



Admitted body status provisions in the Local Government Pension Scheme when services are transferred from a local authority or other scheme employer



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This guidance is prepared for:

- Local Authorities or other scheme employers responsible for letting contracts
- LGPS administering authorities
- Contractors – private and third sector companies and organisations
- Actuaries – acting for authorities and external providers (contractors)
- Trade Unions – representing transferring employees and new joiners
- LGPS Members – transferring from local authorities or being offered the LGPS under a new provider

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Contents

Introduction	5
Services that can be outsourced	6
Implications for local authority staff transferring to a new provider	6
Protecting employment rights for transferring employees (TUPE)	6
Best Value Staff Transfers (Pensions) Direction and Broad Comparability	7
What is meant by a broadly comparable pension scheme	7
Bulk transfer arrangements for numbers of transferring staff	8
Admitted Body Status under the LGPS	8
Discussions about pensions early in the procurement process	9
Contractor choice and the LGPS	9
The funding objective	9
Admission Agreements under the LGPS	10
Transferee Admission Bodies	10
Approval from the Secretary of State for Communities and Local Government may be required	11
Admission agreements either 'closed' or 'open'	11
Relevant matters for agreements with transferee admission bodies	12
When a bond or indemnity may be required	12
Regularly reviewing bonds and indemnities	12
Dates of admission agreements	13
Notification requirements upon entering into an admission agreement	13
Establishing employer contribution rates	14
Close working with the relevant actuary is essential	15
Reviewing employer contribution rates at regular intervals	15
Action needed to be taken before the termination of an admission agreement	16
Managing potential risks	16
Policies needed for discretionary provisions in the LGPS	17
The roles of the administering authority, the letting authority and the contractor	19
Outsourcing – the role of the administering authority	19
Outsourcing – the role of the letting authority	19
Outsourcing – the role of the contractor	20

Glossary of terms	22
Main regulatory provisions in The LGPS (Administration) Regulations 2008 [2008/239] (as amended)	23

Local Government Pension Scheme and admitted body status

Guidance on the Local Government Pension Scheme (LGPS) admitted body status provisions dealing with pension implications when local authority employees or employees of other scheme employers transfer to an external provider (contractor).

Introduction

1. The guidance explains the regulatory position provided for in the Local Government Pension Scheme (Administration) Regulations 2008 [2008/239] (as amended) about how external providers, such as companies or third sector organisations, can be admitted to the LGPS. It also sets out the pension considerations that arise when employees transfer from a local authority to an external provider (referred to as a 'contractor' throughout the rest of the guidance).
2. This guidance is aimed at local authorities in England and Wales and, in particular, those responsible for delivering best value, letting authorities and their procurement officers, and administering authorities. It is also applicable to contractors such as private and third sector companies and organisations, and the employees of all these organisations, together with other interested parties.
3. This non-statutory guidance makes it clear that pensions issues should not be seen in isolation from any tendering and procurement exercise, the guidance also signposts The Best Value Authorities Staff Transfers (Pensions) Direction 2007. Failure to give these issues early and full consideration may cause concern and uncertainty for transferring staff and delay the transfer of the service.
4. This guidance offers a practical guide to the admitted body status (ABS) provisions in the regulations. It is recommended, however, that practitioners and any other interested parties take their own legal advice on the application of the regulations to their particular circumstances.
5. The references to regulations, unless specifically set out in full, relate to The Local Government Pension Scheme (Administration) Regulations 2008 [2008/239] (as amended).

6. This guidance was issued in December 2009 and complies with the eight golden rules of good guidance¹. The guidance will apply until its next review expected in 2012. Any feedback, queries or complaints relating to this guidance should be addressed to Siobhan Prill, Workforce, Pay and Pensions Division, Zone 5/F5, Eland House, Bressenden Place, London SW1E 5DU.

Services that can be outsourced

7. Both central and local government's aim is to improve local public services and customer's satisfaction with the services they receive. This involves the positive engagement of front-line professionals who always think about the customer first. Public services should be delivered by the body most able to deliver high quality services, whether through in-house local authority delivery or by contracting out to the private or voluntary and community sectors.
8. Local authority services that may be outsourced include the essential services that we all rely on such as street and school cleaning, catering, parking, parks, housing and home helps, and the provision of services that support vulnerable families, children, young people and the elderly.
9. If a local authority, for example following a service review, decides that it would be more efficient and effective to 'outsource' by transferring the provision of one or more services to a new contractor, it can award a contract to provide the service following an EU compliant procurement process.

Implications for local authority staff transferring to a new provider

10. Working in partnership with the private and third sectors to modernise and reform the delivery of public services often involves the transfer of public sector employees to new employers. The success of these projects will depend, critically, on the fair treatment of the transferring staff who need reassurance that their rights will be fully respected and that they will be treated fairly throughout an outsourcing exercise.

Protecting employment rights for transferring employees (TUPE)

11. Under provisions in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) [SI 2006/246], the pay, and terms and conditions of employment for transferred employees are protected, preventing these entitlements from being changed without agreement. The Transfer of Employment (Pension Protection) Regulations 2005 [SI 2005/649] covers the pension and contribution arrangements for employees to which a TUPE transfer applies.

¹ *The Code of Practice on Guidance on Regulation* published by the Department for Business, Innovation and Skills (<http://www.berr.gov.uk/files/file53268.pdf>)

12. In broad terms, TUPE protects employees' terms and conditions (except occupational pension arrangements that relate to old age, ill health or survivor benefits) when the business in which they work is transferred from one employer to another. Employment with the new employer is treated as continuous from the date of the employee's start with the first employer or, for redundancy payment purposes, related employer under the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999 [1999/2277] (as amended). Terms and conditions of employment cannot be changed where the operative reason for the change is the transfer itself although changes for other reasons may be negotiated.
13. The TUPE regulations provide some protection against unfair dismissal and state that trade union recognition and collective agreements in force at the time of the transfer are to be maintained.
14. Employers have a duty to consult representatives of employees who may be affected by a transfer². This must take place before the transfer to allow a full and proper consultation to take place.
15. While occupational pension arrangements for old-age, survivor and ill health pensions are not covered by the TUPE regulations, there should be appropriate arrangements to protect occupational pensions, redundancy and severance terms of transferring staff in all these types of transfer.
16. Contractors bidding for tenders need to be aware of the right to an unreduced pension on redundancy transfers under TUPE (*Katia Beckmann v Dynamco Whichloe Macfarlane Ltd*: Case C-164/00).

Best Value Staff Transfers (Pensions) Direction and broad comparability

17. With effect from 1 October 2007, best value contracting authorities in England and police authorities in Wales have been required to comply with The Best Value Authorities Staff Transfers (Pensions) Direction 2007 made under section 101 of the Local Government Act 2003. This means that a best value authority must secure pension protection for each TUPE transferring best value authority employee which must be the same as, broadly comparable to, or better than, those they had a right to acquire prior to the transfer. A copy of the Best Value Authorities Staff Transfers (Pensions) Direction 2007 can be found at www.communities.gov.uk/publications/localgovernment/authorities-staff-transfers.

