



Department for
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Local Government



Department
for Education



Local Government Pension Scheme (LGPS) arrangements for academies

Information pages for schools, academy trusts and pension
funds

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**LOCAL GOVERNMENT PENSION SCHEME (LGPS) ARRANGEMENTS FOR
ACADEMIES – INFORMATION PAGES FOR SCHOOLS,
ACADEMY TRUSTS AND PENSION FUNDS**

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INFORMATION PAGE 1: Introduction and background to LGPS and academies

Introduction

This is a series of information pages on the Local Government Pension Scheme (LGPS) as it affects academies in England. These pages are intended for schools considering conversion to academy status, academy trusts (AT), multi-academy trusts (MAT) and Administering Authorities (LGPS pension funds). The pages are not exhaustive but do contain advice as to where additional information can be obtained. The contents have been discussed and agreed between the Department for Education (DfE), Department for Communities and Local Government (DCLG) (who are responsible for LGPS and the LGPS Regulations) and the Local Government Association (LGA), who represent local authorities.

This document provides general clarification only and is not to be relied upon as advice in any specific instance. Where advice is required ATs and MATs should obtain it from independent professional advisers retained by them for the purpose.

Background

The Local Government Pension Scheme (LGPS) is a funded, statutory, defined benefits pension scheme. It is one of the largest pension schemes in the UK with over five million members and over 10,000 employers. In England, the LGPS is managed by 79¹ Administering Authorities, referred to from this point as LGPS funds.

Active members of the scheme (employees) pay the rate of contributions set out in Regulation 9 of the Local Government Pension Scheme Regulations 2013, www.lgpsregs.org.

Employer contributions are set locally every three years, as part of the LGPS fund triennial valuation. These valuations are carried out by the local fund actuary, appointed by each LGPS fund. Employer contribution rates reflect a number of factors including the employer's profile and the financial position and investment strategy of the particular LGPS fund, and ensure the scheme's long-term solvency so that pensions can be paid when they fall due. They must also be set to ensure long-term cost efficiency. The fund actuary will consult employers on the likely contribution rates; this employer consultation is confined to a small window and usually occurs in the autumn before publication.

¹ There are 81 administering authorities in England. 1 is closed to new members; 1 is restricted to a sole employer.

Employer contributions are generally split into those required to meet on-going cost of benefits as a % of pay (the “primary” rate) adjusted by a “secondary” rate (in respect of any deficit associated with the employer’s liabilities) to arrive at the rate the employer is required to pay.

The latest triennial valuation that commenced at 1 April 2016 set new employer contribution rates for the three-year period commencing 1 April 2017.

Copies of 2016 annual reports can be found at:

<http://www.lgpsboard.org/index.php/fund-annual-reports-2016>

Copies of valuation reports for 2013 can be found at:

<http://www.lgpsboard.org/index.php/fund-actuarial-valuations-2013>

Academies and LGPS

The Secretary of State for Education can enter into academy arrangements with organisations that:

- wish to convert from maintained school to academy status
- wish to convert from sixth form college to academy status
- are new schools (i.e. schools that do not replace a converting or closing maintained school), including Free Schools, University Technical Colleges (UTCs) and Studio Schools
- are required to convert to academy status following an inadequate Ofsted inspection

The proprietor of an academy, commonly referred to as an academy trust (AT), or a multi-academy trust (MAT), automatically becomes a scheme employer in the LGPS under the 2013 Regulations, www.lgpsregs.org. This means that all non-teaching staff employed by academy trusts on conversion or afterwards are entitled to membership of the scheme.

The appropriate LGPS fund for an AT is determined by its geographical location, www.lgpsmember.org/contactfund.php. MATs with academies located across different geographical areas will have LGPS arrangements with a number of different funds; in this case the MAT can apply to move the LGPS arrangements for all their relevant staff into one fund. (See the information page on [**Transfer into a single Fund**](#).)

If you have any queries regarding the information set out through this series of LGPS information pages you may contact:

LGPSpensions@communities.gsi.gov.uk

Academy trusts: preparing to be an LGPS employer

Academy trusts (ATs) are Scheduled Scheme employers in the LGPS. This means that all non-teaching staff employed by an AT on conversion, and any new members of staff who are employed post-conversion, are entitled to membership of the scheme.

Employees can opt out of the LGPS, and if they do so, the AT could offer alternative pension arrangements. However, whilst employees can opt out employers cannot, nor can they offer inducements to join an alternative scheme. To do so would be a breach of the Pensions Act 2008². The AT should be aware that even if staff do opt out and accept another scheme they retain the right to re-join the LGPS at any time while in the employment of the academy trust.

