

Auto Enrolment: Local Guide for Leicestershire County Council Scheme Employers

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Introduction

As well as the contractual enrolment that takes place when a new employee starts work with one of our scheme employers, the government has in place an additional process of scheme entry, known as 'Auto Enrolment' (AE), or sometimes 'Workplace Reform'. Auto enrolment sets out a time frame under which employers become legally obliged to implement Auto Enrolment processes and enter certain eligible employees into a pension scheme at certain times and at least every three years.

[The Pensions Regulator website](#) contains the guidance which you will need to assess your work force.

Employers in existence **before** 1st October 2017 were set a 'Staging Date' when auto enrolment duties commenced. New employers **after this date** are obliged to put auto enrolment duties in place from day one of becoming a new employer, which is known as their 'duties start date'.

This involves:

- Assessing the workforce on that date
- Re-assessing the workforce on every third anniversary of that date (or a date within 3 months of this date if the employer selects).
- On-going assessment of that workforce in case employees who were not eligible for auto enrolment on either of these occasions should later become eligible for auto enrolment.

Main points

Auto Enrolment: What is an eligible jobholder

An eligible jobholder is defined as an employee or worker who is not already enrolled in an eligible pension scheme and who meets the following criteria:

1. is aged 22 or over
2. is under State Pension age
3. earns more than £10,000 (this could be subject to change each year)
4. works in the UK

Postponement

Postponement relates to employees who initially have a contract for less than 3 months. In these cases, the three-month postponement will run from either the first day of employment or the first day they become an eligible jobholder. If employers wish to postpone, they must issue 'Letter P' or arrange for the message regarding the postponement decision to be incorporated perhaps on timesheets to avoid letters being sent each time work is offered.

Important exceptions you need to be aware of and consider carefully

Employers are not required to automatically enrol or re-enrol eligible jobholders:

- a) who had opted out of the Local Government Pension Scheme (LGPS) less than 12 months prior to what would have been the eligible jobholder's enrolment or re-enrolment date in relation to the contract
- b) or where notice to terminate employment has been given before the end of the period of 6 weeks beginning with what would have been the eligible jobholder's enrolment or re-enrolment date in relation to the contract
- c) or where the employer has reasonable grounds to believe the eligible jobholder, on what would have been the eligible jobholder's enrolment or re-enrolment date in relation to the contract, holds Primary Protection, Enhanced Protection, Fixed Protection 2012, Fixed Protection 2014, or Individual Protection 2014 under the Finance Acts 2004, 2011, 2013 or 2014 and from 6 March 2017, Fixed Protection 2016 and Individual Protection 2016 under the Finance Act 2016

Although in each of these cases the employer can nevertheless choose to automatically enrol or re-enrol the *eligible jobholder* into the LGPS.

The protections mentioned in (c) above are protections in respect of the lifetime allowance tax charge. The lifetime allowance is the maximum amount of pension savings that an individual can build up in registered pension schemes which benefit from favourable tax treatment.

Compliance

The Pensions Regulator is responsible for ensuring that employers are complying with their new auto-enrolment duties. Employers that do not comply with the new duties could be liable for hefty financial penalties.

Process

You need to consider the following:

1. Can you establish from payroll/HR which employees fall into which category at three yearly intervals?
2. Can you ensure you will be able to monitor new employees and possible changes of status i.e., non eligible jobholder to eligible jobholder (e.g. someone turns 22 years old)?

What is the Scheme Reference Number?

The Pension Scheme Tax Reference number or PSTR number is 00328856RQ. The Pension Scheme Registry number is 10079136.

To find out your Employer Reference number – please contact the Leicestershire County Council Pensions Team and ask for your ‘Altair employer number’.

Opting out

Eligible jobholders who have been automatically enrolled into a pension scheme can choose to opt out of the scheme, and for Local Government Pension Scheme members, if this is within 3 months of paying into the scheme they will be treated as never joining and be able to receive a refund of their contributions. If they opt out beyond 3 months, then they may still be eligible for a refund, however this will be paid from the Pension Section.

An eligible jobholder will **not** be able to opt out in advance and any request for a form to opt out of the scheme must come through the pension section.

An employer is unable to provide the form for an employee to opt out.

The ability to opt out of the scheme will still exist, however members will either have to contact the pension section directly or go to [the pensions self-service website](#).

This will need to be communicated to them when you issue the appropriate letters/contracts etc.

Where members have opted out, employers will be required to automatically re-enrol eligible jobholders on the third anniversary and then every three years thereafter as long as they remain eligible.

The opt-out form which the member needs to complete must be obtained from the Pension Section, however completion and return will be directly to the employer. Within the record keeping guidelines the requirement to keep the opting out form is placed upon the employer. However, it is suggested that you do send a copy of the members opt out form to the Pensions Section too.

