

## ABERDEEN CITY COUNCIL

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COMMITTEE	PENSIONS COMMITTEE
DATE	1 DECEMBER 2017
REPORT TITLE	REQUEST FOR ADMITTED BODY STATUS
REPORT NUMBER	PC/DEC17/ADBOD
DIRECTOR	HEAD OF FINANCE
REPORT AUTHOR	CLAIRE MULLEN

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### **1. PURPOSE OF REPORT:-**

- 1.1. To consider an application from Aberdeenshire Council to admit Aberdeenshire Sport and Culture Ltd (ACS Ltd) into the Local Government Pension Scheme administered by Aberdeen City Council.

### **2. RECOMMENDATION(S)**

- 2.1 It is recommended that the Committee:
- i. Agree to allow the employees transferring from Aberdeenshire Council to ACS Ltd to participate in the Local Government Pension Scheme administered by Aberdeen City Council.

### **3. BACKGROUND/MAIN ISSUES**

- 3.1 As the administering authority for the Pension Fund Aberdeen City Council is responsible for the prudent governance and management of the Pension Fund in the interest of all scheduled and admitted bodies.
- 3.1.1 As administering authority the Council must admit a body to the Pension Fund as an 'admitted body' under the Local Government Pension Scheme (Scotland) Regulations 2014, Schedule 2, Part 2, 1(d)(i), providing that the body complies with the regulations as detailed in Appendix I.
- 3.2 ACS Ltd request for admission
- 3.2.1 Subject to Committee approval on 23<sup>rd</sup> November 2017, Aberdeenshire Council plan to create a charitable trust from 1<sup>st</sup> April 2018 to provide sport and culture services within the Council. Around 700 staff will be transferred to the new body under TUPE arrangements.

- 3.2.2 A copy of the letter from Aberdeenshire Council seeking admission to the Fund with effect from 1<sup>st</sup> April 2018 is attached at Appendix III. However it should be noted that the application for admission will only proceed if the charitable trust is approved by the Aberdeenshire Council Committee at their meeting on 23<sup>rd</sup> November 2017.
- 3.2.3 Admission to the Scheme by ACS Ltd will be on an open basis allowing admission to the Scheme for all employees of the new body.
- 3.2.4 Aberdeenshire Council, as the originating employer, will act as guarantor for the admission. This is in accordance with the Local Government Pension Scheme (Scotland) Regulations 2014, Regulation 62(3) – see Appendix II.
- 3.2.5 The transfer will be carried out on a fully funded basis meaning no deficit for past service will be transferred to the new employer.

### 3.3 Actuarial evaluation and admission agreement

- 3.3.1 Details of those employees transferring have been supplied to the scheme actuary who has provided an admission summary paper and full risk report. This is in accordance with Scheme regulation requirements.
- 3.3.2 The employer contribution rate and funding level will be subject to review at the tri-ennial actuarial valuation.
- 3.3.3 An external legal advisor will be appointed to draft the admission agreement.

## 4. **FINANCIAL IMPLICATIONS**

- 4.1 There is no financial impact for the Pension Fund with regard to granting admitted body status to ACS Ltd; all costs of admission will be met by Aberdeenshire Council as they will wholly own the charitable trust.

## 5. **LEGAL IMPLICATIONS**

- 5.1 There are no direct legal implications arising from the recommendations of this report.

## 6. **MANAGEMENT OF RISK**

- 6.1 There are no direct risk implications arising from the recommendations in this report.

## 7. **IMPACT SECTION**

- 7.1 There is no direct impact arising from the recommendations in this report.

## **8. BACKGROUND PAPERS**

8.1 None

## **9. APPENDICES**

9.1 **Appendix I**, LGPS (Scotland) Regulations 2014, Schedule 2, Part 2  
**Appendix II**, LGPS (Scotland) Regulations 2014, Regulation 62  
**Appendix III**, Letter from Aberdeenshire Council

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**SCHEDULE 2**

**Scheme employers**

**PART 2**

1. The following bodies are admission bodies with whom an administering authority may make an admission agreement—
  - (a) a body which provides a public service in the United Kingdom which operates otherwise than for the purposes of gain and has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest (whether because the operations of the body are dependent on the operations of the Scheme employer or otherwise);
  - (b) a body, to the funds of which a Scheme employer contributes;
  - (c) a body representative of—
    - (i) any Scheme employers, or
    - (ii) local authorities or officers of local authorities;
  - (d) a body that is providing or will provide a service or assets in connection with the exercise of a function of a Scheme employer as a result of—
    - (i) the transfer of the service or assets by means of a contract or other arrangement, or
    - (ii) any provision in any enactment
  - (e) a body which provides a public service in the United Kingdom and is approved in writing by the Scottish Ministers for the purpose of admission to the Scheme.
2. An approval under paragraph 1(e) may be subject to such conditions as the Scottish Ministers think fit and the Scottish Ministers may withdraw an approval at any time if such conditions are not met.
3. The Scheme employer, if it is not also the administering authority, must be a party to the admission agreement with a body falling within the description in paragraph 1(d).
4. In the case of an admission body falling within the description in paragraph 1(b), where at the date of the admission agreement the contributions paid to the body by one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources, the Scheme employer paying contributions (or, if more than one pays contributions, all of them) must guarantee the liability of the body to pay all amounts due from it under these Regulations.
5. If the admission body is exercising the functions of the Scheme employer in connection with more than one contract or other arrangement under paragraph 1(d)(i), the administering authority and the admission body shall enter into a separate admission agreement in respect of each contract or arrangement.