What is meant by a broadly comparable pension scheme?

18. Broad comparability relates to the protection of transferring employees' future pension rights. This is to ensure that transferring staff are entitled to pensions in respect of future service that are worth as much as they would have had, were they to have remained with their original employer. For a pension arrangement

² As set out under regulation 13 of the TUPE regulations 2006

to be assessed as being 'broadly comparable' to a public sector pension scheme, it does not need to offer identical benefits. However, it must offer the same range of benefits, with the same (or greater) overall value.

19. Letting authorities are advised to ensure bidders, who intend to offer an alternative pension scheme to the LGPS, inform them early in the procurement process and advise details of the scheme they will use to establish broad comparability. This is because the pension scheme put forward by the contractor as broadly comparable should be assessed by an actuary in accordance with the Government Actuary's Department's Statement of Practice.

Bulk transfer arrangements for numbers of transferring staff (Regulation 81)

20. One method of dealing with pensions for numbers of transferring staff is to consider bulk transfer arrangements. Letting authorities should make clear to potential contractors what sort of bulk transfer terms would be available. This will enable contractors to better estimate the costs of providing transferring staff with access to pension provision that is broadly comparable to what they were receiving prior to the transfer (see also paragraphs 22 and 26).
21. Where a broadly comparable scheme is to be provided for transferring staff, there should be an agreement with the new employer's pension scheme which provides that staff will be able to transfer their accrued service credits into that scheme on a day to day, or equivalent value, basis. It should be noted that an agreement should be sought during contract negotiations to achieve the above aim.
22. The administering authority and its actuary will need to be involved very early in the procurement process, and the letting authority may be asked to bear the cost of the actuarial fees incurred.

Admitted body status under the LGPS

23. Admitted body status (ABS) provisions were introduced in the LGPS in 1999 to allow contractors, who take on local authority services or functions with any specific groups of transferring employees, to offer transferring staff continued eligibility for the LGPS during the contract. ABS provisions enable members of the LGPS to remain in that arrangement and continue to accumulate benefits under their existing local government pension scheme arrangements whilst their employment is transferred between different contractors and as long as they remain employed in connection with the delivery of the outsourced service.
24. Admission agreements (see paragraphs 31 to 54) will contain a provision for the admitted body to adopt the practices and procedures relating to the operation of the LGPS as set out in the LGPS (Administration) Regulations 2008 [2008/239] (as amended). This will include the administering authority's pension administration strategy (see regulation 65).

Discussions about pensions early in the procurement process are essential

25. It is vitally important for local authority officers who have responsibility for best value procurement or other potential forms of outsourcing, to discuss pension implications for outsourcing staff with the relevant LGPS administering authority, and keep the officer in their own authority responsible for pension liaison matters fully informed. This should be done at the earliest possible opportunity and before the procurement process begins, and especially when first drawing up a tender specification. This is true regardless of what pension arrangements are eventually to be offered by the contracting employer. Failure to consult with the relevant administering authority early on in the process could lead to delays or complications later on.

Contractor choice and the LGPS

26. It needs to be recognised that it is the contractor who chooses whether they offer their employees membership of the LGPS or a pension scheme that can be certified as a broadly comparable pension scheme, when tendering for a local authority contract as part of an outsourcing exercise. Letting authorities should make it clear that pension rights going forward need to be secured prior to the contract being let but they should not stipulate ABS as a requirement of the tendering process. Contractors should inform the letting authorities of the pension provision it proposes in any tender bid.

The funding objective

27. It is important for all the parties to know that pension liabilities accrued prior to the start of the contract will not, normally, be charged to the new employer. This is to enable a level playing field between tenderers wishing to participate in the LGPS and those who would seek to transfer employees to a broadly comparable scheme. This approach is sensible as the relevant local authority letting the contract will still be budgeting for the service being transferred to the contractor.
28. However, where a contractor is to offer transferring employees a broadly comparable pension scheme and bulk transfer terms have been agreed with past service rights transferred to that broadly comparable pension scheme, past service liabilities will be met by the contractor on an ongoing basis.
29. The approach to funding liabilities over the course of the contract should be clear to all potential bidders and it would be helpful to include a statement about how assets and liabilities for transferring employees will be dealt with and details given of the associated actuarial aspects of ABS in the invitation to tender documentation.
30. The contractor will be required to fund, over the course of the contract, the benefits accruing during the period of that contract for those LGPS members who are covered by the admission agreement. Pension liabilities accruing during the period of the contract should be fully paid for by the end of the contract.

This will include any additional costs for increases in past service liabilities because of decisions made by the contractor for its pensionable employees, such as pay increases in excess of those paid by the contracting authority.

Admission agreements under the LGPS

Transferee Admission Bodies (Regulation 6 (2)(a))

31. If a contractor is successful when tendering for more than one contract, separate admission agreements for each contract should be made. This is because each contract to which the admission agreement relates can commence and terminate, or be terminated, at different times and it may be necessary to revise contribution rates towards, or at, the end of the contract.
32. If the contractor has decided to offer its employees continued eligibility for the LGPS, letting authorities can recommend to the relevant LGPS administering authority that an admission agreement should be entered into. It should be noted that it is the LGPS administering authority that formally enters into the admission agreement but the letting authority, if it is not also the administering authority, must be a party to that agreement. The administering authority cannot decline to admit a contractor if the contractor and the letting authority agree to meet the relevant requirements of the LGPS regulations.
33. A contractor who has entered into an admission agreement is referred to in the LGPS Regulations as a transferee admission body, and the transferred employees and any new employees specified in the admission agreement as being eligible for membership of the LGPS are treated as if they were employed by a scheme employer, but their participation is contractual not statutory.
34. It is important to note that the contractor and the employees covered by the admission agreement will be subject to the standard scheme employer requirements in the LGPS Regulations, as well as certain additional provisions intended to deal with particular issues likely to arise from their different status.
35. Only those employed by the transferee admission body (contractor) in connection with the transferred local authority service or function are eligible to join the LGPS or remain eligible if they transferred with the service or function. An administering authority must admit eligible employees of the transferee admission body to the scheme, and the terms upon which eligible employees are admitted are contained in the admission agreement.
36. Existing employees of a contractor who are not employed in connection with the transferred local authority service or function will not be eligible to join the scheme as admitted body status is dependent upon a link to the relevant local authority service or function.
37. The LGPS regulations relating to transferee admission bodies apply in the same way in a subsequent contract with a new provider when the original contract with the initial transferee admission body (contractor) comes to an end.

38. Where a transferee body (contractor) admitted to the scheme transfers to another provider (a sub-contractor) some of the services or functions that it has responsibility for delivering on behalf of the letting authority, those sub-contractors would also be treated as transferee admission bodies under regulation 6(2)(a). An administering authority may make an admission agreement with this contractor in the normal manner.