We recommend that the sponsor/AT contacts the local LGPS fund as early as possible in the conversion process, to determine what the responsibilities as an employer in the LGPS will be. The local authority will be able to provide contact details for the fund.

The LGPS fund's actuary will carry out an assessment to determine that school's notional allocation of assets (investments held by the LGPS fund) and liabilities (immediate and projected benefits owed to scheme members) within the scheme. The fund actuary's fees in respect of this assessment will need to be paid by the school. These fees vary across the funds. The support grant given to the school by the DfE to help with the costs of converting to academy status can be used to cover this.

The LGPS fund manager will be able to provide the school/trust with an explanation of the methodology applied in making this assessment. This should also be set out in the LGPS fund's Funding Strategy Statement, which may be available on the internet. There is no standard methodology specified in regulations, and it is therefore important that the sponsor/AT seeks to understand the method adopted by their fund.

The LGPS fund will provide the school/trust with the detail of the proposed primary employer contribution rate, and any deficit repayment arrangements. (For further detail on deficits, see the information page on [Understanding LGPS deficits](#).) The fund's actuary sets the employer's contribution rate taking into account a range of information relating to the non-teaching staff within the academy; for example, pay, length of membership in the scheme, age and gender.

The resulting employer contribution rate is usually expressed as a percentage of pay for employees who are active members in the fund to cover future service entitlements. The employer may also have to make an additional contribution towards any deficiency that exists between assets and liabilities at the time of the valuation. The

² A breach of the Pensions Act 2008 could lead to action by the Pensions Regulator, including fines.

deficit element of the rate may comprise of a cash sum or may be expressed as a percentage of pay. The employer contribution rate and deficit repayment contributions are re-assessed at each triennial review.

The employer contribution rate that is set will not cover events such as ill-health retirement or deaths in service. Where these occur the AT will normally have to make an additional, possibly substantial, lump-sum payment to the fund. Trusts should therefore investigate insuring against these events, whether as individual trusts or as part of a group. Trusts should discuss this issue with the fund manager and, if necessary, seek independent professional advice.

The LGPS fund must act within the law and so under the general public law the requirements it makes of its employers must be reasonable and proportionate. Best practice would include LGPS funds keeping their employers informed throughout the triennial review process, and consulting them on workable and affordable solutions if a significant change in arrangements is necessary. If an employer feels the LGPS fund is not acting reasonably and proportionately, it should, in the first instance, set out their reasoning to the LGPS fund, and seek an agreed way forward. Any complaints that cannot be dealt with in this way should be directed to the Pension Ombudsman, www.pensions-ombudsman.org.uk. Employers considering this course of action would be advised to seek expert legal advice before progressing the case.

Successfully participating in the LGPS

As an LGPS employer, the AT will need to provide the LGPS fund with ongoing information about eligible staff members, for example, when staff leave or new staff are appointed. Additionally, under Regulation 80 of the 2013 Regulations, www.lgpsregs.org, scheme employers must provide their LGPS fund with basic information about all their members as at 31 March each year. This information must be provided within three months, so by 30 June each year.

Trusts should ask their pension fund to specify exactly what information is required and when. Some pension funds offer specific training and/or induction packs for academies. It is also important and helpful to establish working level contacts between the academy trust and the pension fund so that queries can be addressed quickly and easily.

The LGA have issued guidance for employers, including a single format specification which covers all the information employers need to provide to fulfil legislative requirements³. This is a voluntary code but LGA have stated that they would expect pension funds to accept information in this format. If a multi-academy trust has employees in different funds, and the funds are asking for information in different

³ www.lgpsregs.org/index.php/guides/payroll-guide-to-the-2014-scheme?showall=&limitstart

formats, the multi-academy trust could encourage each of the funds to adopt LGA's specification.

Using a payroll provider

Pension fund/employer relationships can become more complex when trusts subcontract payroll provision. It is important therefore to choose a payroll provider that has a good reputation and is competent to manage and share the level of data that the pension fund needs to collect from them. Contracts with a payroll provider should be managed by a Service Level Agreement, and the academy trust should ensure that there are effective communication channels in place between the payroll provider and the pension fund.

As new schools join a MAT, the MAT may find that they inherit a variety of payroll providers working in different ways. The MAT may wish to consider whether it can take advantage of break or notice clauses in these agreements to rationalise these.

Multi-academy trusts

Where a multi-academy trust (MAT) is in place, it is legally the scheme employer for staff in all the academies in its trust. However, it is acceptable practice for LGPS funds to treat each academy in a MAT as a separate employer, because each academy has its own staffing profile. Employer contribution rates can therefore differ between academies within the same MAT.

