

Exit Credit Policy

June 2024



Introduction

This is the policy of the East Sussex Pension Fund (“the Fund”) as regards determining the amount of an exit credit payable to a ceasing employer in line with Regulation 64 of the Local Government Pension Scheme Regulations 2013 (“the Regulations”). Please note that these are guidelines only and the Fund will also consider any other factors that are relevant on a case-by-case basis. These considerations may result in a determination that would be different if these guidelines were rigorously adhered to. In all cases, the Fund will make clear its reasoning for any decision.

The policy has been prepared by the Administering Authority to the Fund, East Sussex County Council, in collaboration with the Fund’s actuary, Barnett Waddingham, and the Fund’s legal advisers, Eversheds Sutherland (International) LLP. This policy was approved on 19 June 2024, superseding the approved version from 30 November 2022 and 22 June 2020 and is effective immediately.

These procedures and policies apply to employers participating in the Fund.

General principles

The Fund will notify the exiting employer as well as the letting authority and/or other relevant scheme employers of its intention to make an exit credit determination under Regulation 64.

Subject to any risk sharing or other arrangements and factors discussed above, when determining the cessation funding position the Fund will generally make an assessment based on the value of contributions paid by the employer during its participation, the assets allocated when it joined the Fund and the respective investment returns earned on both. Any exit credit payable may be subject to a maximum of the actual employer contributions paid into the Fund as certified in the Fund’s rates and adjustments certificates, up to any cap arrangements that may have been in place and excluding any additional payments such as strain payments.

The Fund will also factor in any contributions due or monies owed to the Fund that remain unpaid by the employer at the cessation date.

The final decision will be made by the Pension Committee, in conjunction with advice from the Fund’s Actuary and/or legal advisors where necessary, in accordance with this policy and the Regulations.

The default approach to calculating the cessation position will be on a minimum-risk basis unless it can be shown that there is another employer in the Fund who will take on financial responsibility for the liabilities in the future. If the administering authority is satisfied that there is another employer willing to take on responsibility for the liabilities (or that there is some other form of guarantee in place) then the cessation position, at the discretion of the administering authority, may be calculated on the ongoing funding basis. Further details on the minimum risk basis can be found in the Fund’s Funding Strategy Statement.

The Fund accepts that there may be some situations that are bespoke in nature and do not fall into any of the categories above. In these situations, the Fund will discuss its approach to exercising its discretion in determining any exit credit payable with all affected parties.

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Where it is determined that an exit credit is payable, the Fund will advise the exiting employer of the amount due to be repaid and seek to make the payment 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 the timescales referred to below. In order to meet the six-month timeframe, the Fund requires prompt notification of an employer's exit and all data and relevant information as requested by the Fund. The Fund is unable to make any exit credit payment until it has received all data and information requested.

Under the Regulations, the administering authority has the discretion to take into account any other relevant factors in the calculation of any exit credit payable and they will seek legal advice where appropriate.

If the exiting employer or letting authority wishes to dispute the determination of the amount of an exit credit, this must be routed through the Pension Committee.

Factors the Pension Committee may consider when exercising their discretion in relation to exit credits, will include, but are not limited to, the following for each group of employer.

Admitted bodies

1 The date an admission agreement was entered into may affect the commercial terms in which any risk sharing arrangements and/or any other terms or mechanisms were put in place by the relevant parties. This will include those factors in relation to employer contribution rates and other pension costs and risks, which may then have contributed to any potential surplus or deficit in funding. As a result, the Pension Committee will consider the date at which an admission agreement was entered into and whether employers were admitted to the Fund before 14 May 2018. Prior to this date, the payment of an exit credit was not permitted under the Regulations. Where an admission was put in place prior to 14 May 2018, the Pension Committee will take into consideration any contractual or risk sharing arrangement as per point 3 below. Subject to point 2 below, where commercial terms agreed between the admission body and the letting authority do not reflect any contractual or risk sharing arrangements, the Pension Committee will consider all relevant factors of which it is aware in determining any entitlement to an exit credit payment. This will also apply to any pre-14 May 2018 admission which has been extended or 'rolled over' on the same terms that applied on joining the Fund.