This is for three reasons:

1. Future queries on scheme membership are most likely to be directed to the Pension Section from former staff.
2. Experience has shown that in the past these types of queries can be made long after the statutory deadlines to keep such forms.
3. The Pensions Section will be required to keep an electronic record of optants out and will be able to scan the form to this record.

Auto enrolment letters

Templates of all of the letters that you will be required to amend and send are listed below. I should add that this is suggested text and the templates are colour coded to help you. The text in **blue** though **MUST** be included in your correspondence should you elect to create your own letters. If you do use the templates, you will need to tailor the text in **red** to suit your organisation.

- **Letter B** – To be sent to eligible jobholders who are being automatically enrolled. This letter is also suitable for re-enrolment purposes.
- **Letter C** – To be sent to non-eligible jobholders and entitled workers who are entitled to join the LGPS but are not automatically enrolled
- **Letter D** – To be sent to non-members who become a non-eligible jobholder or an entitled worker for the first time
- **Letter E** – To be sent to employees who opt to join the LGPS under auto-enrolment duties
- **Letter F** – To be sent to all employees who are brought into the LGPS contractually
- **Letter G** – To be sent to all employees who are brought into the scheme when a contract is extended beyond 3 months
- **Letter L** – to be sent to employees who opt to join the LGPS during the postponement or transitional delay periods
- **Letter P** – To be sent to employees with a contract for less than 3 months telling them you are postponing auto enrolment

(Please note there is no letter A – This was used to send to employees who are already members of the LGPS. However thankfully the need to write to your existing LGPS members was removed in November 2015)

To assist in the decision-making process, we have also devised several flowcharts. These can be found in the Flow Chart Suite document.

- Flowchart 1 – Procedure for all workers at Staging date
- Flowchart 1a – Procedure for workers who are members on the staging date who subsequently opt out of the LGPS
- Flowchart 2 – Procedure if you apply the Transitional Delay Period NOT NEEDED AFTER OCTOBER 2017
- Flowchart 3 – Procedure for workers at the staging date with a contract for less than 3 months
- Flowchart 4 – Procedure for new workers after the staging date with a contract for more than 3 months
- Flowchart 5 – Procedure for new workers after the staging date with a contract for less than 3 months
- Flowchart 6 – Procedure where a contract is extended to 3 months or more.

Contractual enrolment

Of course, you will already be used to the Local Government Pension Scheme (LGPS) rules, which means that you contractually enrol the majority of new starters into the scheme anyway. So broadly speaking your new staff will fall into two categories those with a contract for 3 months or more and those with a contract of less than 3 months*

- For those with a contract of more than 3 months you will send Letter F. They join the LGPS from day one until such a time that they opt out.
- For those with a contract of less than 3 months send Letter P or alternative communication e.g. timesheet. These employees are not entered into LGPS until they elect to in writing.

If it then subsequently transpires that for those with a contract for less than 3 months their contract is extended for longer. You will need to contractually enrol them into the LGPS and issue Letter G.

** However, there are some employers who may employ staff on open ended or zero hours contracts. There are two courses of action open to employers here:*

1. *Is to deem these contracts to be in essence long term contracts and therefore greater than 3 months – if this approach is taken then employees should be brought into the pension scheme.*
2. *If it is deemed that each offer of work is a separate contract and so less than 3 months then these staff won't be brought into the scheme but must be given the opportunity to join if they so wish, as well as given the notification that auto-enrolment will be postponed until 3 months service is achieved. This would need to be done each time work is offered, but again this could be incorporated into a timesheet for example. An example of wording to be included on a timesheet is also attached.*

Contractual enrolment is a separate process to Auto Enrolment. AE is just an additional layer of pension administration and is subject to eligibility criteria such as age or pay. **These criteria do not apply when assessing your brand new starters for the LGPS** when they commence employment with you or choose to join the LGPS having previously opted out.

In the case of new eligible starters, they should be given a letter detailing scheme details and how to obtain an opt-out form. Leicestershire Pension Fund have devised a suite of letters to take you through all aspects of contractual or auto enrolment. Therefore 'Letter F' is the letter that you should be sending out to your eligible new non-teaching employees along with the Membership form when they start employment with you and are contractually enrolled.

Important: auto and re-enrolment rules are not to be confused with the contractual right to join the Local Government Pension Scheme, which is not affected by age or pay in any way.

Additional Updates

Important information for employers who used Transitional Delay (TD)

Update June 2017

Clarification has recently been received from the Department for Work and Pensions (DWP) and The Pensions Regulator (TPR) that a further exception is to be applied for members at automatic enrolment date (but not at re-enrolment). This also therefore applies when transitional delay has been adopted:

“that where an eligible jobholder opts out more than 12 months before their automatic enrolment date, the employer *cannot* automatically enrol the individual at the automatic enrolment date”

An employer bulletin was issued in July 2017 addressing this new issue.