Approval from Secretary of State for Communities and Local Government may be required (Regulation 6 (2)(b))

39. Subject to paragraph 41, where an organisation is delivering or will deliver public sector services on its own account (i.e. services that are not outsourced under a contract or other arrangement on behalf of a Scheme employer), the body would be subject to the Secretary of State's approval and be treated as a regulation 6(2)(b) transferee admission body.
40. In regulation 6(2)(b) cases, it is the LGPS administering authority that formally enters into the admission agreement with the 6(2)(b) body. The administering authority cannot decline to admit a 6(2)(b) body if the Secretary of State has approved the admission of that body to the fund. Furthermore a 6(2)(b) transferee admission body is required to carry out its own risk assessment under regulation 6(5) but subject to the satisfaction of the administering authority (regulation 6(6)).
41. There may be cases where a community admission body might wish to transfer to another contractor some of the services or functions that it has responsibility for delivering. Although the Pensions Direction does not apply, the contractor and community admission body may wish the transferring employees to be provided with continuing access to the LGPS. In these cases, the approval of the Secretary of State is required under regulation 6(2)(b) to enable the contractor to become an admitted body to the scheme.

Admission Agreements – 'closed' or 'open' (Regulation 6 (11)(a) and (b), and (12))

42. A contractor may wish to offer both transferring local authority employees and new joiners, who are employed in connection with the delivery of the service, eligibility of the LGPS. An administering authority can enter into such an admission agreement and this is often referred to as an 'open' agreement.
43. In some instances, a contractor may wish to restrict eligibility to just transferring employees. This may be because not all the contractors' employees will be employed on the transferred service or function. It is permissible for the administering authority to enter into an admission agreement which only includes those transferred local authority employees and this agreement would be regarded as 'closed' as it would not permit the other employees of the contractor or any new joiners to participate in the LGPS.

Relevant matters for agreements with transferee admission bodies (Regulations 6 (9) and 7 and Schedule 3)

44. Regulation 7 of the LGPS (Administration) Regulations 2008 [2008/239] (as amended) sets out further provisions governing the admission of bodies to the LGPS and Schedule 3 sets out the matters that must be included in an admission agreement such as whether this is a 'closed' or 'open' agreement. This Schedule also includes conditions, requirements and agreements which must be met before a contractor can be admitted to the LGPS as a transferee admission body.
45. The decision whether to enter into an 'open' or 'closed' admission agreement (see 43 above) may, as well as impacting on the level of the employer contribution rate, also impact on the level of bond or indemnity (see paragraphs 46 to 49 below) required by the letting authority.

When a bond or indemnity may be required (Regulation 6 (6), (7) and (8))

46. An admission agreement with a 6(2)(a) transferee admission body requires the letting authority to carry out an assessment, which takes account of actuarial advice, concerning the level of risk arising on the premature termination of the provision of the service or should the transferee admission body's assets by reason of insolvency, winding up or liquidation of the transferee admission body.
47. An admission agreement with 'a 6(2)(b) transferee admission body' requires 'a 6(2)(b) transferee admission body' to carry out an assessment. This risk assessment needs to be carried out to the satisfaction of the administering authority.
48. Where a risk is identified by any of these assessments, the admission agreement can provide, where the level of risk is such as to require it, that the transferee admission body shall provide an indemnity or bond to meet that level of risk. The LGPS regulations set out with whom the indemnity or bond must be made and includes details of bodies that may accept deposits, rather than simply those permitted to effect and carry out contracts of general insurance.
49. The requirement to provide an indemnity or bond seeks to ensure that local council tax payers do not have to underpin a contractor's pension liabilities in the event of their commercial failure during the life of the admission agreement. Letting authorities are encouraged to make this part of any due diligence checks linked to the procurement process.

Regularly reviewing bonds and indemnities (Schedule 3 paragraph 12 (c))

50. Letting authorities should keep under assessment the level of risks, even where these are negligible at the start of the contract, and the need for any subsequent bonds and indemnity cover for transferee admission bodies during the lifetime of all contracts. If, at the outset of the contract, a risk is identified, this should be closely monitored during the course of the contract.

51. As a matter of good practice, periodic reviews of any indemnity or bond provided should be considered in the light of the initial risk assessment and due diligence process. The review would be subject to the merits and circumstances of individual contracts and any need for a revision of the bond or indemnity is a matter to be decided locally by the letting or administering authority as appropriate.

Dates of admission agreements

52. The aim for an admission agreement with an admitted body is to make and date it prior to, or on, the date that staff transfer to their new employer. The LGPS provisions do not expressly forbid or allow the backdating of admission agreements. There are implications for delaying admission agreements as membership is not possible prior to the date of the admission agreement and deductions for contributions to the scheme cannot be made or paid over to the pension fund. In exceptional circumstances, the signing of an admission agreement might be delayed until after employees are transferred from a letting authority to a contractor but CLG considers it would only be appropriate for admission agreements to be signed after a transfer takes place where the admitted body route has been chosen and agreed by local partners prior to the contract being issued, and would normally entail the parties signing an interim or draft agreement to provide the assurances needed for all the parties.

Notification requirements upon entering into an admission agreement (Regulation 7 (3) and paragraph 6 of Schedule 3)

53. Administering authorities must, upon entering into an admission agreement, promptly notify the Secretary of State that they have done so. The notification should include the date the agreement takes effect, the name of the admitted body and, in the case of an admission agreement with a transferee admission body, the name of the letting authority.
54. Transferee admission bodies must, as part of the agreement that they have entered into, notify the relevant administering authority of any changes in employment terms that could affect the fund (see paragraph 6 of Schedule 3). This could include the award of pay-rises above those assumed by the relevant actuary at the start of the contract.
55. The administering authority should also notify the Pensions Regulator of any new participating employer in their Fund. The details should be emailed to exchange@thepensionsregulator.gov.uk and should include:
- the name of the fund
 - the pension scheme registration number for the fund
 - the name, address, nature of business and contact details for the participating employer

56. Administering authorities should also notify the Pensions Regulator of any changes to the details of any participating employer in their fund. Notification can be made through the Pensions Regulator's on-line exchange system. Further details can be found at:
www.thepensionsregulator.gov.uk/onlineServices/exchange/index.aspx.

