

## **Students' Union Superannuation Scheme ("SUSS"): note for employers on Section 75 debt exits**

### **What is this note about?**

This note is for students' unions (a "Union" or "Unions") which participate in SUSS, the pension scheme which was formerly used for Union employees to build up pension scheme benefits.

It is possible for a Union to make a one-off payment to settle in full its liability to SUSS and, by doing so, be released from any further obligation to SUSS. However, please note there is a window within the year (usually between 1 July and 30 September) where Unions are unable to exit SUSS using the process described in this paper as a result of SUSS being re-opened temporarily to allow a build up of nominal pension benefits. This is to enable any Union wishing to incorporate to do so without triggering an immediate, and potentially significant, liability to SUSS..

This note explains in headline terms what the process involves for a Union that wants to explore this option. It is designed to help Unions develop their thinking about whether this is a feasible option for them. When considering any significant action or decision, it is essential for Unions to seek and rely on appropriate legal advice throughout the process.

This note is based on the law and the terms of the SUSS Rules at the time of writing. It may be subject to change if there are changes to the Rules or legal/regulatory developments which impact SUSS. It is intended to be a summary only and does not cover all the detailed law and actuarial guidance which apply when an employer exits a defined benefits scheme like SUSS.

### **Background – What is SUSS?**

SUSS is a multi-employer, non-associated pension scheme. Multi-employer means that multiple Unions participate in SUSS. Non-associated means that the Unions are not connected to each other.

SUSS closed to the build-up of pension benefits in 2011. Whilst SUSS is no longer open to the build-up of benefits, Unions continue to participate in SUSS.

Unions have ongoing funding obligations (i.e. they must keep paying any contributions due) because SUSS is a defined benefit ("DB") pension scheme. That means SUSS pays out a guaranteed level of pension benefits to Union employees and former employees who were members of SUSS (and their dependants).

Every three years SUSS's assets and liabilities are assessed by an actuary to see whether the scheme has enough money to pay the benefits to members (a "funding valuation").

The funding obligations continue to apply to the Unions, because SUSS, like many DB pension schemes, is not fully funded. In other words, there isn't currently enough money in SUSS to pay members' benefits in full. Therefore, a recovery plan has been put in place requiring Unions to pay enough contributions so that over time the deficit will be removed. Without the Unions' continued payment of contributions to SUSS, the full benefits which members are entitled to could not be met.

### **Background – What is a Section 75 debt exit?**

Under the Pensions Act 1995, an employer of a DB scheme may incur a "Section 75 debt" when it ceases to participate in a scheme, or when a scheme is wound up. This debt represents the employer's share of the scheme's deficit i.e. the difference between the assets and liabilities.

The law is designed to protect pension scheme members by ensuring that an employer leaving the scheme does not leave behind unfunded pension liabilities.

One way a Section 75 debt can be triggered is when a participating employer "ceases to employ" active members in the scheme while the scheme remains ongoing. As we will go on to explain, there is also a legal mechanism for triggering a Section 75 debt in a frozen scheme (like SUSS) which has closed to the build-up of further accrual.

The amount of the Section 75 debt is calculated by the SUSS Actuary based on the deficit in the scheme at the time the Union exits. The deficit is calculated on what is known as the "buy-out basis", which is broadly the estimated cost of securing members' benefits (attributable to employment with the exiting Union) with an insurance company. This often results in a higher deficit figure compared to other methods of calculation (e.g., a funding valuation).

When calculating the buy-out deficit, the calculation also makes allowance for the exiting Union's share of any liabilities in SUSS that aren't directly attributable to the remaining Unions. These are known as 'Orphan' liabilities and generally relate to Unions who have already left SUSS.

In summary, the aim is to ensure that SUSS is sufficiently funded and that no deficit which is currently the responsibility of the departing Union is left to the remaining Unions.

## What are the benefits/challenges for a Union paying a Section 75 debt and exiting SUSS?

Please see below a high-level summary of the current benefits/challenges for a Union paying the Section 75 debt and exiting SUSS. We would advise Unions to ensure that they have carefully considered this option ahead of engaging with the Trustees and consider taking their own legal and actuarial advice.

### Benefits

- After exit the Union would have no further obligation to SUSS
- All risk of needing to provide additional contributions in future (for example if investment returns are less than expected) is removed for the Union
- In cash terms, Section 75 debts are lower at the time of writing than they would have been in recent years because of higher interest rates.

