

**Bath & North East
Somerset Council**



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Employers Guide to the LGPS

Joining and Rejoining the LGPS

2 – JOINING / REJOINING THE PENSION SCHEME

2.1 Eligible Employers

To be able to join the LGPS, an employee must work for an employer who participates in the LGPS. There are three types of employer who are able to participate, as follows:

- **Scheduled Body:** this is a statutorily defined body listed within **Part 1 of Schedule 2** of the Administration Regulations and has a statutory obligation to participate in the LGPS. The list can be found in Appendix 1 at the end of this part.
- **Designating Body:** this is a statutorily defined body listed within **Part 2 of Schedule 2** of the Administration Regulations and it has the power to designate which of its employees can join the LGPS. The list can be found in Appendix 1 at the end of this part.
- **Admission Body:**
 - a) Community Admission Body – a body that satisfies the requirements of **Regulation 5** of the Administration Regulations can be admitted to the Avon Pension Fund by an admission agreement approved by the administering authority.
 - b) Transferee Admission Body - a body that provides a service of a Scheme Employer by means of a contract or other arrangement and satisfies the requirements of **Regulation 6** of the Administration Regulations can be admitted to the Avon Pension Fund by an admission agreement approved by the administering authority.

An employee of an Admission Body can elect to join the LGPS if he/she has been nominated by the Admission Body as being eligible to join.

2.2 New Employees

a) Employees of Scheduled Bodies

All new employees, including new employees of Foundation Schools/Trust Schools will **automatically** become members of the LGPS from the first day of their employment:

- unless the employee has the right to join another public service pension scheme this includes firefighters, teachers and lecturers unless they are excluded from their own scheme, and
- providing there is a contract of employment of three month's or more, and
- providing the employee is less than 75 years of age
- unless notice has been given to the employer to opt out of the LGPS before the date of commencement of employment
- with the exception of casual employees where there is **no mutuality of obligation** (see section on casual employees)

See section 2.8 Pension Starter Pack.

b) Employees of Designating Bodies

All new employees will **automatically** become members of the LGPS from the first day of their employment:

- providing the employer has designated them as being eligible to join the LGPS, and
- providing there is a contract of employment of three month's or more, and
- providing the employee is less than 75 years of age
- unless notice has been given to the employer to opt out of the LGPS before the date of commencement of employment
- with the exception of casual employees where there is **no mutuality of obligation** (see section 'd' on casual employees)

See section 2.8 Pension Starter Pack.

c) Employees of Admission Bodies

All new employees can become members of the LGPS from the first day of their employment or later

- providing the employer is allowed to nominate them as being eligible to join the LGPS, within the terms of the admission agreement, and
- providing there is a contract of employment of three month's or more, and
- providing the employee is less than 75 years of age, and
- providing the employee has elected to join the LGPS
- with the exception of casual employees where there is **no mutuality of obligation** (see section 'd' on casual employees)

See section 2.8 Pension Starter Pack.

If an election to join is not made before the employment commences the employee will not become a member until such an election is made. If the election is made at a later date, the date of entry to the LGPS will be the 1st of the month following the date of the employee's election.

d) Employees with Contracts of Three Months or Less

Regulation 2(2) of the Benefits Regulations makes it clear that an **employee** must have a contract of employment of three month's or more in order to be able to join the LGPS. Therefore an employee with a contract for three months or less cannot join the scheme. However, the following rules apply if the employee's contract is extended so that, in aggregate, the contract periods are for 3 months or more:

- (i) an employee of a Scheduled Body should join the LGPS from the date of the contract extension (unless they opt out or are aged 75 or over). The employee will have the option to backdate contributions to the original start date. Employers will need to put procedures in place to pick these cases up and offer backdated membership to the employee.