Establishing employer contribution rates (Regulation 39 – see also Regulation 35, 36 and 37)

57. In the LGPS, the liability to pay pensions to scheme members falls to the relevant administering authority, paid for by contributions from the employers and employees in the fund. Employees pay a fixed percentage of their pensionable pay determined by reference to their whole-time equivalent pensionable pay. In conjunction with their actuary, an administering authority is required to establish a common rate of employer contribution to pay for the accruing pensions rights for employees that are members of that pension fund so as to secure its solvency and maintain as nearly a constant employer contribution rate as possible. In addition, the LGPS Regulations require that an individual adjustment to the common rate is made to address the particular circumstances of a body.
58. The cost of establishing the likely employer contribution rate for an admitted body should be seen by letting authorities as a cost of the tendering exercise. The actuary will need, as soon as is reasonably practicable, to have details of the staff who are likely to be transferred to the contractor and the length of the contract. The staff details should include, for each member of staff:
- whether he/she is currently a member of the LGPS
 - the date of birth
 - current pensionable pay (or what it would be if the person was a member of the LGPS) stating whether this is the actual or full time equivalent rate
 - whether the employee is full time or part time and, if the latter, the current percentage of full time contractual hours
 - the period of membership of the LGPS to date (if any)
 - whether male or female
 - a valid ID (e.g. NI number)
 - plus any other considerations such as specific protections for a member or group of members, i.e. the Rule of 85 protection
59. The actuary will assess and set an employer contribution rate to apply from the date the contract is let or transfer of the function, based on the details of employees transferred (and taking account of whether the admission agreement

is to be an 'open' or 'closed' agreement), to ensure that the benefits which accrue to them are properly funded over the period of the contract. The contribution rate will be subject to review at each triennial actuarial valuation.

Close working with the relevant actuary is essential

60. The actuarial matters relevant to admission agreements established under the terms of the LGPS are particularly significant, especially as the cost of meeting future pension liabilities will have a direct impact on the overall pricing of any contract. It is essential, therefore, that letting authorities actively involve the relevant pension fund actuary throughout the outsourcing exercise having first agreed with the administering authority who is to deal directly with all relevant actuaries.
61. The funding objective for the life of the contract has been set out above (see paragraphs 27 – 30) but it is also important for potential contractors, and their actuarial advisers, to be made aware of the specific LGPS regulations. Close liaison is required between the letting authority and the administering authority and the contractors regarding the application of the regulations. This is to ensure that contractors know the regulatory arrangements which exist in relation to the funding and investment strategy, and also those which exist to manage past, present and future liabilities. Such matters will need detailed and careful discussions, assessments and decisions, during both the initial pre-tendering phase and, more significantly, on finalising the contract.

Reviewing employer contribution rates at regular intervals (Regulations 36 and 38)

62. As part of the three-yearly cycle of actuarial valuations, the administering authority must obtain a rates and adjustments certificate and this will identify the employer contribution rate to be paid to the pension fund for each of the following three years. The certificate will be based on the actuarial assumptions about the liabilities arising in the period covered by the certificate, at the actuarial valuation.
63. Where a contractor decides, for instance, to exercise its discretion to award an additional period of membership or an additional amount of extra pension but does not fund the liability by a capital payment to the relevant scheme administering authority, this will impact on their liabilities and the need to fund them. This could result in the administering authority needing to obtain a revised actuarial certificate, or an individual rates and adjustment certificate, to show the amount the admission body's employer contribution rate will need to be amended in order to provide the relevant pension fund with sufficient assets to meet the liabilities by the end of the contract.

64. There are other situations where an administering authority may need to obtain a revised rates and adjustment certificate (for instance, where a further fund or 'an admission agreement fund' is established, or where the administering authority must obtain a revised rates and adjustment certificate when an admission agreement ceases to have effect before the contract terminates).

Action to be taken before the termination of an admission agreement (Regulation 38)

65. Where an admission agreement ends or is about to end, the administering authority must obtain an actuarial valuation of the outstanding liabilities attributable to the admission body and it may be necessary for the relevant actuary to provide a revised rates and adjustments certificate showing the contributions due to be paid before the agreement ends to cover any outstanding liabilities.
66. The position to aim for by the end of a contract is that employer contributions result in neither a surplus nor a deficit, as it is not possible for an administering authority to provide a refund of contributions to the employer. To achieve this aim, the contractor, or the letting authority if they are to terminate the contract, should provide adequate notice of termination of the contract. The notice should allow for sufficient time for the necessary actuarial assessments and any necessary adjustments of employer contribution rates. It is recommended that the contractor contacts the letting authority at the earliest opportunity to discuss the steps to be taken to meet all the obligations for pension liabilities, and the same applies to the letting authority if they are to terminate the contract. It will be vital to notify the relevant administering authority as well.
67. Where it is not possible to obtain the outstanding contributions from an outgoing transferee admission body (or from any relevant insurer, bond or indemnity), the administering authority may obtain a revised rates and adjustments certificate to show the contributions due from the relevant letting authority. It should be remembered, that if the outstanding liabilities remain unobtainable, the rates and adjustment certificate will show the revised contributions due from all employers within the fund.

Managing potential risks

68. Potential risks associated with the provision of pensions can cause uncertainty and confusion amongst local authorities and contractors, especially as pension provision is a highly specialised area. Local authorities and contractors should, therefore, consider who will be responsible for managing specific elements of risks associated with providing access to the LGPS before entering into an admission agreement.
69. Risks associated with pension provision might include changes in pay and conditions of service, mortality assumptions, stock market performance, or ill health retirement assumptions.

70. The table below provides an example of how some of the more obvious risks could be attributed to either the letting authority or contractor, as suggested by respondents to CLG's 2008 informal consultation exercise on ABS provisions. There may, of course, be other factors for discussion and negotiation at the pre-contract stage.

<i>Letting authority</i>	<i>Contractor</i>
Actuarial assumptions	Pay increases above normal local government levels
Mortality rates	Redundancies
Inflation	Early retirement costs
Regulatory change	Discretions
Discount rates	Augmentations or increasing a member's period of membership
Investment return	Ill health retirements

71. Benefit changes or ill health retirements costs are most likely to be borne by the contractor in the first instance, but there may be mechanisms in the contract to change prices where these affect pension costs and this could result in the letting authority ultimately bearing the cost.
72. Some risks are unpredictable, such as the sudden death of the member. Letting authorities will wish to discuss, as early as possible, with the relevant administering authority and its actuary, the options available to them when seeking to manage risks arising unexpectedly.
73. Approaches to risk management are best agreed between the local authority and contractor during contract negotiations taking into account local circumstances, and it is recommended that any agreed approaches should be included within contractual documentation as opposed to the admission agreement. There is evidence to suggest that some letting authorities already use contractual arrangements to effectively manage risks. It is, therefore, recommended that the letting authority and contractor discuss with the relevant administering authority and its actuary, the best way to manage potential risks.
74. There may be other arrangements whereby a letting authority and contractor can manage risks but it will be for the parties involved to consider the most appropriate mechanism in their particular circumstances, having regard to best value considerations and having taken their own legal advice as necessary.

Policies for discretionary provisions in the LGPS (Regulation 66)

75. The rules within the LGPS are set and can only be changed with new or amending regulations but there are some provisions within the LGPS which are discretionary. Discretionary powers allow employers or administering authorities to choose how, or if, they will apply certain provisions.

