



**SHROPSHIRE COUNTY
PENSION FUND**

A GUIDE FOR EMPLOYERS LETTING CONTRACTS WITH STAFF UNDER TUPE AND OBTAINING ADMITTED BODY STATUS IN THE LOCAL GOVERNMENT PENSION SCHEME (LGPS)

This leaflet provides guidance in relation to the granting of Admitted Body Status to a new contractor for the staff working on the contract who will be transferred with LGPS protection.

Issue Date	24 March 2016
Version	1.0

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1) INTRODUCTION

This document is the Shropshire County Pension Fund's guidance in relation to the granting of Admitted Body Status to a new contractor, when LGPS protection is required for the staff working on the contract who will be transferred. It is the responsibility of the out sourcing Employer to ensure that this guidance is complied with. Failure to comply with this guidance may cause delays in the granting of Admitted Body Status to a new contractor or trust resulting in the award of the contract or the establishment of the trust being delayed.

The Local Government Pension Scheme Regulations set out the matters which must be included in the Admissions Agreement and the requirement for a Bond, Indemnity or Guarantor to be put in place. In addition the Local Authorities in England must also comply with the Best Value Authorities Staff Transfers (Pensions) Direction 2007. The Regulations which must be complied with and the procedures which must be followed are set out below.

2) THE REGULATIONS

The Local Government Pension Scheme (LGPS) is a statutory pension scheme which means that the rules governing the scheme are set out in Acts of Parliament. Whilst the Scheme is a 'national scheme' and the same regulations apply across the whole of England & Wales, the administration for the geographical region of Shropshire is run locally by Shropshire Council as the administering authority to the Shropshire County Pension Fund.

The current regulations, which have been in force since 1 April 2014, are the Local Government Pension Scheme Regulations 2013 referred to hereinafter as 'the Regulations'. For ease of reference, the relevant parts of 'the Regulations' as they relate to admission bodies can be found at Appendix 1.

Best Value Transfer (Pensions) Direction 2007

In addition to the provisions of the Local Government Pension Scheme Regulations, Local Authorities within England must also have regard to the Best Value Authorities Staff Transfers (Pension) Direction 2007 herein after referred to as "the Direction". For ease of reference the Direction and the covering letter from Government can be found at Appendix 2.

3) PENSION INFORMATION & DECISIONS REQUIRED FOR TENDER SPECIFICATIONS

This section of the guide sets out the various steps that need to be taken to ensure correct pension information and decisions are made prior to commencing a full procurement.

Step 1 – Scheme employer takes a decision to outsource one of its services

The Scheme employer must notify the Pension Fund immediately of its decision prior to commencing a full procurement exercise.

Step 2 – Request for information

The Pension Fund will request from the Transferor Scheme Employer details of the employees who are likely to be involved in the TUPE transfer. The administering authority will provide New Employer Data Request template to the Transferor Scheme Employer requesting details, in a prescribed format, of all scheme members currently contributing to the LGPS along with details of employees not currently contributing to the Scheme for whatever reason but who are eligible for membership of the Scheme. This information will be provided by your payroll provider, you may wish to agree a turnaround time, as this is out of the pension team control. The pension team will keep the contract officer up to date if there is lateness of this information.

There are also questions on the Data request which need completing, the different types of decisions are in the drop down box to choose from. The questions are:

- Admission Date (if known) or required Admission Date if not know
- Letting Employer
- Under which regulations the employer will enter the Fund?
- Will the new employer's participation in the Fund be open* or closed* or not yet determined?
- Is the initial funding position fully funded, partially funded or not yet determined?
- Does the new employer have a guarantor within the Fund? If so supply details
- What basis should be used for the calculations – ongoing or least risk
- Length of Contract
- Total Contract Value

Step 3 – Data check

Upon receipt of the employee details from the Transferor Scheme Employer the Pension Fund will check the data against its database and raise any queries with the Transferor Scheme Employer to ensure that all records are accurate and up to date. You should allow at least 2 weeks for this check to be undertaken.

Step 4 – Submission of data to the Pension Fund actuary

Once it has been confirmed that all data is up to date the Pension Fund after calculating the pension entitlements will submit a file to the Pension Fund actuary requesting a report setting out a valuation of the liabilities relating to the employees concerned, the proposed employer pension contribution rate required of any New Admission Body and an assessment of the risk that accepting a New Admission Body into the Pension Fund will have for the Pension Fund and its other associated employers. This will be expressed as a bond or indemnity the value of which must be considered as part of the admission agreement process. A period of 6 weeks should be allowed for the actuary to provide this information.

* Both open and closed admission agreements allow employees at the date of transfer to retain their membership of the LGPS (or eligibility for membership of the scheme if not currently contributing) so long as they are employed in connection with the provision of the service that has been outsourced. A closed agreement restricts membership of the LGPS specifically to those individuals employed at the contract start date whereas an open agreement allows access to the LGPS for all future individuals that become employed in connection with the provision of the service.