- (ii) an employee of a Designating Body should join the LGPS from the date of the contract extension if the employer has designated them as eligible for membership of the LGPS (unless the employee chooses to opt out or is aged 75 or over). However, the backdating option mentioned in (i) above **does not apply** to employees of Designating Bodies.
- (iii) an employee of an Admission Body will be able to opt into the scheme from the date of the contract extension if they are otherwise eligible for membership of the scheme under the admission agreement (unless the employee chooses to opt out or is aged 75 or over). The backdating option mentioned above **does not apply** to employees of Admission Bodies.

e) Casual Employees

Whilst Regulation 2(2) of the Benefits Regulations makes it clear that an **employee** must have a contract of employment of more than 3 months' duration in order to be able to join the LGPS this has an impact on the pensionable status of casual employees, of which there are two types. See footnote¹:

- (i) where there is a fixed-term or open-ended contract **with mutuality of obligation**. In these cases the employer has issued a contract of employment (although there are no contractual hours) and the employee is under an obligation to accept work under that contract as and when it is offered. Those employees in this category are eligible for membership if the contract is open-ended or the fixed-term is for more than 3 months' duration and will become members of the LGPS subject to section 2.2 (a), (b) or (c).
- (ii) where there is **no mutuality of obligation**. In these cases the employer is under no obligation to offer employment and the worker is under no obligation to accept any work offered. A contract of employment only exists on the days when work is both offered and accepted. Those in this category are unlikely to ever meet the 3 month requirement and would thus be excluded from the Scheme.

2.3 Employees who have more than one contract

If an employee is given an additional contract with the same employer the employee must be treated as a new employee and treated in accordance with paragraphs a) to e) of Section 2.2 New Employees. The pension regulations require that each contract is treated and recorded separately. These contracts are often combined and paid under the same payroll number by the employer but it is vital for pension purposes that membership is recorded separately for each employment and the Pensions Section informed accordingly.

¹ See the decision of the House of Lords in the case of Carmichael and Others v National Power Plc (explained in LGPC Circular 87 <http://www.lge.gov.uk/lge/aio/56226>)

2.4 Re-joining the LGPS after Opting-out – Regulation 13(4) of the Administration Regulations

These employees may re-join the LGPS **by applying in writing to their employer**. The date of entry to the LGPS will be the beginning of the pay period following the date of completion of the Pension Membership Form. Eg if the employee is monthly paid the date of entry will be the 1st of the month following the date of application.

2.5 Members Contribution Rates (Regulation 3 of the Benefits Regulations)

An employer is recommended to establish a policy on how new employees commencing on or after 1 April 2008 will be allocated to a contribution band, and determine in what circumstances the banding decision will be revisited.

In 2008/09 employees will pay contributions according to the table shown below based on their whole-time equivalent pensionable pay. Thus, the rate for a part-time employee will be determined by reference to the whole-time equivalent rate of pay, not on the part-time pay actually earned. An employer will also need to determine how to calculate the whole-time equivalent pensionable pay for:

- sessional workers, which should be reasonably straight forward where the payment for the session is linked to an hourly rate derived from an annual pay figure / spinal column point,
- fee earners, including those where a fee is paid as a separate payment for the role undertaken. For example, if a returning officer receives a fee of £8,000, separate from the salary for their main post, the contribution rate would be determined by reference to the amount of fee paid and so would be 5.5%, and
- employees with variable pensionable payments.

The figures in the table below will increase on 1 April each year by the rise in the Retail Prices Index with the first increase being in April 2009².

The bands in effect from 1 April 2009 are:

Band	Whole-time equivalent pay	Contribution rate
1	Up to £12,600	5.5%
2	More than £12,601 and up to £14,700	5.8%
3	More than £14,701 and up to £18,900	5.9%
4	More than £18,901 and up to £31,500	6.5%
5	More than £31,501 and up to £42,000	6.8%
6	More than £42,001 and up to £78,700	7.2%
7	More than £78,700	7.5%

² In practice, the new table will be applied from the beginning of the first pay period in each year (even though this pay period may not actually start on a 1st April e.g. for weekly, fortnightly or 4 weekly paid staff).

The band for any whole-time term-time employee is the band relevant to the pay the person receives for the weeks worked e.g. 44 weeks rather than 52 weeks. The band for any part-time term-time employee is the band relevant to the whole-time equivalent pay the person would have received in the weeks worked e.g. 44 weeks rather than 52 weeks.