### Challenges

- The Section 75 debt is greater than we would expect the cost to be of funding SUSS in the long-term because of the prudence in insurer pricing.
- The debt also assumes the Union was buying-out on its own, so the economies of scale from being in SUSS are lost and a higher debt is due as a result.
- The exiting Union needs to pay for the expenses associated with the exit – both of SUSS’s advisers and their own.

## What is the Section 75 debt exit process?

If a Union wishes to exit SUSS and pay its Section 75 debt, the SUSS rules and the relevant legislation require a Union to give written notice to the Trustees of its intention to cease participating in SUSS.

The standard notice period is three months, although the Trustees may agree to a shorter period if requested.

The notice must meet specific legal requirements so it is formalised in a Deed of Cessation to ensure it does so. This Deed documents key aspects of the Union’s cessation in a single document, providing clarity and certainty for all involved parties. The Trustees and their legal advisers have produced a draft Deed of Cessation which they have used for previous Union exits. Unions have an opportunity to review the terms of the Deed before it is signed.

Once the Deed has been executed (and subject to the expiry of the agreed notice period), the remaining work is for the SUSS Actuary to calculate the debt; in terms of the notice period, one possible consideration here might be whether it is easier to determine the asset value for the purposes of the Section 75 debt calculation on a particular date, e.g. on a month-end and, if so, to align the expiry of the notice with such a date.

### **What is the proposed basis for calculating the Section 75 debt?**

The method and assumptions used for calculating the Section 75 debt are determined by the SUSS Actuary, which is based on Barnett Waddingham's experience of the cost of securing pension benefits in the insurance market. This may change over time in line with market conditions and experience.

### **What is the scale of the project?**

A Section 75 debt project is a large, costly, and time-consuming endeavour that typically takes around three months or more to complete, covering stages from initial planning to the final debt payment and exit from SUSS. It requires a primary point of contact at the Union or university to coordinate with the IGG Scheme Secretarial team. Professional fees for the project are substantial, typically ranging from £50,000 to £75,000 (ex VAT), which are payable by the exiting Union.

### **Can the Union change its mind once the Deed has been signed?**

The Deed of Cessation includes a clause allowing the Union to revoke its decision to cease participation up until a specified date which is included in the Deed. However, the Union would still be responsible for paying all adviser fees incurred up until the point of revocation. You may be interested to know that, to date, no Union has operated the revocation provisions.

### **Is the Section 75 debt estimate provided to the Union guaranteed for a period of time?**

The Section 75 debt estimate (which is provided before the end of the notice period) is only indicative and not guaranteed. Once the notice period ends, and if the notice is not revoked, the SUSS Actuary will certify the Section 75 debt, making it fixed and guaranteed. Until the debt is certified, it remains an estimate subject to change.

### **Once the Section 75 debt is paid; then would this be documented to confirm this has been paid and that there is no longer any liability for the Union?**

The Section 75 debt legislation provides that an employer is released from liability to a scheme upon payment of the Section 75 debt amount. However, we also include specific wording in the Deed stating that, once the Section 75 debt and any other owed amounts are settled (such as the PPF levy), the Union will have no further obligations to SUSS.

### **What are the signing requirements for the Data Sharing Agreement and Deed of Cessation?**

In addition to the Deed of Cessation mentioned above, Unions must also enter into a Data Sharing Agreement to comply with data protection law requirements. The Data Sharing Agreement is usually entered into at an early stage of the process. A summary of the signing requirements for the Data Sharing Agreement and Deed of Cessation:

[Data Sharing Agreement](#)

- Must be signed by the Trustees and the Union before any data is shared.
- Signing will be facilitated via DocuSign.
- Barnett Waddingham (the entity providing the data) must set up an account on Clarity for data provision.

#### Deed of Cessation

- Signing will be facilitated via DocuSign.
- Requires signatures from:
  - Two SUSS Trustees (2 witnesses needed).
    - Email addresses required for both the signatory and the witnesses.
  - Two Directors or authorised signatories (depending on the corporate structure) of exiting Union:
    - Email addresses required.
  - Two Directors of the NUS UK (as principal employer):
    - Email addresses required

#### **When are the final contributions required to be paid?**

If the Union stops participating on the agreed departure date, no further contributions will be required from that date onward. However, contributions for the month before leaving must be paid before the Union departs.

## **Key roles and responsibilities for the project:**

### Scheme Secretarial Team (IGG):

- Coordinate the overall process from start to finish using the Project Plan.
- Ensure all necessary documentation is completed and retained, such as the Deed of Cessation and the Data Sharing Agreement.
- Facilitate communication between the Trustees, Union and advisers (actuaries/legal adviser).