Some MATs may want to request that the LGPS fund treat them as a single employer for relevant staff in all its academies. The benefits for a MAT to be considered as a single employer include:

- uniform contributions and employer rates across the MAT for that particular fund
- reduced annual administration costs/burdens e.g. in identifying/allocating employee costs for individual academies
- the MAT might be considered less of a risk than an individual academy, which could impact employer contribution rates and deficit repayment arrangements.

However, the MAT should be aware that being treated as a single employer will mean a sharing of assets and liabilities across all their academies. They may therefore incur extra costs to carry out the necessary calculations to share out those assets and liabilities each time a school enters or leaves the MAT.

Another option, and perhaps simpler to maintain, is for MATs to effectively pool contributions themselves, agreeing internally how to spread the LGPS costs across individual school budgets.

MATs should also discuss their employer arrangements and the potential advantages and disadvantages of each approach with the LGPS fund.

If MATs are considering being treated as a single employer, they should discuss with their auditors the appropriate disclosures in their accounts (FRS 102).

Transfer into a single LGPS fund

Some MATs operate across geographical areas, and therefore have pension arrangements with several LGPS funds. A MAT can apply to the Secretary of State of DCLG to have all its employees moved into a single LGPS fund.

The MAT should consider any effect on their employer contribution rate following transfer. It should also weigh the benefits of any administrative savings with the cost of the actuarial assessments required to consolidate all its employees and any former employees into one fund and the potential impact on any separate employer arrangements it currently has in place (see the information page on [Multi-academy trusts](#)). The MAT should discuss these implications with each of the relevant LGPS funds before making any approach to the Secretary of State of DCLG.

If, after taking all the potential implications into account, the MAT wishes to move all their employees (and any former employees) into one LGPS fund, they should submit an application for a Direction to DCLG. DCLG will carry out statutory consultation with interested parties, which usually takes at least 2 months to complete. Please contact DCLG at the email address below for details:

LGpensions@communities.gsi.gov.uk

Providing proper arrangements have been made with each LGPS fund for the transfer of liabilities, exit payments should not be required.

The DfE has provided a Departmental guarantee (see the information page on the [Departmental guarantee](#)) to all LGPS administering authorities in England that in the event of the closure of an academy trust or MAT any outstanding LGPS liabilities that cannot be met by the Trust's assets will be met by the DfE and will not revert to the fund. Academies therefore present no greater risk to funds than local authorities. Arrangements for the transfer of liabilities and exit payments should not treat academies as higher risk employers.

Pooling arrangements for academies within LGPS

Some LGPS funds allow or may determine that employers within their fund can pool together, to generate stability across the group. However, LGPS funds are not obliged to offer any pooling arrangement within their fund of any kind.

Pooling can be beneficial for scheme employers as they can share risk (for example, ill-health retirement payments) across the group. Variations in the cost of future benefits (the primary employer contribution rate) caused by changes in the age and pay profile of staff can also be reduced when part of a larger pool.

However, pooling also carries disadvantages as it involves cross-subsidy across the pool. This means that a decision made in one school within the pool, for example on salary awards or early retirements, may affect the contributions required of other schools within the pool, in order to ensure all liabilities across the pool can be met.

When pooling arrangements are implemented, individual assets and liabilities are no longer tracked by the fund actuary and therefore it is not readily possible to revert back to assessment/treatment as an individual employer.

If MATs are considering being treated as a single employer, they should discuss with their auditors the appropriate disclosures in their accounts (FRS 102).

Employers should contact their LGPS fund to find out if pooling arrangements are available, and whether participating in a pool would be suitable for them.

Understanding LGPS deficits

Like many funded occupational pension schemes, the LGPS has recently been in deficit because the value of the assets held at the time of fund valuations is less than the amount assessed by the actuary to be required to meet all current and future pension payments when they fall due.

When an academy trust (AT) becomes a scheme employer under the LGPS Regulations, it takes on a responsibility to meet the liabilities for the employees (active members) at the point of conversion. The calculation to determine how assets and liabilities are allocated between the local authority (the previous scheme employer) and the academy trust on conversion is very complex, and is carried out locally by the LGPS fund's actuary. The LGPS fund manager will be able to provide the school/trust with an explanation of the methodology applied in making this assessment, which should also be set out in the LGPS fund's Funding Strategy Statement.