76. Within three months of the date the employer begins participation in the scheme, each employer must determine and publish its policy on its discretionary powers for example when:
- granting applications for the early release of benefits in certain situations (prior to the age of 60)
 - waiving, on compassionate grounds, any percentage reduction applicable to the early release of benefits
 - granting extra membership to members leaving early in certain circumstances
 - granting extra membership to new or active members
 - granting extra pension to members and
 - whether to agree to flexible retirement and, if so, whether to pay benefits in whole or in part, and whether to waive any actuarial reduction in whole or in part
77. Local authorities and other scheme employers are encouraged to develop written policies in respect of their other employing authority discretions permitted under the LGPS regulations and these are included in a discretions list that is available at <http://www.lge.gov.uk/lge/aio/279274>. The publication of discretionary policies enables an employer to demonstrate what their policy is, or was, at any given point in time, should a query be raised or an appeal lodged through the LGPS Internal Dispute Resolution Procedure, or with the Pensions Ombudsman. Where local authorities have written policies in respect of discretions, these should be made available to all potential bidders early in the tendering process.
78. It should be noted that the contractor does not have to adopt the same discretionary policies as the local authority awarding the contract. Discretions under the LGPS regulations are exercised by the employer. It is for each contractor that enters into an admission agreement, to decide its own policies under the LGPS, but they must ensure that they do not fetter the exercise of that discretion when formulating their policies. The policy should make it clear that the policy confers no contractual rights, that the employer retains the right to change the policy at any time, and only the policy which is current at the time a relevant event occurs to the scheme member will be the one applied to that member.

The roles of the administering authority, the letting authority and the contractor

79. It is vital that all parties involved in the outsourcing process are aware of their role when it comes to the pension and admission agreement issues and the following paragraphs set out the main areas for each party.

Outsourcing – the role of the administering authority

80. The administering authority:
- will make the decision to admit a body (contractor) to the LGPS having established that it is possible to do so in accordance with the LGPS regulations and in consultation with the relevant letting authority and contractor. The administering authority cannot decline to admit a contractor if the contractor and the letting authority agree to meet the relevant requirements of the LGPS regulations
 - is responsible for the terms of admission agreements and many of the conditions for agreements with transferee bodies are required by legislation (see regulations 6 (9), 7 and Schedule 3)
 - must protect their fund by prudent management and assessment of potential risks to the fund with the admission of non scheme employers and have regard to the need for any indemnity or bond required under regulation 6 (7)
 - must keep under review transferee admission bodies employer contribution rates to ensure that all liabilities can be met during the lifetime of the contract and that a surplus or deficit will not occur at the end of the contract
 - should encourage letting authorities and contractors to contact them early with all the relevant information, in an outsourcing process and at each stage in the process
 - must not agree to any bulk transfer to a broadly comparable scheme unless it is satisfied that each of the members will acquire rights under the new scheme at least equivalent to those which would have been obtained if a standard cash equivalent transfer value had been paid

Outsourcing – the role of the letting authority

81. The letting authority:
- should ensure that pensions issues are considered early in the outsourcing exercise. This means right at the beginning when decisions are being taken about who is considered best to deliver a particular service or function, during the procurement process, and especially when the tender

specification is being drawn up. Early contact with the relevant administering authority is essential to avoid later confusion and potential delays

- should hold early discussions with the administering authority and especially where a potential contractor wishes to offer LGPS for transferring employees
- should hold early discussions with staff and trade unions
- will need to make the necessary assessments, in consultation with the contractor, concerning potential financial risks to any contract with the contractor, which may have implications for the ongoing provision of the service or function being transferred, and where an admission agreement is to be entered into, consider the level of indemnity / bond, if any, they may wish the contractor to provide. Close liaison with the administering authority will also be needed (regulation 6 (5))
- must be satisfied, where a contractor wishes to offer membership of its own pension scheme, that the scheme is broadly comparable to the LGPS
- should discuss with the administering authority the bulk transfer terms to be offered to potential bidders if transferring staff are being offered a broadly comparable pension scheme

Outsourcing – the role of the contractor

82. The contractor:

- needs to establish from the letting authority the requirements for pension provision. Contractors are encouraged to seek this information from the letting authority if it is not clear in the tender or pre-tender documentation as some pension provision will always be expected for transferring local authority employees. Early discussions with the letting authority and trade unions are actively encouraged as they will help to make informed decisions about pension issues or resolve any potential problems before the process is too far underway
- will need to engage their own actuary or employ an actuary, as appropriate, to assess the potential pension costs for them as an employer during the lifetime of the contract
- will need to liaise closely with the letting authority and the relevant administering authority (either directly or through their actuary) to establish whether they meet the requirements of broad comparability of their own pension scheme if this is what is offered – see paragraph 18

- will where an admission agreement is entered into, need to keep under review the pension payments made so they are aware that the funding position over the life of the contract is managed to ensure that there is no surplus or deficit at the end of the contract

Glossary of terms

Administering authority: the local authority which manages the pension fund (in some circumstances, will also be the same as the authority letting the contract).

Letting authority: the local authority or other scheme employer which is outsourcing the public service or function

Contractor (or external provider): the company or organisation bidding for the letting authorities' or other scheme employers' outsourcing contracts.

Bidder: see 'contractor' above

Sub-contractor: a company or organisation with which the contractor has entered into a separate contract or agreement to carry out all or part of the outsourced public service or function.

Scheme employer: in an outsourcing exercise, the letting authority or other scheme employer.

Main regulatory provisions in The LGPS (Administration) Regulations 2008 [2008/239] (as amended)

Set out below are the main regulatory provisions in the LGPS concerning transferee admission bodies and related provisions. Practitioners will, of course, wish to refer to the main regulations contained in the LGPS (Administration) Regulations 2008 (SI 2008 No.239) when considering individual cases or applications. These provisions were correct as at 16 December 2009.

Employees of non-scheme employers: transferee admission bodies

6.—(1) Subject to the requirements of this regulation and regulation 7, an administering authority may make an admission agreement with any transferee admission body.

(2) A transferee admission body is a body, other than a community admission body, that is providing or will provide—

(a) 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,

(ii) a direction made under section 15 of the Local Government Act 1999(7), or

(iii) directions made under section 497A of the Education Act 1996(8),

“a (2)(a) transferee admission body”); or

(b) a public service and is approved by the Secretary of State for the purposes of admission to the Scheme (“a (2)(b) transferee admission body”).

(3) In the case of an admission agreement with a (2)(a) transferee admission body, the Scheme employer, if it is not also the administering authority, must be a party to the admission agreement.

(4) An approval under paragraph (2)(b) may be subject to such conditions as the Secretary of State thinks fit and she may withdraw an approval at any time if such conditions are not met.

(5) An admission agreement with a transferee admission body shall require the Scheme employer, in the case of a (2)(a) transferee admission body, or the transferee admission body, in any other case, to carry out an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets by reason of the insolvency, winding up or liquidation of the transferee admission body.

(6) An assessment carried out by a (2)(b) transferee admission body shall be carried out to the satisfaction of the administering authority.

(7) The admission agreement shall further provide that, where the level of risk identified by the assessment is such as to require it, the transferee admission body shall enter into an indemnity or bond to meet the level of risk identified.

