

# **Academy Arrangements and the Local Government Pension Scheme**

## **Foreword**

The December 2011 letter from the Secretaries of State for Education and Communities and Local Government recommended that, where an Academy seeks to be pooled with the local authority, this is favourably considered. It also said that supporting guidance would be developed and issued and this joint Department for Education and Department for Communities and Local Government ‘frequently asked questions’ document has therefore been produced. It is intended to guide practitioners in both pensions administration and Academies to better understand the relationship between Academies and the Local Government Pension Scheme (LGPS). This is the first edition of the FAQ document and additional Q&A’s will be added, including Q&A’s addressing actuarial issues produced in conjunction with actuarial professionals. The FAQ document does not replace the LGPS regulations and practitioners will want to seek their own legal advice as necessary.

## **Academies**

Academies set up under the Academies Act 2010 are independent schools but they are publicly funded. Section 1 of the Academies Act 2010 contains provisions that allow for the Secretary of State for Education to enter into an Academy arrangement with any person to establish and maintain and to carry on, or provide for the carrying on of, an Academy. The Act enables existing maintained schools to convert to Academy status and for Academy arrangements to be entered into with an Academy Trust that is replacing a maintained school. Additionally, the Act allows the creation of new schools (i.e. schools that do not replace a converting or closing maintained school), including Free Schools, University Technical Colleges (UTCs) and Studio Schools. These new schools are also Academies set up under Academy arrangements under Section 1 of the Academies Act 2010.

## **Local Government Pension Scheme**

A proprietor of an Academy, commonly referred to as an Academy Trust, who has entered into Academy arrangements, is a Scheme employer in the Local Government Pension Scheme (LGPS) and is listed in paragraph 21 of Part 1 of Schedule 2 to the LGPS (Administration) Regulations 2008. This means that the non-teaching staff employed by Academy Trusts are automatically eligible for membership of the LGPS and existing members in a maintained school retain eligibility when a school becomes an Academy. The change in legal status, when a former maintained school is replaced by an Academy, means that the Academy Trust becomes an LGPS employing authority in its own right. Academy Trusts for new provision, such as Free Schools, Studio Schools and UTCs will also be LGPS employers.

In this document the LGPS (Benefits, Membership and Contributions) Regulations 2007 are referred to as “the Benefits Regulations” and the LGPS (Administration) Regulations 2008 are referred to as “the Administration Regulations”.

## Employees

1. Q. Can non-teaching staff of an Academy Trust join the LGPS?  
A. Yes. Academy Trusts are employers in the LGPS by virtue of Paragraph 21 of Part 1 of Schedule 2 to the Administration Regulations. This means that any member of staff, under age 75 and with a contract of employment for three months or more, who is not eligible to be a member of another public service pension scheme (such as the Teachers Pension Scheme) will be automatically enrolled into the LGPS, but they are able to opt out should they wish.
2. Q. What happens if an employee in a maintained school has opted out of the LGPS prior to the maintained school converting to Academy status?  
A. As the employee will be starting employment with a new employer (the Academy Trust), they will be automatically re-enrolled back into the LGPS under the provisions of Administration Regulation 13. They still retain the option to opt out again.
3. Q. Can staff transferred to an Academy from a maintained school under TUPE provisions keep the LGPS benefits accrued prior to the transfer separate from those accruing after the transfer?  
A. No. Administration Regulation 16(7) provides that the scheme member's service is automatically aggregated (i.e. is treated as unbroken) despite the member having a new employer where it is either a transfer under TUPE provisions or a transfer which is treated as if it were a relevant transfer within the meaning of TUPE regulations.
4. Q. If a former employee of a maintained school who was a member of the LGPS has left the LGPS with deferred benefits but seeks to have early release of retirement benefits between the ages of 55 and 60, but the school has converted to an Academy, who will be responsible for deciding whether, or not, to agree to the release of these benefits?  
A. The decision rests with the local authority responsible for the former maintained school, as the Local Authority was the last employer and not the Academy Trust. (Benefits Regulation 30).