In all cases, liability for pre-conversion pensioner and deferred members remains with the local authority. However, the methodology used for the allocation of assets may result in the AT not inheriting a sufficient share of assets to meet the liabilities of the active members who are transferred. Where this is the case, the AT will immediately have a deficit on conversion.

Deficit recovery arrangements are set out by the LGPS fund in its Funding Strategy Statement. The contribution needed in respect of the deficit could be expressed as either a percentage of pay or a monetary amount depending on the LGPS fund's policy. The statement will determine the period over which the deficit is to be recovered and these periods can vary across and within each different LGPS fund to reflect their different circumstances and the view of funding risk taken by the fund. ATs will want to satisfy themselves that they are able to pay the employer contributions, including those associated with any deficit, as they become due.

LGPS funds have a legal duty⁴ to ensure that their deficit repayment arrangements achieve their fund's solvency and long term cost efficiency. Long-term cost-efficiency implies that the rate must not be set at a level that gives rise to additional costs. For example, deferring costs to the future would be likely to result in those costs being greater overall than if they were provided for at the time. Solvency means that the rate

⁴ Section 13 of the Public Service Pensions Act

should be set at such a level as to ensure that the scheme's liabilities can be met as they arise. This has particular implications for how LGPS funds address their deficits⁵.

The local authority, and all other scheme employers will, if applicable, (i.e. if there is a deficit associated with their members)⁶ also make payments against the deficit. The local authority's deficit repayment contributions will cover local authority maintained schools, as their scheme employer.

The Department for Education (DfE) has provided a departmental guarantee (see the information page on the [Departmental guarantee](#)) to all LGPS administering authorities in England that in the event of the closure of an AT or MAT any outstanding LGPS liabilities that cannot be met by the trust's assets will be met by the DfE and will not revert to the fund. Academies therefore present no greater risk to funds than local authorities. Administering authorities should not treat academies as higher risk employers when establishing deficit repayment arrangements.

⁵ It should be noted that the amount of ongoing deficit calculated every three years by the LGPS fund is neither the same nor comparable to the amount the trust is required to report on its balance sheet under current accounting standards. See www.gov.uk/guidance/academies-accounts-direction.

⁶ Some employers may not have a deficit because they have already paid it off.

LGPS arrangements when outsourcing services

If an academy trust (AT) or multi-academy trust (MAT) chooses to outsource particular services (e.g. catering or cleaning services) to another provider, and that involves transferring employment of individuals, the contracted provider must also offer access to LGPS to those employees who are transferring, under Fair Deal⁷. To do this, the AT or MAT must ensure the contractor body has Admitted Body Status, governed by an admission agreement, with the relevant LGPS fund. The agreement will apply to all transferring staff. However, the contractor is not bound to offer LGPS to new staff and therefore a ‘closed’ agreement restricted to transferring staff only is usual practice.

A scheme employer who is outsourcing a function is known as the “letting authority”. If outsourcing, the AT or MAT should remember that if an admission agreement ends (for example, if the contract with the AT is terminated) any outstanding employer contributions required to meet pension liability obligations, may ultimately revert to them, as the letting authority. Trusts should discuss the implications of outsourcing services with their LGPS fund manager.

Where a MAT is outsourcing services, LGPS funds should not require a separate admission agreement for each individual academy if the MAT:

- (i) is treated as the employer (as opposed to each individual academy within the MAT having its own LGPS arrangements);
- (ii) has one contract with the Admitted Body to provide services at several of its academies; and
- (iii) all those academies are located within one LGPS fund area.

If the MAT is operating in only one LGPS fund area, but with individual arrangements for each of its academies, the fund may require an individual admission agreement for each contract in relation to each academy. Separate agreements can add greatly to academy costs. A MAT may therefore wish to consider combining all agreements for the same supplier in the same fund.

Where a MAT has a contract with a contractor body that relates to employees of academies that sit in different LGPS fund areas, a separate admission agreement would be required for all affected LGPS funds.

These requirements are in order to ensure that the liability chain is clear and transparent, i.e. to know where the liability is going to fall back to when a contract ends or if the contractor body gets into financial difficulty.

⁷ www.gov.uk/government/publications/fair-deal-guidance

The Departmental guarantee for academies

The Department for Education (DfE) has provided a Departmental guarantee to all LGPS administering authorities in England that in the event of the closure of an academy trust (AT) or multi-academy trust (MAT) any outstanding LGPS liabilities that cannot be met by the trust's assets will be met by the DfE and will not revert to the fund. Academies therefore present no greater risk to funds than local authorities and should not be treated as higher risk employers. The guarantee applies also to sixth form colleges that have changed their status to become an academy.