6. An admission agreement must require the admission body to carry out, to the satisfaction of the administering authority, and to the satisfaction of the Scheme employer in the case of a body falling within paragraph 1(d)(i), an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of service or assets by reason of insolvency, winding up, or liquidation of the admission body.
7. Notwithstanding paragraph 6, and subject to paragraph 8, the admission agreement must further provide that where the level of risk identified by the assessment is such as to require it, the admission body shall enter into an indemnity or bond in a form approved by the administering authority with—
  - (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000(12) to accept deposits or to effect and carry out contracts of general insurance;
  - (b) a firm in an EEA state of the kind mentioned in paragraph 5(b) and (d) of Schedule 3 to that Act(13), which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule(14)) to accept deposits or to effect and carry out contracts of general insurance; or
  - (c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.
8. Where, for any reason, it is not desirable for an admission body to enter into an indemnity or bond, the admission agreement must provide that the admission body secures a guarantee in a form satisfactory to the administering authority from—
  - (a) a person who funds the admission body in whole or in part;
  - (b) in the case of an admission body falling within the description in paragraph 1(d), the Scheme employer referred to in that paragraph;
  - (c) a person who—
    - (i) owns, or
    - (ii) controls the exercise of the functions of, the admission body; or
  - (d) the Scottish Ministers in the case of an admission body—
    - (i) which is established by or under any enactment, and
    - (ii) where that enactment enables the Scottish Ministers to make financial provision for that admission body.
9. An admission agreement must include—
  - (a) provision for it to terminate if the admission body ceases to be such a body;
  - (b) a requirement that the admission body notify the administering authority of any matter which may affect its participation in the Scheme;

(c) a requirement that the admission body notify the administering authority of any actual or proposed change in its status, including a take-over, reconstruction or amalgamation, insolvency, winding up, receivership or liquidation and a material change to the body's business or constitution;

(d) a right for the administering authority to terminate the agreement in the event of—

(i) the insolvency, winding up or liquidation of the admission body,

(ii) a material breach by the admission body of any of its obligations under the admission agreement or these Regulations which has not been remedied within a reasonable time,

(iii) a failure by the admission body to pay any sums due to the fund within a reasonable period after receipt of a notice from the administering authority requiring it to do so.

**10.** An admission agreement must include a requirement that the admission body will not do anything to prejudice the status of the Scheme as a registered scheme.

**11.** When an administering authority makes an admission agreement it must make a copy of the agreement available for public inspection at its offices and must promptly inform the Scottish Ministers of—

(a) the date the agreement takes effect;

(b) the admission body's name; and

(c) the name of any Scheme employer that is party to the agreement.

**12.** Where an admission body is such a body by virtue of paragraph 1(d), an admission agreement must include—

(a) a requirement that only employees of the body who are employed in connection with the provision of the service or assets referred to in that sub-paragraph may be members of the Scheme;

(b) details of the contract, other arrangement or statutory provision by which the body met the requirements of that sub-paragraph;

(c) a provision whereby the Scheme employer referred to in that sub-paragraph may set off against any payments due to the body, an amount equal to any overdue employer and employee contributions and other payments (including interest) due from the body under these Regulations;

(d) a provision requiring the admission body to keep under assessment, to the satisfaction of the bodies mentioned in paragraph 6, the level of risk arising as a result of the matters mentioned in that paragraph;

(e) a provision requiring copies of notifications due to the administering authority under paragraph 9(b) or (c) to be given to the Scheme employer referred to in that sub-paragraph; and

(f) a provision requiring the Scheme employer referred to in that sub-paragraph to make a copy of the admission agreement available for public inspection at its offices.

**13.** Where an admission body of the description in paragraph 1(d) undertakes to meet the requirements of these Regulations, the appropriate administering authority must admit to the Scheme the eligible employees of that body.

### Special circumstances where revised actuarial valuations and certificates must be obtained

62.—(1) If a person—

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

(b) was a Scheme employer, but no longer has an active member contributing to a fund,

that person becomes “an exiting employer” for the purposes of this regulation and is liable to pay an exit payment.

(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 in respect of those benefits.

(3) 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 to 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.

(4) 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.

(5) When an exiting employer has paid an exit payment into the appropriate fund, 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.

(6) Paragraph (7) 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(8) (actuarial valuations of pension funds: assumptions).

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

(8) For the purposes of this regulation—

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

“exit payment” means the assets 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);

“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).