## Academies as employers in the LGPS

5. Q. What is the appropriate Administering Authority for an Academy Trust?  
A. This is determined by the geographical location in which all or most of the proprietor's area lies (Administration Regulation 30 and paragraph 8 of the table in Part 1 of Schedule 4).

DCLG is currently considering responses to a consultation concerning a proposed regulatory change concerning proprietors that operate a number of academies in different local authority areas.

6. Q. How can an Academy get information about the setting of the employer contribution rate?

A. Administration Regulations 36 and 38 specify the valuations, reports, certificates or revised certificates that the Pension Fund administering authority must obtain. Administration Regulation 37 requires that a copy of the rates and adjustment certificate is sent to the employers who have active members in the LGPS, or who may have to pay into the pension fund.

7. Q. Are there any LGPS costs, in addition to the employer contribution, that an Academy Trust could face after it has become a separate employer in the LGPS?

A. The Administration Regulations set out what charges the administering authority can make on employers. As well as the employer's contribution rate, the Academy would have to pay additional amounts if:

- they have used their discretion to increase the total service of a member, or award additional pension (Administration Regulation 40);
- if a member becomes entitled to benefits on the grounds of ill health, redundancy, efficiency or flexible retirement (Administration Regulation 41);
- a contribution towards the administration of the pension fund is due (Administration Regulation 42);
- if the administering authority has incurred additional costs resulting from the level of performance of the employer (Administration Regulation 43);
- if due to late payment interest is due (Administration Regulation 44).

8. Q. Could there be additional costs for the Academy Trust relating to a higher number of Academy staff taking ill health retirement than was assumed by the actuary?

A. Yes. Where more employees, than actuarially assumed, receive benefits as a result of ill health retirements, there could be an additional charge made to the Academy Trust (Administration Regulation 41).

9. Q. If an Academy terminates an employment for redundancy reasons, could there be a cost for the Academy?

A. Yes. Where retirement benefits are released early because a member has been made redundant, and is aged 55 and over but before age 65 (or the retirement age at which unreduced benefits can be paid), the Academy will need to pay for the period of early release. This is known as a 'strain payment' and becomes payable as the administering authority has to pay the pension for longer than anticipated. (Administration Regulation 41 (2))

10. Q. Are staff in organisations that contract with Academies eligible to join the LGPS?

A. Organisations with links to scheme employers can be admitted bodies to the LGPS if they meet the criteria and this includes contracting bodies providing services for an Academy. Applications will be considered by the appropriate administering authority and will be subject to the provisions of the Administration Regulations.

DCLG is currently considering responses to a consultation concerning a proposed regulatory change to make it a requirement for a transferee

admission body or a community admission body to provide some form of parent guarantor should that body be unable to provide an indemnity or bond in the event that the body cannot meet its pension liabilities.

11.Q. Would an Academy Trust be required to contribute to the Pension Protection Fund (PPF) for LGPS purposes?

A. No. The LGPS is exempt from the PPF as it is a statutory public service pension scheme set up under powers contained in the Superannuation Act 1972.

12.Q. Does an Academy Trust need to obtain separate insurance for any LGPS obligations?

A. There is no general requirement for private insurance to be obtained by an Academy Trust in relation to its LGPS obligations.

This guidance may not address all the issues relating to being an employer in the LGPS and, if an Academy Trust has any specific issues or requires further information on items in this FAQ document, we suggest that an early conversation between the Academy and its LGPS administering authority is considered.

For further information please see the following sources.

The Department for Education

<http://www.education.gov.uk/a00202059/lgps>

The Local Government Pension Scheme Regulations

<http://timeline.lge.gov.uk/>

Link to LGA advice site

<http://www.lge.gov.uk/lge/core/page.do?pagelD=119455>