(8) The indemnity or bond must be with—

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000(9) to accept deposits or to effect and carry out contracts of general insurance;

(b) an EEA firm, of the kind mentioned in paragraph (5)(b) and (d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for

authorisation under paragraph 12 of that Schedule) 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

(9) An admission agreement with a transferee admission body shall make provision for the relevant matters set out in Schedule 3.

(10) This paragraph applies where a transferee admission body undertakes to meet the relevant requirements of this regulation and—

(a) in the case of a (2)(a) transferee admission body, the Scheme employer undertakes to meet the relevant requirements of this regulation; or

(b) in the case of a (2) (b) transferee admission body—

(i) the Secretary of State approves the body for admission to the Scheme, and

(ii) the conditions, if any, to which the approval is subject have been met.

(11) Where paragraph (10) applies—

(a) an administering authority must admit to the Scheme the eligible employees of the transferee admission body designated by that body; and

(b) where the administering authority does so, the terms on which it does so are the admission agreement for the purposes of these Regulations.

(12) Only those employees of the transferee admission body who are employed in connection with the provision of a service or assets mentioned in paragraph (2) are eligible to be designated, under regulation 7(1), members of the Scheme.

Admission agreements – further provisions

7.—(1) A person employed by a community admission body or an eligible person employed by a transferee admission body may only be a member if he, or a class of employees to which he belongs, is designated in the admission agreement by the body as being eligible for membership of the Scheme.

(2) An admission agreement must terminate if the admission body ceases to be such a body and may make such other provision about its termination as the parties consider appropriate.

(3) When an administering authority makes an admission agreement it must promptly inform the Secretary of State of—

(a) the date the agreement takes effect;

(b) the admission body's name; and

(c) in the case of an agreement with a (2)(a) transferee admission body, the name of the relevant Scheme employer.

(4) An administering authority and an admission body may make an admission agreement despite the fact that they do not exercise their functions or provide services or assets in areas that overlap or adjoin each other.

(5) Any question which may arise between the parties to an admission agreement relating to the construction of the agreement or the rights and obligations under that agreement shall be referred in writing to the Secretary of State for determination.

(6) These Regulations and the Benefits Regulations apply to employment with an admission body in which the employee is an active member in the same way as if the admission body were a Scheme employer.

Admission agreement funds

32.—(1) An administering authority which has made an admission agreement may establish a further pension fund (an “admission agreement fund”) in addition to the fund maintained under regulation 29 (“the main fund”).

(2) Immediately after an authority establishes an admission agreement fund, it must give the Secretary of State written notice that it has done so.

(3) The notice must specify the admission bodies whose employees are eligible for benefits from the admission agreement fund.

(4) Where an admission agreement fund is established—

(a) the liabilities of the main fund as respects membership in employment with those specified bodies become liabilities of the admission agreement fund; and

(b) assets of such value as an actuary appointed by the appropriate administering authority determines to be appropriate must be transferred from the main fund to the admission agreement fund.

(5) When valuations under regulation 36 of both the main fund and the admission agreement fund are first obtained after the admission agreement fund is established, the administering authority must obtain a transfer statement from an actuary appointed by the authority.

(6) The transfer statement must specify whether, in the actuary’s opinion, there is a need for further assets to be transferred from the main fund to the admission agreement fund and, if so, their value.

(7) Where the transfer statement specifies that assets of a specified value need to be transferred, the administering authority must arrange for assets of that value to be transferred as soon as is reasonably practicable.

Funding strategy statement

35.—(1) This regulation applies to the funding strategy statement prepared and published by an administering authority under regulation 76A of the 1997 Regulations ([37](#)).

(2) The authority must—

(a) keep the statement under review;

(b) make such revisions as are appropriate following a material change—

(i) in its policy on the matters set out in the statement, or

(ii) to the current version of its statement under regulation 9A of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998 (statement of investment principles); and

(c) if revisions are made, publish the statement as revised.

(3) In reviewing and making revisions to the statement, the authority must—

(a) have regard to the guidance set out in the document published in March 2004 by CIPFA and called “CIPFA Pensions Panel Guidance on Preparing and Maintaining a Funding Strategy Statement (Guidance note issue No.6)”; and

(b) consult such persons as it considers appropriate.

Actuarial valuations and certificates

36.—(1) Each administering authority must obtain—

(a) an actuarial valuation of the assets and liabilities of each of its pension funds as at 31st March 2010 and in every third year afterwards;

(b) a report by an actuary in respect of the valuation; and

(c) a rates and adjustments certificate prepared by an actuary.

(2) Each of those documents must be obtained before the first anniversary of the date (“the valuation date”) as at which the valuation is made or such later date as the Secretary of State may agree.

(3) A report under paragraph (1)(b) must contain a statement of the demographic assumptions used in making the valuation; and the statement must show how the assumptions relate to the events which have actually occurred in relation to members of the Scheme since the last valuation.

(4) A rates and adjustments certificate is a certificate specifying—

(a) the common rate of employer’s contribution; and

(b) any individual adjustments,

for each year of the period of three years beginning with 1st April in the year following that in which the valuation date falls.

(5) The common rate of employer’s contribution is the amount which, in the actuary’s opinion, should be paid to the fund by all bodies whose employees contribute to it so as to secure its solvency, expressed as a percentage of the pay of their employees who are active members.

(6) The actuary must have regard to—

(a) the existing and prospective liabilities of the fund arising from circumstances common to all those bodies;

(b) the desirability of maintaining as nearly constant a common rate as possible; and

(c) the current version of the administering authority’s funding strategy statement mentioned in regulation 35.

(7) An individual adjustment is any percentage or amount by which, in the actuary’s opinion, contributions at the common rate should, in the case of a particular body, be increased or reduced by reason of any circumstances peculiar to that body.

(8) A rates and adjustments certificate must contain a statement of the assumptions on which the certificate is given as respects—

(a) the number of members who will become entitled to payment of pensions under provisions of the Scheme; and

(b) the amount of the liabilities arising in respect of such members,

during the period covered by the certificate.

(9) The authority must provide the actuary preparing a valuation or a rates and adjustments certificate with the consolidated revenue account of the fund and such other information as he requests

Future costs

36A.—(1) Administering and employing authorities shall have regard to guidance issued by the Secretary of State about how the future costs of the Scheme will be met.

(2) To enable the Secretary of State to calculate those costs for the purposes of that guidance, each administering authority shall provide to the Secretary of State by 31st August 2010, and in every third year afterwards, all the data used for the purposes of providing an actuarial valuation under regulation 36.

(3) For the purposes of that guidance, the Government Actuary shall provide to the Secretary of State by 31st October 2010 and in every third year afterwards—

(a) an actuarial valuation of the assets and liabilities of the Scheme as at 31st March 2010 and in every third year afterwards, based on the information provided to the Secretary of State under paragraph (2);

(b) a report in respect of the valuation (“the valuation report”); and

(c) an overall cost certificate.

(4) The valuation report must contain a statement of the financial and demographic assumptions used in making the valuation; and the statement must show how the assumptions relate to the events which have actually occurred in relation to the members of the Scheme since the last valuation.

