and the responsibilities of the employer during the period).
* Relevant financial information for the employer such as a copy of its latest accounts, sources of Funding, budget forecasts, credit rating (if any) to support its covenant assessment.
* Security be put in place covering the employer’s deficit on their cessation basis and the Fund will seek actuarial, covenant and legal advice in all cases.
* Regular monitoring of the contribution requirements and security requirements
* All costs of the arrangement are met by the employer, such as the cost of advice to the Fund, ongoing monitoring or the arrangement and correspondence on any ongoing contribution and security requirements.

A DDA will normally terminate on the first date on which one of the following events occurs:

* The employer enrols new active Fund members.
* The period specified, or as varied, under the DDA elapses.
* The take-over, amalgamation, insolvency, winding up or liquidation of the employer.
* The administering authority serves a notice on the employer that the administering authority is reasonably satisfied that the employer’s ability to meet the contributions payable under the DDA has weakened materially or is likely to weaken materially in the next 12 months.
* The Fund actuary assesses that the employer has paid sufficient secondary contributions to cover all (or almost all) of the exit payment due if the employer becomes an exiting employer on the calculation date (i.e. employer is now largely fully Funded on their low-risk basis).
* The Fund actuary assesses that the employer’s value of liabilities has fallen below an agreed *de minimis* level and the employer becomes an exiting employer on the calculation date.
* The employer requests early termination of the agreement and settles the exit payment in full as calculated by the Fund actuary on the calculation date (i.e. the employer pays their outstanding cessation debt on their cessation basis).

On the termination of a DDA, the employer will become an exiting employer and a cessation valuation will be completed in line with this policy.

## 3.3 Exit credit policy

The administering authority’s entitlement to determine whether exit credits are payable in accordance with these provisions shall apply to all employers ceasing their participation in the Fund after 14 May 2018. This provision therefore is retrospectively effective to the same extent as provisions of the [Local Government Pension Scheme (Amendment) Regulations 2020](https://www.legislation.gov.uk/uksi/2020/179/made).

In making a determination as to the value of any exit credit payable, which may be zero, the Administering Authority will consider: (a) the extent of any surplus, (b) the proportion of surplus arising as a result of the exiting employer’s employer contributions; (c) in the case of an Admission Body that is an exiting employer, any representations made by the Admission Body (and any other parties notified, as set out above) which may include information as to any risk sharing agreements in place, any guarantor arrangements, any specific agreement between scheme employers, and any such other representations relevant in the specific case and (d) any other relevant factors, which may generally include, for example, factors such as:

1. the type of employer, its initial Funding position and any pooling arrangements;
2. whether an Admission Body participates in the Fund via the “fixed contribution rate” (or pass through);
3. any admission terms/Pooling arrangements/contractual or risk sharing agreements which deal with the ownership of exit credits/cessation surpluses (and the dates such agreements were entered into);
4. the approach/factors considered when setting contribution rates payable by an Admission Body, including any secondary contribution rates and the level of prudence, during its participation in the Fund (including which party was responsible for Funding risks and/or any forms of employer assistance/support in place);
5. if payment of the surplus would have a materially negative effect on the position of other employers in the Fund;
6. the size of the surplus and how that surplus arose;
7. whether the admission agreement ends early and, if so, the reasons for the early termination;
8. whether a scheme employer or resolution body becomes an exiting employer due to a reorganization, merger or take-over;
9. provisions on exit credits in any deferred debt agreement;
10. costs in relation to determination of an exit credit;
11. whether an Admission Body /scheme employer /or resolution body leaves on a low risk exit basis;
12. any contributions due or monies owed to the Fund that remain unpaid by an employer at the cessation date; and
13. whether an Admission Body had entered the Fund prior to the original exit credit regulations start date of 14 May 2018.

Any representations to be made by the employer (and any other parties notified as set out above) - together with copies of any documents provided for the Fund to consider must be provided to the Fund as soon as reasonably practicable and in any event within one month of the administering authority’s notification of its intention to make a determination (as set out above) subject to any longer period on request by the exiting employer as may be agreed by the administering authority.