### Trustees:

- Approve the Section 75 debt exit process and terms.
- Sign the Deed of Cessation and Data Sharing Agreement via DocuSign.
- Ensure compliance with legal and regulatory requirements.

### Unions:

- Sign the Data Sharing Agreement and the Deed of Cessation.
- Settle the Section 75 debt, the adviser fees and any other amounts owing to SUSS.

### The Trustees' Legal Advisers:

- Advise the Trustees on the legal implications of the Section 75 debt exit.
- Draft and review the required legal documents (Deed of Cessation/Data Sharing Agreement).
- The Trustees' legal adviser cannot provide advice to the Union. Some Unions (but not all) choose to instruct their own legal advisers.

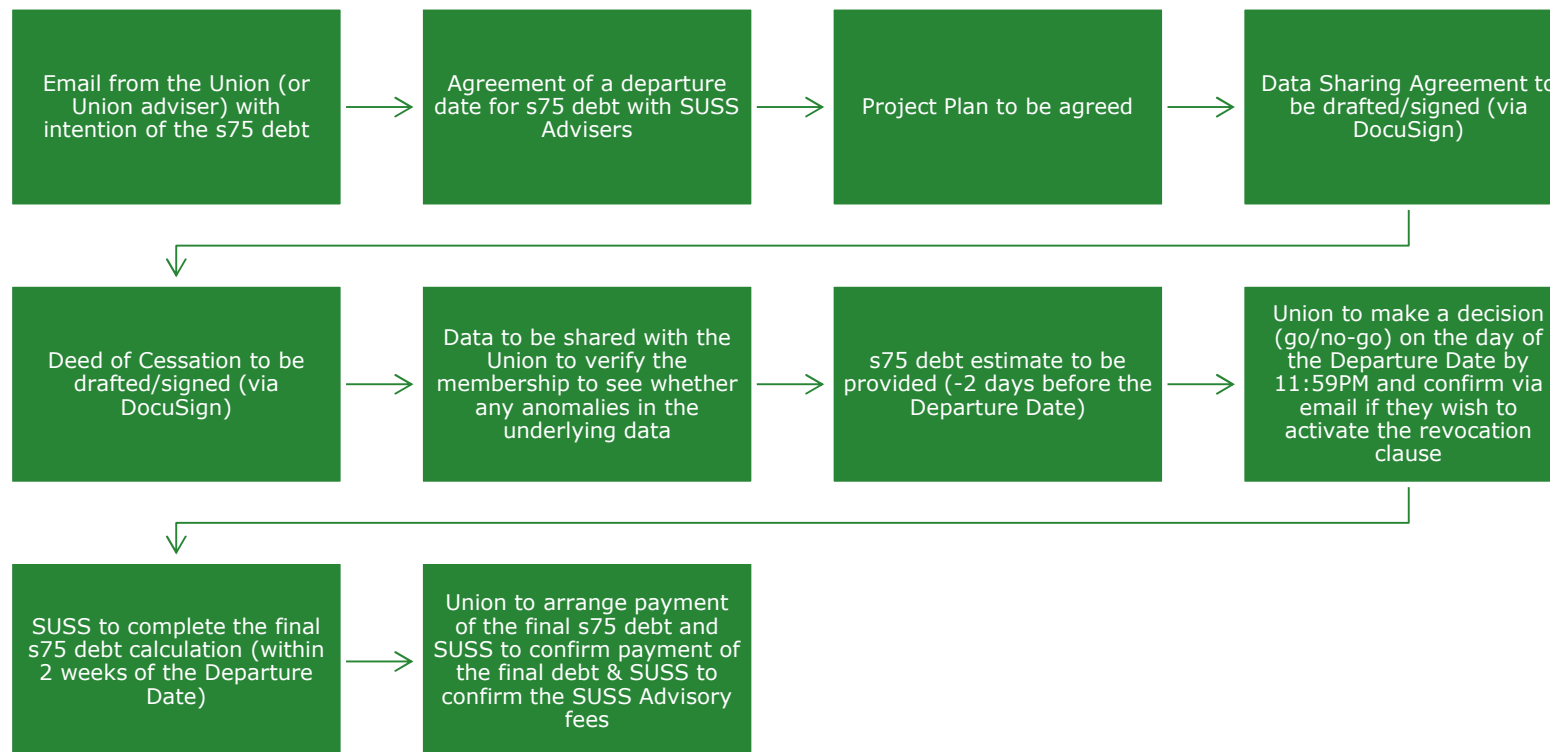
### Scheme Actuary (Barnett Waddingham):

- Calculates the Section 75 debt amount.
- Provides Section 75 debt estimates (as required).
- Provides actuarial certification as required.
- Updates the Pensions Regulator when the Union pays the Section 75 debt.