(5) An overall cost certificate is a certificate—

(a) specifying the cost of the future accrual of pension liabilities; and

(b) adjusted where appropriate to reflect surpluses or deficits arising from variations between events which have actually occurred in relation to the members of the Scheme and the assumptions used in making valuations for each year beginning with 31st March 2007.”;

and

(b) after regulation 38 (special circumstances where revised actuarial valuations and certificates must be obtained), by the insertion of—

Special circumstances where revised actuarial valuations and certificates must be obtained

38.—(1) When obtaining a transfer statement under [regulation 32\(5\)](#), an administering authority must also obtain from the actuary a rates and adjustments certificate for the admission agreement fund for each remaining year of the period covered by the most recent such certificate for its main fund.

(2) Subject to paragraph (3A), where ([SI 2008/2829](#)) an admission agreement ceases to have effect, the administering authority which made it must obtain—

(a) an actuarial valuation as at the date it ceases of the liabilities of the fund in respect of current and former employees of the admission body which is a party to that agreement (“the outgoing admission body”); and

(b) a revision of any rates and adjustments certificate for any fund which is affected, showing the revised contributions due from that body.

(3) Where, for any reason, it is not possible to obtain revised contributions from the outgoing admission body, or from an insurer or any person providing an indemnity or bond on behalf of that body, the administering authority may obtain a further revision of any rates and adjustments certificate for the fund, showing—

(a) in a case where that body is a transferee admission body within [regulation 6\(2\)\(a\) or \(b\)](#), the revised contributions due from the body which is the Scheme employer in relation to that admission body; and

(b) in any other case, the revised contributions due from each employing authority which contributes to the fund.

(3A) Paragraph (2) does not apply where, by virtue of a transfer scheme, the liabilities of the Housing Corporation relating to pensions of current or former employees have been transferred to the Homes and Communities Agency or the Regulator of Social Housing. ([SI 2008/2989](#))

(3B) But the Homes and Communities Agency or the Regulator of Social Housing, as the case may be, shall make arrangements with the relevant administering authority as to the contributions necessary to secure the funding of those liabilities. ([SI 2008/2989](#))

(3C) Those arrangements shall include provision for the past service deficit to be paid in 15 annual instalments, the first of which shall be paid no later than 31st March 2009. ([SI 2008/2989](#))

(3D) In paragraph (3C) “the past service deficit” means the deficit calculated as at 31st March 2007 from the actuarial valuation obtained under regulation 77 of the 1997 Regulations of the fund of which the Housing Corporation is a community admission body, revalued by the fund actuary as at 30th November 2008, in respect of—

(a) employees transferred by virtue of a transfer scheme; and

(b) deferred and pensioner members to whom that scheme applies.

([SI 2008/2989](#))

(3E) An admission agreement with a relevant administering authority shall provide that if it appears, on an actuarial valuation of the assets and liabilities of the relevant pension fund (whether under [regulation 36](#) or otherwise), that an increased individual adjustment is required, the Homes and Communities Agency or the Regulator of Social Housing, as the case may be, will notify the Secretary of State forthwith. ([SI 2008/2989](#))

(3F) An employee of the Housing Corporation whose contract of employment is transferred to the Homes and Communities Agency or the Regulator of Social Housing by virtue of a transfer scheme shall be treated as having—

- (a) applied in writing for the purposes of [paragraph \(6\)\(a\) of regulation 13](#) (joining the Scheme); and
- (b) given notice for the purposes of [paragraph \(1\) of regulation 16](#) (re-employed and rejoining deferred members).

[\(SI 2008/2989\)](#)

(3G) In this regulation—

- (a) “individual adjustment” has the meaning given by [regulation 36\(7\)](#);
- (b) “relevant administering authority” means an administering authority which enters into an admission agreement with the Homes and Communities Agency or the Regulator of Social Housing following a transfer mentioned in paragraph (3A); and
- (c) “transfer scheme” means a scheme made under section 65 of the Housing and Regeneration Act 2008.

[\(SI 2008/2989\)](#)

(4) An administering authority may obtain from an actuary a certificate specifying, in the case of an admission body, the percentage or amount by which, in the actuary’s opinion—

- (a) the contribution at the common rate should be adjusted; or
- (b) any prior individual adjustment should be increased or reduced,

with a view to providing that the value of the assets of the fund in respect of current and former employees of that body is neither materially more nor materially less than the anticipated liabilities of the fund in respect of those employees at the date the admission agreement is to end.

(5) Paragraph (6) applies where—

- (a) an administering authority agrees with an employing authority as mentioned in [regulation 40\(4\)](#); or
- (b) it appears to an administering authority that the amount of the liabilities arising or likely to arise in respect of members in employment with an employing authority exceeds the amount specified in, or likely as a result of, the assumptions stated for that authority in a rates and adjustments certificate by virtue of [regulation 36\(8\)](#).

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

Future costs: revised certificates

38A. Where, as a result of the valuation exercise under regulation 36A, the Secretary of State amends the Benefits Regulations, an administering authority must consider whether the rates and adjustment certificate obtained under regulation 36(1)(a) should be revised to take account of the amendment; and if, in the authority's view the certificate should be so revised—

(a) the authority must ensure that the certificate is revised accordingly and as soon as possible; and

(b) the revised certificate must cover the period beginning with 1st April in the second year following that in which the valuation date falls under regulation 36.”.

Employer's contributions

39.—(1) An employing authority must contribute to the appropriate fund in each year covered by a rates and adjustments certificate under regulation 36 or 38 the amount appropriate for that authority as calculated in accordance with the certificate and paragraph (4).

(2) During each of those years an employing authority must make payments to the appropriate fund on account of the amount required for the whole year.

(3) Those payments on account must—

(a) be paid at the end of the intervals determined under regulation 42; and

(b) equal the appropriate proportion of the whole amount due under paragraph (1) for the year in question.

(4) An employer's contribution for any year is the common percentage for that year of the pay on which contributions have, during that year, been paid to the fund under regulations 18 (contributions during child-related leave), 19 (contributions during reserve forces service leave) or 21 (contributions during absences with permission) or regulation 3 of the Benefits Regulations (contributions payable by active members) by employees who are active members, increased or reduced by any individual adjustment specified for that employer for that year in the rates and adjustments certificate.

(5) The common percentage is the common rate of employer's contribution specified in that certificate, expressed as a percentage.

(6) Where an employee—

(a) is treated under paragraph (4) of regulation 18 as if he had paid contributions; or

(b) has paid contributions during a period of maternity, paternity or adoption absence (within the meaning of that regulation),

the pay on which the common percentage is calculated is the pay the employee would have received if he had not been absent.

Exchange of information by authorities

64.—(1) An employing authority which is not an administering authority must—

(a) inform the appropriate administering authority of all decisions made by the employer under Part 6 or this Part concerning members; and

(b) give that authority such other information as it requires for discharging its Scheme functions.