The determination will be made by the Employer services manager in accordance with the LGPS Regulations 2013, in conjunction with advice from the Fund’s Actuary taking the above into consideration. The determination will set out the value of any exit credit payable and the factors considered in reaching this determination and will advise the exiting employer of the amount due to be paid (if any).

Where it is determined that an exit credit is payable, the administering authority will make the payment to the exiting employer within six months of the exit date where possible. A longer time may be agreed between the Administering Authority and the exiting employer where necessary. For example, if the exiting employer does not provide all the relevant information to the Administering Authority within one month of the cessation date or such other period as specified by the Administering Authority, the Administering Authority will not be able to guarantee payment within six months of the cessation date.

### Disputes

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.

# 4. Practicalities and process

## 4.1 Responsibilities of ceasing employers

An employer who is aware that its participation in the Fund is likely to come to an end must:

* advise the Fund, in writing, of the likely ending of its participation (either within the terms of the admission agreement in respect of an admission body (typically a 3 month notice period is required) or otherwise as required by the Regulations for all other scheme employers). It should be noted that this includes closed employers where the last employee member is leaving (whether due to retirement, death or otherwise leaving employment).
* provide any relevant information on the reason for leaving the Fund and, where appropriate, contact information in the case of a take-over, merger or insolvency.
* provide all other information and data requirements as requested by the administering authority which are relevant, including in particular any changes to the membership which could affect the liabilities (e.g. salary increases and early retirements) and an indication of what will happen to current employee members on cessation (e.g. will they transfer to another Fund employer, will they cease to accrue benefits within the Fund, etc.).

## 4.2 Responsibilities of the administering authority

The administering authority will:

* gather information as required, including, but not limited to, the following:
	+ details of the cessation - the reason the employer is leaving the Fund (i.e. end of contract, insolvency, merger, machinery of government changes, etc.) and any supporting documentation that may have an effect on the cessation.
	+ complete membership data for the outgoing employer and identify changes since the previous formal valuation.
	+ the likely outcome for any remaining employee members (e.g. will they be transferred to a new employer, or will they cease to accrue liabilities in the Fund).
* identify the party that will be responsible for the employer’s deficit on cessation (i.e. the employer itself, an insurance company, a receiver, another Fund employer, guarantor, etc.).
* commission the Fund actuary to carry out a cessation valuation under the appropriate regulation.
* where applicable, discuss with the employer the possibility of paying adjusted contribution rates that target a 100% Funding level by the date of cessation through increased contributions in the case of a deficit on the cessation basis or reduced contributions in respect of a surplus.
* where applicable, liaise with the original ceding employer or guarantor and ensure it is aware of its responsibilities, in particular for any residual liabilities or risk associated with the outgoing employer’s membership.
* having taken actuarial advice, notify the employer and other relevant parties in writing of the payment required in respect of any deficit on cessation and pursue payment.

### Payment of an exit credit

* If the actuary determines that there is an excess of assets over the liabilities at the cessation date, the administering authority will act in accordance with the exit credit policy above. If payment is required, the administering authority will advise the exiting employer of the amount due to be repaid and seek to make payment within six months of the exit date. However, in order to meet the six month timeframe, the administering authority requires prompt notification of an employers’ exit and all data requested to be provided in a timely manner. The administering authority is unable to make any exit credit payment until it has received all data requested.
* At the time this policy was produced, the Fund has been informed by HMRC that exit credits are not subject to tax, however all exiting employers must seek their own advice on the tax and accounting treatment of any exit credit.

## 4.3 Responsibilities of the actuary

Following commission of a cessation valuation by the administering authority, the Fund actuary will:

* calculate the surplus or deficit attributable to the outgoing employer on an appropriate basis, taking into account the principles set out in this policy.
* provide actuarial advice to the administering authority on how any cessation deficit should be recovered, giving consideration to the circumstances of the employer and any information collected to date in respect to the cessation.
* where appropriate, advise on the implications of the employer leaving on the remaining Fund employers, including any residual effects to be considered as part of triennial valuations.

# 5. Related policies

The Fund’s approach to exiting employers is set out in the FSS, specifically “Section 7 – What happens when an employer leaves the Fund?”

The approach taken to set the actuarial assumptions for cessation valuations is set out in Appendix D of the FSS.