## Can you provide a summary of the Section 75 debt process?

The first step in the process involves the Union formally notifying SUSS (IGG) of its decision to proceed with the Section 75 (s75) debt process. Along with this notification, the Union must propose a departure date for the SUSS advisers and Trustees to review and consider. This departure date is crucial for determining the timing and specifics of the s75 debt calculation, which will be central to the subsequent steps in the process.

Once the Union has confirmed that it is happy to proceed with the Section 75 debt option then a project plan will be drafted and circulated for review by the exiting Union.



**What are the Regulatory Requirements when exiting SUSS?**

Once the Section 75 debt has been fully paid, there is a regulatory requirement for the Union to be removed as a Participating Employer on the Scheme Return. The Trustees are responsible for completing this requirement.

Once the Section 75 debt, expenses, Pension Protection Fund levy, any other amounts owed to SUSS and the necessary regulatory actions have been addressed, no further action is required.

**What are the next steps if a Students' Union would like to progress a Section 75 debt exit?**

Please contact the SUSS trustees for more information and to answer any additional questions you have on [SUSS@weareigg.com](mailto:SUSS@weareigg.com).



## Appendix, Frequently Asked Questions

### What is the impact on the remaining Unions?

Once a Union has paid its Section 75 debt (and any other amounts owing to SUSS), the exiting Union is legally discharged and therefore does not have any further obligations in relation to SUSS. The impact on the remaining Unions is that there is now a smaller group of remaining Unions that will be required to fund a smaller deficit.

### What is the funding impact position for SUSS if and when Unions pay the S75 debt and leave SUSS?

Upon leaving SUSS a Union has no further obligation to SUSS. The funds which have been paid into SUSS by the exiting Union are invested by the Trustees. As such the remaining Unions should benefit from an improved funding position on the funding basis which is used to determine the Unions' contributions, as exiting Unions pay a premium for exiting SUSS.

In summary, following the exit of a Union, the overall buy-out funding position of SUSS stays about the same and the funding position on the technical provisions basis, which is used to determine Unions' contributions, improves. However, the remaining Unions would be responsible for funding a greater share of any new deficit emerging after the exit as compared to the position before the exit. The Trustees consider the impact of Section 75 debts paid upon exit, to see whether any changes should be made to the investment strategy e.g. whether to derisk further from equities to bonds.

### How will the S75 debt be calculated?

If a Union chooses to exit SUSS, it will have no further liability to SUSS after it has paid its Section 75 debt. The Section 75 debt amount is calculated based on the shortfall between the portion of the SUSS assets attributable to the departing Union and an estimate of the amount that would be needed to secure the exiting Union's liabilities with an insurance company.

The calculation uses market conditions and asset values at the calculation date. The share of the SUSS liabilities attributable to each Union is based on the Trustees' employment history records plus an allowance for the orphan liabilities to be assigned to each Union in proportion to its share of the attributable liabilities. The actual Section 75 debt will be based on data, assumptions and market conditions at the time of the departure date and could differ materially from the estimate. Please note, this will be before any allowance is made for the expenses/costs incurred of carrying out the work, which would be payable in addition.

Once the debt has been triggered it must be paid in full and the amount is not subject to the agreement of the exiting Union. However, shortly before the exit date it is possible to obtain an estimate of the figure for the purposes of determining whether or not to proceed with exiting SUSS.

**Can each Union have access to the funding calculations with an explanation from the SUSS Actuary?**

Yes – this can be provided upon request at a cost to the Union, and further detail is provided when the Section 75 debt estimate is provided.

**How many Unions have to opt out before SUSS becomes no longer viable?**

Unions pay a premium for exiting SUSS, which means that each Section 75 debt paid is expected to improve SUSSs' funding position. Because the Section 75 debts are based on the estimated cost of securing SUSS's benefits with an insurance company, each exit moves SUSS closer to being fully funded on a buy-out basis. If the process continues then, at the point the last employer leaves SUSS, the Trustees could expect to have sufficient funds to secure SUSS's liabilities with an insurance company.