IMPORTANT NOTE If the decision is made not to include the actuary assessment in the Tender Specification please ensure that this is brought to the attention to the bidders in the documentation. An assessment must be made prior to any subsequent admission following award of the contract

Step 5 – Provision of actuarial report

The Pension Fund will provide a copy of the actuary's report upon receipt to the Transferor Scheme Employer for inclusion in their tender specification. It should be noted that without this information any prospective bidder will find it difficult to decide whether or not to proceed with the tender.

Step 6 – Determination of pension liabilities

The Transferor Scheme Employer will need to make a decision as to how the pension liabilities identified in the actuary's report will be funded. This may be by requiring the successful contract bidder to provide a bond or indemnity to the value set out in the actuary's report or by the Transferor Scheme Employer choosing to act as a guarantor to the Pension

Fund. In either case, the decision taken will need to be set out in the final admission agreement. The Transferor Scheme Employer and New Admission Body will also need to decide whether the admission agreement will be on an open or closed basis.

NOTE For your Tender Specification it is best practise to attach a draft Admission Agreement and Bond agreement. The latest versions must be requested in good time from the Pensions Team.

4) PROCESS FOR GAINING ADMISSION BODY STATUS

Step 7 – Award of contract

The Transferor Scheme Employer awards the contract to their preferred bidder and must, therefore, immediately notify the Pension Fund. As part of this process the Transferor Scheme Employer must confirm the name of the successful bidder, their contact details, the date that the contract will start, the length of the contract and updated details, in the format previously specified at Step 2 by the Pension Fund, of the employees (**if different** from the previous submission) involved in the TUPE transfer.

Step 8 – Revision of scheme liabilities

Where the Transferor Scheme Employer provides an updated staff TUPE list to the Pension Fund, the Pension Fund will, following the completion of the checks set out at Step 3, request a revised report from the Pension Fund actuary setting out the revised liabilities and updated risk assessment if there has been a material change in the TUPE list.

Step 9 – Pro-forma admission agreement

A draft admission agreement will be sent to the Transferor Scheme Employer and the New Admission Body by the Pension Fund. It should be noted that the admission agreement **MUST** be completed in advance of the service contract commencement date i.e. it must be signed and sealed by the three parties to the agreement before day one of the contract, the three parties being the Transferor Scheme Employer, the New Admission Body and Shropshire Council. A copy of the draft admission agreement must be provided to the legal representatives of each party for their input but it is worth noting that it is in a format acceptable to the Pension Fund and in order for the agreement to be completed in a timely manner amendments should be kept to a minimum.

Step 10 – Completion of admission agreement and administrative issues

Once the admission agreement has been accepted by the three parties steps will be taken by the Pension Fund to create a new employer and for the records of the scheme members involved in the TUPE transfer to be moved from the existing Transferor Scheme Employer employer code and cost centre to a newly created employer code and cost centre within the pension administration software. Details of how to make contribution payments to the Pension Fund will also be supplied along with guidance as to how the pension scheme should be administered by the New Admission Body on behalf of their scheme members

In addition, the New Admission Body is required to produce an employer policy statement concerning how it might choose to adopt certain discretions available to an employer under the LGPS regulations.

Some of the information contained within these steps will be looked at in more detail in the next section of this guide called 'Matters to be Considered'.

5) MATTERS TO BE CONSIDERED

The Admission Agreement

Scheme regulations require an admission agreement to be in place between the Transferor Scheme Employer, the New Admission Body and Shropshire Council before the contract start date. As a minimum the admission agreement must contain references to all the matters contained within paragraphs 3 to 12 of Schedule 2 of Part 3 of 'the Regulations'.

The key requirements to be contained within the agreement are:

- The date from which the admission agreement takes effect;
- Details of the service contract to which the agreement relates;
- Details of eligibility for membership of the LGPS including confirmation of those individuals at the effective date who are either contributing to the LGPS or who are eligible to contribute to the LGPS but are, for whatever reason, not contributing to the Scheme at the effective date;
- A declaration that the eligible employees are employed by the New Admission Body in connection with the provision of the service contract;
- Details of the employer contribution rate as actuarially assessed and how the rate may be varied subject to actuarial re-evaluation;
- Details of the New Admission Body's liability to meet additional costs that may arise as a result of its decision to award the early release of benefits to its scheme members and any liabilities arising from the termination of the admission agreement;
- Details of a bond or indemnity to the value as actuarially assessed to the satisfaction of both the Transferor Scheme Employer and Shropshire Council or if such an indemnity is not required confirmation of a guarantor;
- To keep under review the value of the bond or indemnity where required and as actuarially assessed;
- The New Admission Body's obligations to administer the Scheme in accordance with 'the Regulations' and in line with any service level agreement and guidance issued by the administering authority;
- The New Admission Body's obligation to produce and keep under review a policy statement with regard to the discretions available to it under 'the Regulations';
- Provisions required on termination of the admission agreement including the premature termination of the agreement due to insolvency, winding up or liquidation of the New Admission Body;
- Three copies of the final admission agreement must be produced each one of which must be signed and sealed by the three parties to the agreement, one copy of which is to be retained by each of the parties to the agreement.

