

Updated guides for Automatic Enrolment and information from the LGA

Dear Employer

The Local Government Association (LGA) have recently issued updated versions of the Automatic Enrolment Guide and the Automatic Enrolment Brief guide (v6) which are available at <http://lgpsregs.org/index.php/guides/administration-guides-to-the-2014-scheme> for the Scheme in England and Wales

The updates to the guides (and to the template letters in the detailed guide) are primarily to reflect the measures included in the Pensions Act 2014 which amended the Pensions Act 2008 to further simplify automatic enrolment. These measures were designed to:

- introduce an alternative quality requirement for DB schemes
- simplify the information requirements for employers
- create exceptions to the employer duties in certain circumstances.

and were detailed in [the Occupational and Personal Pension Schemes \(Automatic Enrolment\) \(Amendment\) Regulations 2015 \[SI 2015/501\]](#), operative from 1 April 2015.

The LGA have issued this additional wording with the updated guides, which you may find useful:

As a result of these regulations employers are not required to automatically enrol or re-enrol eligible jobholders :

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

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

The protections mentioned in (c) above are protections in respect of the lifetime allowance tax charge. The lifetime allowance is the maximum amount of pension savings that an individual can build up in registered pension schemes which benefit from favourable tax treatment. There is also an update to the opt-out form for England and Wales included in Annex 4 and further information in paragraphs 96 and 98 of the Guide regarding the completion of the declaration of compliance and the re-declaration of compliance by, or by an agent authorised by, a foundation school (including a Trust school that is a foundation school), a voluntary aided school or a foundation special school.

Another significant change is that the detailed guide and the template letters now reflect the LGPCs latest understanding of the implications for those with Fixed or Enhanced Protection who are enrolled or re-enrolled into the LGPS i.e.

For members of the LGPS in England and Wales –

i) if a person obtained Fixed Protection 2012, Fixed Protection 2014 or Enhanced Protection whilst a member of a different pension scheme they will lose the relevant protection if they become a member of the LGPS in England or Wales (a new pension ‘arrangement’). It should be noted that the LGPS in Scotland, the LGPS in Northern Ireland and the LGPS in the Isle of Man are all different pension schemes to the LGPS in England and Wales. If the person wishes to retain their Fixed Protection 2012, Fixed Protection 2014 or Enhanced Protection it will be necessary for them to opt out of the LGPS in England or Wales within 3 months of being enrolled, thereby ensuring they are treated as never having been a member of the scheme.

ii) if a person holds Fixed Protection 2012, Fixed Protection 2014 or Enhanced Protection and they have previous benefits in the LGPS in England or Wales they will lose the relevant protection if they become a member of the LGPS in England or Wales and they **do not aggregate** their benefits (as the new period of membership in the LGPS will be treated as a new pension ‘arrangement’). If the person wishes to retain their Fixed Protection 2012, Fixed Protection 2014 or Enhanced Protection it will be necessary for them to opt out of the LGPS in England or Wales within 3 months of being enrolled, thereby ensuring they are treated as never having been a member of that scheme.

iii) if a person holds Fixed Protection 2012 or Fixed Protection 2014 and they have previous benefits in the LGPS in England or Wales (based on a period of membership which includes pre 1 April 2014 membership) they will lose the relevant protection if:

- they become a member of the LGPS in England or Wales, and
- **aggregate** their benefits, and
- **HMRC were to deem** this to be a new pension ‘arrangement’ (because the aggregated benefits include some pre 1 April 2014 final salary benefits and some post 31 March 2014 career average revalued earnings benefits).

However, we understand that the Department for Communities and Local Government, being the department responsible to the relevant Minister (the ‘responsible authority’ under the Public Service Pensions Act 2013) take the view that the relevant LGPS Regulations provide a **single** arrangement within a single scheme. HMRC have indicated that, in individual cases, they are not in a position to say whether or not they agree with that view. If the DCLG view is correct and **HMRC do not deem** it to be a new pension ‘arrangement’ the person will not lose protection unless they have ‘benefit accrual’. They would lose Fixed Protection 2012 or Fixed Protection 2014 at the point at which ‘benefit accrual’ occurs (which could be immediately upon aggregation or at some point thereafter) - see <http://www.hmrc.gov.uk/manuals/ptmanual/ptm093500.htm> for more information on ‘benefit accrual’.

If the person wishes to make certain that they retain their Fixed Protection 2012 or Fixed Protection 2014 it will be necessary for them to opt out of the LGPS in England or Wales within 3 months of being enrolled, thereby ensuring they are treated as never having been a member of that scheme.

iv) if a person holds Enhanced Protection and they have previous benefits in the LGPS in England or Wales (based on a period of membership which includes pre 1 April 2014 membership) they will lose that protection if:

- they become a member of the LGPS in England or Wales, and
- **aggregate** their benefits, and
- **HMRC were to deem** this to be a new pension 'arrangement' (because the aggregated benefits include some pre 1 April 2014 final salary benefits and some post 31 March 2014 career average revalued earnings benefits).

We understand that the Department for Communities and Local Government, being the department responsible to the relevant Minister (the 'responsible authority' under the Public Service Pensions Act 2013) takes the view that the relevant LGPS Regulations provide a **single** arrangement within a single scheme. HMRC have indicated that, in individual cases, they are not in a position to say whether or not they agree with that view.

If the DCLG view is correct and **HMRC do not deem** it to be a new pension 'arrangement' the person will not lose protection even if they then have 'relevant benefit accrual' (i.e. benefits at retirement exceed the value of their benefits at 5 April 2006 as increased after then, in general terms, by the greater of 5% per annum, the increase in the cost of living or increases in their pensionable pay). This is because the person would be able to notionally split the crystallisation of their defined benefit rights on retirement. This would allow them to reduce their tax liability by crystallising benefits below the 'relevant benefit accrual' limit so Enhanced Protection would be retained during that crystallisation. When the remaining benefits are crystallised, Enhanced Protection on those benefits would be lost. The person would lose the Enhanced Protection if they were to pay contributions into a money purchase pension arrangement (e.g. they were to pay into the LGPS AVC facility) other than to a life assurance policy providing death benefits that started before 6 April 2006, or if they were to start a new pension arrangement, or if they were to transfer their LGPS benefits to another defined benefit pension scheme.

If the person wishes to make certain that they retain their Enhanced Protection it will be necessary for them to opt out of the LGPS in England or Wales within 3 months of being enrolled, thereby ensuring they are treated as never having been a member of that scheme.

v) if a person holds Fixed Protection 2014 and they are enrolled into the LGPS in England or Wales they will **not** lose Fixed Protection 2014 if:

- they do not opt out within 3 months, but
- they have earlier LGPS membership in England or Wales which consists **only** of post 31 March 2014 membership, and
- they **aggregate** the two periods of membership (as this will not constitute entering into a new arrangement)

provided they do not have 'benefit accrual'.

However, the person will lose Fixed Protection 2014 at the point at which 'benefit accrual' occurs (which could be immediately upon aggregation or at some point thereafter) - see <http://www.hmrc.gov.uk/manuals/ptmanual/ptm093500.htm> for more information on 'benefit accrual'.

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We understand that the above information on Protections reflects DCLGs current view.

We are also considering making appropriate updates to the employee's guides to the LGPS for England and Wales and the employees' guides to the LGPS for Scotland.

Kind regards,

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