The Local Government Pensions Committee (LGPC) Secretariat has queried this with The Pensions Regulator and DWP as it appears to go against the spirit of automatic enrolment and produces a number of counterintuitive impacts. For example, a person who opted out of a scheme more than 12 months ago (potentially many years ago) could not be automatically enrolled on their automatic enrolment date, whereas a person who opted out less than 12 months before their automatic enrolment could be automatically enrolled, but at the employer's discretion.

Nevertheless, DWP have confirmed that this is the policy position and TPR's guidance on this matter should be followed. Such individuals must still be brought into the LGPS at their automatic re-enrolment date if they are an eligible jobholder at that time.

Update November 2017

The end of the ‘transitional delay period’ has highlighted a further issue around this area upon which the Local Government Pensions Committee (LGPC) of the Local Government Association (LGA) had been seeking clarification. This has now been received and the following information distributed.

Employers should be aware that The Pension Regulator's (TPR) Guidance on TD states that where an individual to whom TD was applied is not an eligible jobholder on 1st October 2017 the employer must keep assessing the worker each pay reference as usual. If at any point after 1st October 2017 the eligible jobholder criteria are met, unless one of the allowable exceptions apply*, the individual must be automatically enrolled with effect from 1st October 2017 i.e. active membership must be backdated to start from 1st October 2017 irrespective of the date the employee first meets the eligible jobholder criteria after 1st October 2017. Obviously, this could have consequences if employers are required to backdate contributions for several years. LGA have been seeking clarification from DWP on this unusually sounding point of practice.

LGA have now received confirmation from DWP that they agree with TPR's guidance which, in their view, is consistent with the requirements of the Pensions Act 2008. In their view, the PA2008 requires this approach because where an eligible jobholder has been

subject to transitional delay the start date for active membership is the day after the end of transitional delay (i.e. 1st October 2017).

Whilst this is simple enough if the individual is still an eligible jobholder on 1st October 2017 as they would be brought into the scheme at that point (unless one of the exceptions apply), it becomes more complex if the individual is no longer an eligible jobholder on 1st October 2017. DWP's view is that the start date for active membership remains 1st October 2017, but there is no requirement for them to be brought into the scheme until they become an eligible jobholder again. If and when they do subsequently become an eligible jobholder again, the start date for active membership will remain 1st October 2017 and this will mean that their membership should be backdated to 1st October 2017.

DWP have stated that, in light of the issues raised, they will review the treatment of these individuals. However, LGA do not expect that DWP review will fundamentally alter the situation outlined here and are therefore advise funds and employers to adhere to the content of TPR's guidance, particularly paragraphs 73 to 78 of the TD guidance, in the event of a case arising.

*It is important to note that the exception that prevents employers automatically enrolling those who opted out of the LGPS more than 12 months before 2nd October 2017 (as discussed further in last month's bulletin) will continue to apply meaning that employers will only need to backdate membership of the LGPS in a minority of cases where:

- a) transitional delay applied to the individual,
- b) the individual was not an eligible jobholder on 1st October 2017,
- c) the individual subsequently became an eligible jobholder, and
- d) the individual had not previously opted out of the LGPS more than 12 months before their automatic enrolment date.

In relation to backdating and the obvious problems that will arise around the issue of arrears, TPR guidance is straightforward enough if slightly unhelpful. The Guide simply states that the employer "must make arrangement so that the member becomes an active member...with effect from 1st October 2017. Accrual in the scheme with defined benefits must start from 1st October 2017".

Teacher's Pension Scheme

For any Employers who have staff who are employed in posts which are eligible for Teachers Pension Scheme (TPS) membership.

There are a couple of situations which may apply, and they are as a result of a decision made by the Teachers Pensions Agency.

1. Where a teacher has a full-time contract and a part time contract The Department for Education (DfE) is proposing that the part time contract is not covered by the TPS. This would mean that the teacher would be eligible for the LGPS in respect of the part time contract.

Should the teacher subsequently leave their full-time post then they would then be moved into the Teacher's Pension Scheme for their part time post.

2. Teachers under normal pension age who retired on the grounds of ill-health prior to 1st April 1997 are permitted to undertake a degree of teaching work without losing their entitlement to their existing pension benefits. They are not able to rejoin the TPS in respect of that work until they attain normal pension age. These teachers would have to be enrolled in the LGPS until they reach normal pension age.

It is likely to be very difficult for employers to administer both groups of teachers, particularly where teachers have different employers and there is concern that this could lead to teachers being placed in the wrong scheme. The DfE has now confirmed that they will not be allowing the above-mentioned employments membership of the TPS.

Author: Leicestershire County Council Pensions Manager 2012.

- i. Updated November 2015
- ii. Updated January 2017
- iii. Updated June 2017
- iv. Updated October 2017
- v. Updated November 2017
- vi. Updated March 2018
- vii. Updated March 2019
- viii. Updated January 2022