nalc
National Association of Local Councils

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LTN 79 | STAFF PENSIONS

1. The Pensions Act 2008 ("the 2008 Act") requires all local councils (parish, town and community councils) to enrol "eligible jobholders" automatically into a qualifying pension scheme ("a qualifying scheme").

2. Employers' obligations to provide access to non-contributory pension schemes were largely abolished under the 2008 Act.

Qualifying scheme

3. A qualifying scheme satisfies the qualifying criteria in s.16 of the 2008 Act. For more information see: www.thepensionsregulator.gov.uk/docs/pensions-reform-pension-schemes-v4.pdf

Eligible jobholder

4. An eligible jobholder is aged between 22 and state pension age and currently has earnings above the trigger amount of £10,000 (s.3 of the 2008 Act).

5. Eligible jobholders are required to contribute to the scheme. They can voluntarily leave the qualifying scheme, but can re-join.

Non-eligible jobholders and entitled workers

6. Under sections 7 and 9 of the 2008 Act employers also have obligations to:

   - "non-eligible jobholders" - workers who are not eligible for automatic enrolment but who can choose to opt into a qualifying scheme and;

   - "entitled workers", workers who are entitled to join a non-contributory pension scheme

7. Non-eligible jobholders are workers who are aged 16-74 with qualifying earnings currently less than £10,000 but greater than £6,240.00. Employees aged between 16 and 21, or between state pension age and 74 with earnings currently above £10,000 can similarly opt in.

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8. Entitled workers are workers who are aged 16-74 and currently earn less than £6,240.00. They can require the employer to arrange for them to join a pension scheme. The scheme does not have to be a qualifying scheme and the employer does not have to contribute to it.

9. All earnings figures in this LTN are based on the year 2020/2021. The government may decide to change these figures each year.

Enrolment date

10. The employer must enrol eligible jobholders within six weeks from when they met the eligibility criteria. In most cases, this will be when starting work. Employers may choose to use a three-month postponement period before a jobholder is enrolled, but they can only use this postponement period once for each jobholder (see paragraph 17 – professional advice)

Telling jobholders about auto-enrolment

11. Employers are required to provide information to jobholders (and other workers) about auto-enrolment, including details of the contributions they will receive and information about the right to opt out. The Pensions Regulator has produced standard-form correspondence: www.thepensionsregulator.gov.uk/en/document-library/forms

Safeguarding individuals

12. The 2008 Act contains penalties for employers who encourage employees or job applicants to opt out of automatic enrolment. (see sections 50 to 59). For more information, please see: www.thepensionsregulator.gov.uk/docs/detailed-guidance-8.pdf

National Employment Savings Trust (NEST)

13. NEST is a qualifying scheme set up by the government. Employers are not required to use NEST provided their alternative scheme meets the statutory criteria for a qualifying scheme. For more information see: www.nestpensions.org.uk/schemeweb/NestWeb/public/home/contents/homepage.html

Re-enrolment

14. Re-enrolment of a worker into a qualifying scheme can arise in a number of ways. The most likely for local councils is when a worker opts out following

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automatic enrolment. A local council must enrol an opted out worker into a qualifying scheme, generally every three years from the opt out date. For more information on re-enrolment see: www.thepensionsregulator.gov.uk/docs/detailed-guidance-11.pdf

The Local Government Pension Scheme

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

Retirement gratuities

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

Professional advice

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

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

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