(2) If—

(a) an administering authority makes any decision under Part 6 or this Part about a person for whom it is not the employing authority; and

(b) information about the decision is required by his employing authority for discharging that employer's Scheme functions,

that authority must give that employer that information.

Statements of policy about exercise of discretionary functions

66.—(1) Each employing authority must prepare a written statement of its policy in relation to the exercise of its functions under regulations 12 (power of employing authority to increase total membership of active members), 13 (power of employing authority to award additional pension), 18 (flexible retirement) and 30 (choice of early payment of pension) of the Benefits Regulations.

(2) Before the expiry of the period of three months beginning with the commencement date, each employing authority must send a copy of its statement to each relevant administering authority and must publish its statement.

(3) An employing authority must—

(a) keep its statement under review; and

(b) make such revisions as are appropriate following a change in its policy.

(4) Before the expiry of the period of one month beginning with the date any such revisions are made, each employing authority must send a copy of its revised statement to each relevant administering authority and must publish its statement as revised.

(5) In preparing, or reviewing and making revisions to, its statement, an employing authority must have regard to the extent to which the exercise of any of the functions mentioned in paragraph (1) in accordance with its policy could lead to a serious loss of confidence in the public service.

(6) In this regulation, a relevant administering authority, in relation to an employing authority, is any authority which is an appropriate administering authority for that employer's employees.

Bulk transfers (transfers of undertakings etc.)

81.—(1) This regulation applies where—

(a) two or more members' active membership ends on their joining a registered non-local government scheme ("the new scheme");

(b) it is agreed by—

(i) the members' appropriate administering authority,

(ii) the members' employing authorities (if different), and

(iii) the trustees or managers of the new scheme,

that a payment should be made under this regulation; and

(c) the members—

(i) agree in writing that that payment should be made instead of any payment which they otherwise might require to be made under Chapter 4 or 5, and

(ii) waive any rights they might have under those Chapters by virtue of the cessation of their active membership.

(2) The appropriate administering authority must not give its agreement under paragraph (1)(b) unless it is satisfied that the rights that each of the members will acquire under the new scheme are at least equivalent to those which he would have obtained if a transfer value had been paid to the same scheme under Chapter 4 or 5, as it applies by virtue of regulation 78 (assuming in any case where the member would not be entitled to such a payment that he was).

(3) The appropriate administering authority must provide each member with sufficient information in writing to check that fact before he agrees as mentioned in paragraph (1)(c).

(4) The appropriate administering authority must—

(a) set aside (whether in cash or in assets or both) such part of the appropriate fund (“the transfer payment”) as an actuary appointed by the authority and an actuary appointed by the trustees or managers of the new scheme for the purpose may agree as appropriate for the acquisition of such rights in that scheme as they may so agree; and

(b) pay or transfer it to the trustees or managers of the new scheme for the benefit of the relevant members.

(5) The appropriate administering authority must certify to the new scheme’s trustees or managers the amount included in the transfer payment which represents each member’s contributions and interest on them.

(6) Where a transfer payment is to be or has been made under this regulation, no other payment or transfer of assets shall be made from the pension fund by reason of membership covered by the transfer payment.

(7) Paragraph (6) overrides anything to the contrary in—

(a) the Former Regulations;

(b) any local Act scheme;

(c) the Earlier Regulations; or

(d) these Regulations or the Benefits Regulations

Calculation of amount of transfer payment under regulation 81

82.—(1) The amount of the transfer payment to be paid under regulation 81 is the amount determined by an actuary appointed by the members’ appropriate administering authority to be equal to the value at the date they join the new scheme of the actual and potential liabilities payable from its fund which have then accrued in respect of the members and the persons who are or may become entitled to benefits under the Scheme through them.

(2) The actuary may make such adjustments as he thinks fit in calculating that amount and, in particular, as respects the period from that date to the date of actual payment of the transfer value.

(3) He must specify in his valuation the actuarial assumptions he has used in making it.

(4) The employing authority shall bear the costs of determining the appropriate part of the fund and apportioning the fund.

(5) But if there is more than one employing authority involved, each shall bear such part of the costs as the actuary determines to be appropriate

Schedule 3 - Matters to be included in admission agreements with transferee admission bodies

1. A requirement for the transferee admission body to pay to the administering authority all contributions and payments due under these Regulations and the Benefits Regulations.

2. If required by regulation 6(7), a reference to the indemnity or bond in accordance with regulation 6(8) and a warranty from the transferee admission body that such an indemnity or bond is in place.

3. A provision requiring the transferee admission body to adopt the practices and procedures relating to the operation of the Scheme set out in these Regulations, the Benefits Regulations, the Transitional Regulations and in any employer's guide published by the administering authority and provided to that body.

4. An undertaking from the transferee admission body to the administering authority that it will not do anything to prejudice the status of the Scheme as a registered scheme.

5. A representation and warranty from the transferee admission body to the administering authority that all the body's employees who are members are employed in connection with the provision of a service or assets mentioned in regulation 6(2).

6. An undertaking from the transferee admission body that it will promptly notify the administering authority in writing of any material change in the terms and conditions of employment which affect entitlement to benefits under the Scheme for its employees who are members and of any terminations of employment by virtue of redundancy or in the interests of efficiency.

7. A requirement that the transferee admission body notifies the administering authority of each occasion on which it exercises a discretion under these Regulations, the Benefits Regulations or the Transitional Regulations and the manner in which it exercises that discretion.

8. A requirement that the transferee admission body—

(a) notifies the administering authority of any matter which may affect, or is likely to affect, its participation in the Scheme; and

(b) gives immediate notice to that authority of any actual or proposed change in its status which may give rise to a termination,

and, for these purposes, a termination includes a take-over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of the body's business or constitution.

9. A provision—

(a) for automatic termination of the admission agreement, as required by regulation 7(2), if the transferee admission body ceases to be such a body; and

(b) otherwise for a minimum period of three months' notice to terminate the agreement.

10. A right for the administering authority to terminate the agreement in the event of—

(a) the insolvency, winding up or liquidation of the transferee admission body;

(b) a breach by that body of any of its obligations under the admission agreement (but where the breach is capable of remedy only where it has not been remedied within a reasonable time); or

(c) a failure by that 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.

11. A requirement that the admission agreement in its final form must be available for public inspection at the offices of the administering authority.

12. In relation to a transferee admission body under regulation 6(2)(a)—

(a) a reference to the date of the contract, other arrangement or direction by which the body met the requirements of that regulation;

(b) a provision whereby the Scheme employer 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 payable under these Regulations) due from the body as an employing authority;

(c) a provision requiring the Scheme employer to keep under assessment the level of risk arising as a result of the matters mentioned in regulation 6(5);

(d) provision that where a representation or notification must be given to an administering authority under paragraph 5, 6, 7 or 8, it must also be given to the Scheme employer; and

(e) where the Scheme employer is not also the administering authority, a requirement that the admission agreement in its final form must be available for public inspection at the offices of that employer.

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