2 An admission body must demonstrate that they have been exposed to underfunding risk (either in whole or part) during their participation in the Fund to be entitled to any exit credit payment. For example a pass-through arrangement as set out in the Funding Strategy Statement would not give rise to an entitlement on the basis that these admitted bodies would not have been asked to pay an exit payment had a deficit existed at the time of exit.

3 The Fund will make an exit credit payment in line with any contractual or risk sharing agreements which specifically covers the ownership of exit credits/cessation surpluses or if the admission body and letting authority have agreed any alternative approach (which is consistent with the Regulations and any other legal obligations). This information, which will include which party is responsible for which funding risk, must be presented to the Fund in a clear and unambiguous document with the agreement of both the admission body and the letting authority within one month of the admission body ceasing participation in the Fund.

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4 If there is any dispute from either party with regards interpretation of contractual or risk sharing agreements as outlined in 3, the Fund will withhold payment of the exit credit until such disputes are resolved.

5 Where a guarantor arrangement is in place, but no formal risk-sharing arrangement exists, the Fund will consider how the approach to setting contribution rates payable by the admission body during its participation in the Fund reflects which party is responsible for funding risks. This decision will inform the determination of the value of any exit credit payment.

6 If the admission agreement ends early, the Fund will consider the reason for the early termination, and whether that should have any relevance on the Fund's determination of the value of any exit credit payment. In these cases, the Fund will consider the differential between employers' contributions paid (including investment returns earned on these monies) and the size of any cessation surplus.

7 The decision of the Fund is final in interpreting how any arrangement described under 3, 5 and 6 applies to the value of an exit credit payment.

8 If an admitted body leaves on a minimum risk basis (because no guarantor is in place), then any exit credit will normally be paid in full to the employer.

Scheduled bodies and resolution bodies

1 Where a guarantor arrangement is in place, but no formal risk-sharing arrangement exists, the Fund will consider how the approach to setting contribution rates payable by the employer during its participation in the Fund reflects which party is responsible for funding risks. This decision will inform the determination of the value of any exit credit payment.

2 Where no formal guarantor or risk-sharing arrangement exists, the Fund will consider how the approach to setting contribution rates payable by the employer during its participation in the Fund reflects the extent to which it is responsible for funding risks. This decision will inform the determination of the value of any exit credit payment.

3 The decision of the Fund is final in interpreting how any arrangement described under 1 and 2 applies to the value of an exit credit payment.

4 If a scheduled body or resolution body becomes an exiting employer due to a re-organisation, merger or take-over, then no exit credit will be paid.

5 If a scheduled body or resolution body leaves on a minimum risk basis (because no guarantor is in place), then any exit credit will normally be paid in full to the employer.

Representations

In the case of an Admitted Body that is an exiting employer, any representations to be made by:

- the Admitted Body;
- any other body that has provided a guarantee in relation to the Admission Body's participation;
- the relevant letting authority,

(as appropriate) as part of the determination process, must be provided to the Fund as soon as reasonably practicable and in any event within 1 month of the Fund's notification of its intention to make a determination (or such longer period as the Fund may in its discretion may allow).

The administering authority does not need to enquire into the precise risk sharing arrangement adopted by an employer but it must be satisfied that the risk sharing arrangement has been in place before it will pay out an exit credit.

The level of risk that an employer has borne will be taken into account when determining the amount of any exit credit. It is the responsibility of the exiting employer to set out why the arrangements make payment of an exit credit appropriate.

Appeals

If a party involved in the exit credit process set out in this policy wishes to dispute the Fund's determination, this should be raised via the Pension Fund Committee. Officers can be contacted and asked to forward the details of the dispute.

Review of policy

This policy will be reviewed at least every three years following triennial valuations or following changes in the Regulations pertaining to employers leaving the Fund.

It should be noted that this statement is not exhaustive and individual circumstances may be taken into consideration where appropriate. Any queries should be directed to the Head of East Sussex Pension Fund in the first instance at pensions@eastsussex.gov.uk.