The overall effect, therefore, is as follows:

- for someone who works, say, 37 hours per week for 52 weeks of the year, the contribution band is assessed by reference to their actual pensionable rate of pay.
- for someone who works, say, 20 hours per week for 52 weeks of the year, the contribution band would be assessed by reference to the WTE equivalent pay i.e. gross up their actual pensionable rate of pay by 37/20.
- for someone who works, say, 37 hours per week but for only 44 weeks of the year, the contribution band is assessed by reference to their actual pensionable rate of pay, not the pay grossed up by 52/44.
- for someone who works, say, 20 hours per week for 44 weeks of the year, the contribution band would be assessed by reference to the WTE equivalent term-time pay i.e. gross up their actual pensionable rate of pay by 37/20 (but do not gross it up further by 52/44).

It should be noted that an employee whose post could be 52 weeks per year but who, for personal reasons (e.g. for work-life balance reasons or to fit in with school holidays), chooses with the agreement of the employer to work less than 52 weeks will not be treated as a term-time employee, but as a part time employee.

An employer may be asked to explain why the contribution band for a part-time employee is determined by reference to their whole-time equivalent rate of pay. Well, take two people on the same scale point, one who is half-time and earning £10,000 with the other being full-time earning £20,000. Both are receiving the same hourly pay rate.

Using the WTE pay rate for both would result in a contribution rate of 6.5% and:

- for one year in the scheme the full-timer would pay $£20,000 \times 6.5\% = £1,300$ and get a benefit of $1 \times 1/60^{\text{th}} \times £20,000 = £333.33$
- for one year in the scheme the half-timer would pay $£10,000 \times 6.5\% = £650$ and get a benefit of $0.5 \times 1/60^{\text{th}} \times £20,000 = £166.67$

So, the half-timer would pay exactly half the contributions and get exactly half the pension of a full-timer.

If, on the other hand, the contribution rate had been based on actual pay, rather than the WTE pay, the full-timer would have paid 6.5% and the half-timer would have paid 5.5%. Thus:

- for one year in the scheme the full-timer would have paid £20,000 x 6.5% = £1,300 and got a benefit of $1 \times 1/60^{\text{th}} \times £20,000 = £333.33$, and
- for one year in the scheme the half-timer would have paid £10,000 x 5.5% = £550 and got a benefit of $0.5 \times 1/60^{\text{th}} \times £20,000 = £166.67$

In this latter scenario, the half-timer would have paid much less than half the contributions of a full-timer, but would get a benefit that is exactly half that of a full-timer.

In order to ensure that the payroll system is updated to cater for tiered employee contributions, employers will need to speak to their IT section (if the payroll programmes are maintained “in-house”) or to their payroll software supplier or, if payroll has been outsourced, to their payroll provider. Payroll programmes will need to be amended and tested to ensure the programme can effectively implement the employer’s policy i.e.

- it can allocate staff to the correct band (or bands if, for example, an employee has two jobs, each one of which falls into a different band),
- it can update the bands each April in line with Pensions Increase (i.e. in line with the published RPI figure), and
- it can reallocate employees to the correct band at any time during the year (if the employer’s policy is to do so – see below regarding reallocation).

It will be necessary to ensure that payroll and personnel officers understand the policy in order to ensure its effective implementation and to deal with queries from employees.

The initial attribution to a contribution band must be carried out on a reasonable basis. Employees must be notified of the employer’s decision on the contribution rate they will pay (determined by the pay band they are being placed in) and of their right of appeal against that decision under the scheme’s Internal Dispute Resolution Procedure (IDRP).

Employers will have to notify the Pensions Section of the contribution rate each employee has been allocated to (and of any subsequent change in the rate and the date of the change).

For example the bands could be reassessed:

- at the beginning of each April, or
- at the beginning of the month that a pay award and / or increments are due
- at the date that an employee’s whole-time equivalent pay increases or decreases

It should be noted that it is not appropriate or possible to reassess an employee’s band in consequence of that person going on to half or reduced pay (due to sickness or maternity, paternity, parental leave, adoption leave, etc) as the band

has to be assessed by reference to the whole-time equivalent rate of pay for the job.