In the guarantee the DfE commits to ensuring that where an AT or MAT closes, the closure is effectively managed. Normally the liabilities will be met from the trust's assets on closure, but the Secretary of State has the power to determine how the assets of a trust are disposed. Any remaining outstanding LGPS deficit would then be met by the DfE in full.

The Parliamentary Minute states that the DfE and HM Treasury reserve the right to withdraw the guarantee. This is a standard condition for all government guarantees where there is no specific end date; there is absolutely no expectation that the guarantee would be withdrawn. Before any withdrawal of the guarantee the DfE would consult all relevant parties and give reasonable notice to allow funds to undertake new risk assessments.

The guarantee is not time bound. The liabilities set out in the parliamentary minute have been projected over a seven-year period and the DfE will continue to project future academy numbers and assess potential liabilities on a rolling programme.

Closure of an academy trust

It is very unusual for an academy to close. If there are significant issues with an academy, a plan will be put in place by the DfE, aimed at keeping the school open, including educational, governance and financial interventions. If necessary, re-brokerage (transferring the academy from one academy trust to another) will occur and the academy will become part of another trust. (This process should trigger no requirement for immediate payment of a deficit, as the liabilities will transfer to another LGPS employer. See the information page on [Re-brokerage](#).)

Only once these interventions have been fully explored and exhausted, will closure be considered. The likely LGPS exit payment will be taken into account as part of this process, and early conversations between the AT and the pension fund are advised. In the rare case that a closure is deemed necessary, the Regional Schools Commissioner would seek approval from DfE Ministers.

In the unusual event that an academy needs to be shut, along with a deactivation of its AT (or MAT), the LGPS deficit will crystallise. Payment of the LGPS liabilities must be met, where possible, from the AT's (or MAT's) assets. If, after the trust's assets have been allocated to meet the liabilities, there is still a deficit, then a claim can be made for the remaining liabilities to be met through the guarantee, as outlined below:

- SoS agrees to closure of the academy
- The closing AT or MAT should contact the Pension Fund to inform them that they are closing, and request an exit valuation
- The Pension Fund provides the exit valuation; the AT or MAT share this with the Education and Skills Funding Agency (ESFA)⁸
- DfE carry out due-diligence on the exit valuation, and commission the Government Actuary's Department to review the reasonableness of the approach taken (further info may be requested as part of the review)
- ESFA prepare submission to DfE Minister to formally approve payment under the guarantee
- ESFA communicate approval of payment to the pension Fund, who should then send an invoice for the approved amount to ESFA
- Payment from ESFA directly to the pension Fund, by way of lump sum

Any general queries relating to payments under the guarantee should be directed to academies.questions@education.gov.uk. Queries relating to specific closures should be directed to the nominated ESFA territorial lead.

The guarantee came into force in July 2013, and as at the time of publication of these information pages in April 2017 it has been utilised in only two claims, both of which have been paid in full. In no case has the guarantee rejected or been unable to pay out for a claim.

⁸ Formerly the Education Funding Agency. www.gov.uk/government/organisations/education-and-skills-funding-agency

Academy re-brokerage

When an academy transfers from one academy trust (AT) or multi-academy trust (MAT) to another (a process known as 're-brokerage'), an actuarial valuation will be required to determine the value of assets/liabilities at the time of transfer. Discussions with the LGPS fund manager should be instigated at the earliest opportunity by either the existing or new trust. The actuarial costs incurred will be met by the new trust as part of the re-brokerage process in transferring the staff between employers.

Responsibility for the liabilities will vary depending on the circumstances surrounding the re-brokerage, but, generally, will be as set out below:

When a MAT transfers one of its academies to another sponsor, but remains in business the liabilities and associated deficit for the transferring academy staff would be passed on to the new academy trust.

When a MAT is wound up, and all of its academy schools are moved to another sponsor the liabilities and associated deficit for transferring academy staff would be passed to the new academy trust. The assets of the closing academy trust would be used to meet any liabilities arising in respect of trust employees not transferring – e.g. those working in an academy trust head office. If the assets are not sufficient to meet these liabilities, then the closing MAT/LGPS fund should make a submission to DfE to enact the guarantee.

When an academy closes but the MAT continues to operate the MAT would retain responsibility for the liabilities as it would remain as an employer in the LGPS fund.

The intention is that in all cases, there should be no crystallisation of the deficit, and therefore no scheme exit payment needed, as responsibility for the liabilities will continue to be met by an LGPS scheme employer. It is possible that the employer's contribution rate could be revised depending on the administering authority's risk assessment of the new sponsor.