

## **STAFF PENSIONS**

1. The Pensions Act 2008 (“the 2008 Act”) requires all local councils to enrol “eligible jobholders” (see paragraph 5) automatically into a qualifying pension scheme (“a qualifying scheme”) (see paragraph 4). The new pension arrangements are being implemented in stages, with largest employers enrolled first. Staging started in 2012 and all employers will be enrolled by April 2017, subject to some exceptions (see paragraph 14). The staged implementation has now reached smaller employers including many local councils<sup>1</sup> (see paragraph 11). The staging dates are triggered by employers’ PAYE schemes (see paragraph 12).
2. If local councils are not yet required to provide a pension under the 2008 Act, they are not under any statutory duty to contribute to their workers’ pension schemes. But if such local councils have five or more eligible employees, they must offer access to a non-contributory pension scheme to their workers in accordance with the Welfare Reform and Pensions Act 1999. Local councils can choose to contribute voluntarily to a qualifying scheme such as the Local Government Pension Scheme (“LGPS”) (see paragraph 18).
3. The Department for Communities and Local Government’s view (with which NALC agrees) is that the duty automatically to enrol eligible jobholders into a qualifying scheme applies to local councils and that separate regulations were not needed for councils to comply with the duty. Automatic enrolment allows councils to have a more affordable pension scheme than the LGPS.

### **Qualifying scheme**

4. A qualifying scheme satisfies the qualifying criteria in s.16 of the 2008 Act. The criteria will depend on the type of pension scheme - whether it is a defined contribution scheme, a defined benefit scheme or a ‘hybrid’ scheme (a combined defined contribution/ defined benefit scheme). For more information see

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<sup>1</sup> In this LTN “local council” means a parish council or in Wales, a community council.

<http://www.thepensionsregulator.gov.uk/docs/pensions-reform-pension-schemes-v4.pdf>

### **Eligible jobholder**

5. An eligible jobholder is aged between 22 and state pension age and currently has earnings above the trigger amount of £10,000 (s.3 of the 2008 Act).
6. Eligible jobholders are required to contribute to the scheme. They can voluntarily leave the qualifying scheme, but can re-join.

### **Non-eligible jobholders and entitled workers**

7. Under sections 7 and 9 of the 2008 Act employers also have obligations to:
  - “non-eligible jobholders” - workers who are not eligible for automatic enrolment but who can choose to opt into a qualifying scheme and
  - “entitled workers”, workers who are entitled to join a non-contributory pension scheme
8. Non-eligible jobholders are workers who are aged 16 - 74 with qualifying earnings currently less than £10,000 but greater than £5824. They can require an employer to enrol them in a qualifying scheme with effect from the enrolment date (see paragraph 12). Employees aged between 16 and 21, or between state pension age and 74 with earnings currently above £10,000 can similarly opt in.
9. Entitled workers are workers who are aged 16 - 74 and currently earn less than £5824. They can require the employer to arrange for them to join a pension scheme. The scheme does not have to be a qualifying scheme and the employer does not have to contribute to it.
10. All earnings figures in this LTN are based on the year 2016/2017. The government may decide to change these figures each year.

### **Staged introduction**

11. The Employers' Duties (Implementation) Regulations 2010/4 (“the 2010 Regulations”) as amended by the Employers' Duties (Implementation) (Amendment) Regulations 2012/1813 set out the period in which automatic enrolment will take place. Automatic

enrolment for employers with a PAYE scheme size of less than 30 began on 1 June 2015 and will end by 1 April 2017, subject to a small number of exceptions (see paragraph 14). The Pensions Regulator writes to employers 12 months before their staging date.

12. The tables below are from the 2010 Regulations. They set out the dates where automatic enrolment has already been introduced (Table 1) and the dates where automatic enrolment has yet to be introduced (Table 2).

**Table 1.**

<b><i>Employer (by PAYE scheme size or other description)</i></b>	<b><i>Staging date</i></b>
90-159	1st May 2014
62-89	1st July 2014
61	1st August 2014
60	1st October 2014
59	1st November 2014
58	1st January 2015
54-57	1st March 2015
50-53	1st April 2015
Less than 30 with the last 2 characters in their PAYE reference numbers 92, A1-A9, B1-B9, AA-AZ, BA-BW, M1-M9, MA-MZ, Z1-Z9, ZA-ZZ, 0A-0Z, 1A-1Z or 2A-2Z	1st June 2015
Less than 30 with the last 2 characters in their PAYE reference numbers BX	1st July 2015
40 - 49	1st August 2015
Less than 30 with the last 2 characters in their PAYE reference numbers BY	1st September 2015
30-39	1st October 2015
Less than 30 with the last 2 characters in their PAYE reference numbers BZ	1st November 2015

**Table 1 contd/.**

<b>Employer (by PAYE scheme size or other description)</b>	<b>Staging date</b>
Less than 30 with the last 2 characters in their PAYE reference numbers 02-04, C1-C9, D1-D9, CA-CZ, or DA-DZ	1st January 2016
Less than 30 with the last 2 characters in their PAYE reference numbers 00, 05-07, E1-E9 or EA-EZ	1st February 2016
Less than 30 with the last 2 characters in their PAYE reference numbers 01, 08-11, F1-F9, G1-G9, FA-FZ or GA-GZ	1st March 2016
[Less than 30 with the last 2 characters in their PAYE reference numbers 12-16, 3A-3Z, H1-H9 or HA-HZ	1st April 2016
Less than 30 with the last 2 characters in their PAYE reference numbers I1-I9 or IA-IZ	1st May 2016