Lower Rate Rights members

Employers will need to increase the contribution rate of all 5% contributors to 5.25% with effect from 1st April 2008, to 5.5% from April 2009, the lower of 6.5% and the figure from the contribution table from April 2010, and the figure from the contribution table from April 2011.

2.6 Meaning of Pensionable Pay – Regulation 4 of the Benefits Regulations

An employee's pensionable pay is the total of –

- (a) all the salary, wages, fees and other payments paid to him for his own use in respect of his employment; and
- (b) any other payment or benefit specified in his contract of employment as being a pensionable emolument.

But an employee's pensionable pay does not include –

- (a) payments for non-contractual overtime;
- (b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;
- (c) any payment in consideration of loss of holidays;
- (d) any payment in lieu of notice to terminate his contract of employment; or
- (e) any payment as an inducement not to terminate his employment before the payment is made.

The following regulations of the 1997 Regulations have been retained by virtue of Schedule 1 of the Transitional Provisions Regulations:

- **regulation 13(2)(f)** which provided that the amount treated as the money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such provision should be non-pensionable, except for some historic cases protected by retained regulations 13(8) and 13(9) of the 1997 Regulations,
- **regulation 13(2)(g)** which provided that, in the case of an employee or former employee of the Commission for the New Towns, any payment made under any scheme relating to the termination of the employment of employees by the Commission in respect of the completion before a specified date of specified functions, should be non-pensionable, and
- **regulation 13(2)(h)** which provided that a payment made in consequence of a School Achievement Award under the scheme established by the Secretary of State known as the School Achievement Award Scheme should be non-pensionable.

No sum may be taken into account in calculating pensionable pay unless income tax liability has been determined on it.

2.7 Incorrectly deducted pension contributions – Regulation 45(5), (6) and (7)

The regulations require that interest should be paid on any refund of incorrectly deducted pension contributions (including additional contributions and AVCs) paid back to the employee where the refund is made more than 1 month after the contributions were deducted.

Where the employer refunds incorrectly deducted pension contributions to an employee via the payroll this will have the effect, correctly, of reducing that month's total payment of contributions to the Pension Fund.

If the refund is made more than one month after the contributions were originally (incorrectly) deducted from the employee's pay, please notify the Pensions Section of:

- a) the name and national insurance number of the employee
- b) a monthly breakdown of the employee's incorrectly deducted contributions
- c) the date the refund of the incorrectly deducted contributions was made. It is possible that the refund will be made by the Pensions Section. The Pensions Section will then calculate and pay out of the Pension Fund any interest that is due on the refund to the employee.

2.8 Pension Starter Pack

[Avon Pension Fund provides Scheme Employers with a Pension Pack.](#) This is designed to advise an employee of his/her rights as regards choice of pension scheme and the right to elect to join or opt out of the Local Government Pension Scheme depending on employee's employer. It includes the following:

- a letter to the employee
- Pension Membership Form – **Form LGPS 1**
- Opting out Form – **Form LGPS 4**
- Expression of Wish Form – **Form LGPS 19**
- Nomination of a cohabiting partner - **Form LGPS 19A**
- a brief guide to the LGPS

An employer must issue the Pension Starter Pack supplied by the Avon Pension Fund, ideally with the letter of appointment, but in any event within one week of the date the employee commences employment.

The Pension Membership Form must be returned to the employer with the employee's original birth certificate or a certified copy. The Form must then be forwarded to the Pensions Section indicating whether or not the date of birth has been verified. If the date of birth is not verified at this time, payment of any future benefits or transfer values will be delayed whilst verification is sought.

Form LGPS 2 must be completed in all cases of new members and sent to the Pensions Section whether or not the member has completed **Form LGPS 1**. Form LGPS 2 does not need to be completed where the employer has agreed to transfer starter data to the Avon Pension Fund via a spreadsheet or data transfer etc.