Fewer participating Unions means that each remaining Union is responsible for a greater share of SUSS's liabilities and funding shortfall (although the total shortfall in SUSS is decreasing). The Trustees continually monitor the financial covenant of those Unions, i.e. their ability and willingness to pay the contributions required, to ensure that SUSS's funding assumptions and investment strategy remain appropriate.

**If others opt out, what's the Trustees' position on the future of SUSS and would this then lead to some sort of buy-out?**

The Trustees have a long term ambition to secure SUSS's liabilities with an insurance company, so the more Unions that leave SUSS and pay their Section 75 debts the sooner that can be achieved. However, in the short term there is no expectation that SUSS will be in a position to move to buy out.

## Appendix, Draft Project Plan

A	B	C	D	E	F
	Task description	completed	Date by	Who owns	Notes
2	<b>Project agreement and future management</b>				
3	Drafting of outline plan		[1-2 weeks]	[Union Adviser/or IGG]	To be drafted when the Departure Date has been confirmed
4	Issuing the draft outline plan to all parties		[1-2 weeks]	[Union Adviser/or IGG]	To be issued once drafted
5	Provision of estimated fees from SUSS (including PPF levy)		[1-2 weeks]	SUSS (IGG)	To be provided once the SUSS Advisers have confirmed their fees
5	Appoint legal adviser		[1-2 weeks]	[Union]	If deemed required
7	Inform SUSS of Union intentions and request draft deed of notice and data sharing agreement		[1-2 weeks]	[Union Adviser/Union]	As soon as possible once the Departure Date confirmed
3	Seek agreement to the outlined plan by the Union		[1-2 weeks]	[Union Adviser/Union]	University agreement might be required (depends on the Union)
9	Initial legal advice on proposal and timings		[1-2 weeks]	SUSS (IGG)	Email to be sent to the SUSS Advisers on their view on a Departure Date
0	Agreement to the outline plan from all stakeholders		[1-2 weeks]	[Union Adviser/Union/IGG]	
1	Weekly/daily management of the plan		[1-2 weeks]	[Union Adviser/Union/IGG]	If required
2	<b>Cessation debt triggering and payment</b>				
3	1 Provide latest section 75 debt to the Union / University		[1-2 weeks]	SUSS (IGG)	To be provided based on the latest information available (currently 31/01/2024) - sent as part of the initial email
4	2 Draft data sharing agreement and share with Union		[1-2 weeks]	SUSS (IGG)	Information template can be shared following initial request for comment
5	3 Draft "Deed of Notice" and share with Union		[1-2 weeks]	SUSS (IGG)	Deed template can be shared following initial request for comment
6	4 Union/Union Adviser to review draft "Deed of Notice"		[1-2 weeks]	[Union Adviser/Union]	
7	5 Union to sign the deed of notice confirming that the Union wishes to cease participation in SUSS		[1-2 weeks]	[Union]	Via DocuSign - Gowling to arrange (NUS x2 Directors, SUSS Trustee x2 (including witness), Union x2)
8	6 Union legal adviser to review draft "Data sharing agreement" and Union to sign it		[1-2 weeks]	[Union Adviser/Union]	Via DocuSign - Gowling to arrange (SUSS Trustee x2 and Union x2)
9	7 SUSS to provide Union membership data to help verify the section 75 debt amounts quoted by SUSS		[when DSA signed]	SUSS (IGG)	
0	8 Union to verify the membership to see whether any anomalies in the underlying data		[within 1 week after transfer of data]	Union	
1	9 SUSS to provide an update on the estimated section 75 debt position as at [departure date - 2 days] and updated sensitivities for Union membership		[departure date -2 days]	SUSS (IGG)	
2	10 Go/no go decision needed by the Union / Union Adviser regarding the crystallisation of the section 75 debt at end of notice period		[departure date]	[Union Adviser/Union]	A call will be needed with the Union/Union Adviser
3	11 Written notice to SUSS from the Union that it wishes to exit on [Departure Date]		[departure date]	Union	Needs to be made before 12pm on [departure date]
4	12 SUSS complete final section 75 debt calculation for the Union		[departure date +2 weeks]	SUSS Actuary/SUSS (IGG)	
5	13 Union/Union adviser to review final section 75 debt calculation and liaise with Union / University		[departure date +4 weeks]	[Union Adviser/Union]	
6	14 Union to arrange payment of final debt		[departure date +2-4 weeks]	Union	
7	15 SUSS to confirm receipt of payment		[departure date +4 weeks]	SUSS (IGG)	

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