**Table 2**

<b>Employer (by PAYE scheme size or other description)</b>	<b>Staging date</b>
Less than 30 with the last 2 characters in their PAYE reference numbers 17-22, 4A-4Z, J1-J9 or JA-JZ	1st June 2016
Less than 30 with the last 2 characters in their PAYE reference numbers 23-29, 5A-5Z, K1-K9 or KA-KZ	1st July 2016
Less than 30 with the last 2 characters in their PAYE reference numbers 30-37, 6A-6Z, L1-L9 or LA-LZ	1st August 2016
Less than 30 with the last 2 characters in their PAYE reference numbers N1-N9 or NA-NZ	1st September 2016
Less than 30 with the last 2 characters in their PAYE reference numbers 38-46, 7A-7Z, O1-O9 or OA-OZ	1st October 2016
Less than 30 with the last 2 characters in their PAYE reference numbers 47-57, 8A-8Z, Q1-Q9, R1-R9, S1-S9, T1-T9, QA-QZ, RA-RZ, SA-SZ or TA-TZ	1st November 2016

**Table 2 contd/.**

<b>Employer (by PAYE scheme size or other description)</b>	<b>Staging date</b>
Less than 30 with the last 2 characters in their PAYE reference numbers 58-69, 9A-9Z, U1-U9, V1-V9, W1-W9, UA-UZ, VA-VZ or WA-WZ	1st January 2017
Less than 30 with the last 2 characters in their PAYE reference numbers 70-83, X1-X9, Y1-Y9, XA-XZ, or YA-YZ	1st February 2017
Less than 30 with the last 2 characters in their PAYE reference numbers P1-P9 or PA-PZ	1st March 2017
Less than 30 with the last 2 characters in their PAYE reference numbers 84-91 or 93-99	1st April 2017
Less than 30 persons in the PAYE scheme not meeting any other description contained in the first column of this table	1st April 2017
Employer who does not have a PAYE scheme	1st April 2017

13. Employers can bring their staging date forward if they have a qualifying scheme in place.

<http://www.thepensionsregulator.gov.uk/en/employers/bringing-your-staging-date-forward/>

### **Postponing/delaying automatic enrolment**

14. Employers may postpone automatic enrolment in any scheme for some or all of its workers for up to three months. They may also apply for a “transitional delay period” to defer automatic enrolment until 30 September 2017 into defined benefit schemes. More information is available from the Pensions Regulator.

<http://www.thepensionsregulator.gov.uk/docs/detailed-guidance-3a.pdf>

<http://www.thepensionsregulator.gov.uk/docs/detailed-guidance-3b.pdf>

## Safeguarding individuals

15. The 2008 Act contains penalties for employers who encourage employees or job applicants to opt out of automatic enrolment. (see sections 50 to 59).

<http://www.thepensionsregulator.gov.uk/docs/detailed-guidance-8.pdf>

## National Employment Savings Trust (“NEST”)

16. A qualifying scheme called the National Employment Savings Trust (“NEST”) has been set up by the government. Employers are not required to use NEST if they operate an alternative scheme that meets the statutory criteria for a qualifying scheme. For more information see

<http://www.nestpensions.org.uk/schemeweb/NestWeb/public/home/contents/homepage.html>

## Re-enrolment

17. Re-enrolment of a worker into a qualifying scheme can arise in a number of ways. The most likely for local councils is when a worker opts out following automatic enrolment. A local council must enrol an opted out worker into a qualifying scheme every three years from the opt out date. For more information on re-enrolment see

<http://www.thepensionsregulator.gov.uk/docs/detailed-guidance-11.pdf>

## The Local Government Pension Scheme

18. The LGPS is a qualifying scheme. It is governed by the Superannuation Act 1972 and regulations. Some public sector employers have a statutory obligation to participate in the LGPS (for example, a county, district or London borough council in England; a county council or county borough council in Wales). Others, including local councils, can choose whether or not to designate an employee (or a class of employees) for LGPS membership (see Regulation 5(7) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525)).

## Changes to the Local Government Pension Scheme

19. There were major changes to LGPS in April 2014.

- career average revalued earnings (CARE) not final salary is the basis for calculating pension
- consumer price index (CPI) not the retail price index (RPI) is the annual revaluation factor
- 1/49<sup>ths</sup> not 1/60<sup>ths</sup> is the annual accrual rate
- part-time workers' pensionable pay includes non-contractual overtime and other additional hours
- normal pension age is the individual's state pension age (minimum 65)
- decreased employee contributions for the lowest paid and increased contributions for the highest paid
- option to pay 50% contributions for a 50% pension, subject to automatic enrolment requirements
- entitlement to a refund of employee contributions if less than two years' LGPS service. Previously refunds were restricted to three months' service.

The changes do not affect benefits that accrued before April 2014. For more information see:

<http://www.lgps.org.uk/lge/core/page.do?pagelid=15431012>

## **Retirement Gratuities**

20. The Local Government (Discretionary Payments) Regulations 1996 were revoked by the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011("the 2011 Regulations"). Since January 2012, councils have not had the discretion to pay a retirement gratuity. The Government's view (with which NALC is in agreement) is that local councils may still fulfil any extant contractual obligations which relate to the payment of gratuities. There are separate NALC employment briefings which provide detailed information about the background to and effect of 2011 Regulations.

## **Professional advice**

21. Before councils decide on their pension arrangements, they should obtain professional advice from a pensions adviser (such as an independent financial adviser, an employee benefit consultant or an accountant) who is regulated by the Financial Conduct Authority (FCA) for the provision of pensions advice. For more information see: <http://www.fca.org.uk/about>

**Other Legal Topic Notes (LTNs) relevant to this subject:**

<b>LTN</b>	<b>Title</b>	<b>Relevance</b>
22	Disciplinary and Grievance Arrangements	Sets out arrangements for dealing with employment issues
34	Retirement Gratuities	Explains when a gratuity can be paid

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