Open or Closed Scheme

The New Admission Body and the Transferor Scheme Employer will need to consider whether or not the admission agreement will be open or closed.

An **open agreement** means that any future employee of the New Admission Body appointed after the admission agreement commencement date who is employed in connection with the provision of the service contract will have access to the LGPS subject to the normal eligibility provisions set out in 'the Regulations'.

A **closed agreement** means that the eligible employees detailed within the admission agreement continue to have access to the LGPS whilst employed in connection with the provision of the service contract and subject to the normal eligibility provisions set out in 'the Regulations'. However, no future employees of the New Admission Body will be granted access to the LGPS even if they are so employed.

The New Admission Body Contributions and Financial Implications

The amount that a New Admission Body will pay by way of employer pension contributions is determined by an actuarial assessment prior to the start of the service contract but calculated as at the contract start date. The actuary will look at the profile of the eligible employees transferring from the Transferor Scheme Employer to the New Admission Body and take account of each employee's age, gender, contractual hours of work, full time equivalent salary, CARE pay and scheme membership accrued to date.

Whilst employee contributions are payable in accordance with Regulation 9 or 10 of 'the Regulations', employer contributions can vary. It is important that the New Admission Body is aware of this and that there is potential for employer rates to increase as well as decrease. In fact, every three years the Pension Fund undergoes a full actuarial valuation when employer contribution rates are set for the next valuation period. The actuary will determine a 'common' rate required across the Fund in general and then make an adjustment to that rate for each Scheme employer based on the specific membership profile of each Scheme employer separately.

The actuary will adopt a certain funding method and uses a set of assumptions, as agreed with the administering authority, to determine what the employer contribution rates should be. In setting the rates the actuary has to consider the cost of providing pension benefits in the future as well as ensuring the Pension Fund meets the liabilities built up in the past. These are known as the 'future service rate' and the 'past adjustment rate'. The past service rate will be shown as an annual cash amount which is not related to the Admission Body's payroll.

Any new Scheme employer therefore needs to be fully aware of and in a position to accept the ongoing financial responsibility that becoming a New Admission Body entails. A New Admission Body will usually start with a funding level of 100% i.e. their assets will be equivalent to the liabilities notionally transferred to the New Admission Body from the Transferor Scheme Employer in respect of the eligible employees transferring to their employment. But this is not guaranteed and is to be decided on by the Transferor Scheme Employer. The initial employer contribution rate, set as a percentage of pensionable payroll, will be determined by reference to the pension benefits that will be built up during the contract period. This will be kept under review as part of the 3-yearly actuarial valuation process or such shorter period as may be required. Ultimately, any surplus or deficit arising will be spread over a period agreed by the administering authority.

The New Admission Body needs to understand that upon admission to the Pension Fund it will become financially liable for:

- The future pension benefits built up for each of the contributing Scheme members transferred to the New Admission Body from the Transferor Scheme Employer at the admission agreement commencement date;
- The past pension benefits built up for each of the contributing Scheme members transferred to the New Admission Body from the Transferor Scheme Employer at the admission agreement commencement date;
- The future pension benefits, from the date that they may elect to join the Scheme, built up for each of the non-contributing Scheme members transferred to the New Admission Body from the Transferor Scheme Employer at the admission agreement commencement date;
- The pension benefits built up for any future new employee joining the LGPS (if the admission agreement is open to new joiners);
- Additional pension benefits arising from the transfer in of former pension rights from other pension schemes on behalf of any Scheme member that they employ;
- The ongoing deferred and retired member benefits payable to former active members in their employ until those members die or their surviving dependants die. If a Scheme member dies before their spouse, civil partner or nominated co-habiting partner a proportion of the pension becomes payable for the lifetime of the dependant. In addition, pensions can also be paid to eligible children of the deceased up to the age of 18, to the age of 23 if still in full time education or training or for life in certain cases where the eligible child is unable to engage in gainful employment because of physical or mental impairment.

Consideration also has to be given to the impact that a closed scheme, including where a previously open agreement becomes closed to future new entrants, has on future costs.

Whilst it may seem that savings are to be made by closing the Scheme to new entrants, certain implications need to be considered that can actually increase Pension Fund costs. Consider the following:

- ***The average age profile of the employer's scheme members.*** As time goes on the average employee age will increase and this will have an impact on the cost of future benefits. The future service rate would therefore increase as the average age of the scheme members increases.
- ***Scheme members leave the employer.*** As members leave the employer the contributions being paid to the Pension Fund will decrease whilst the payments out of the fund in respect of benefits being brought into payment will increase. Whilst the employers contributions for the past service liability are payable as cash amounts and are not affected by any reduction in the pensionable payroll the gradual shift from a majority of active members to a majority of deferred or pensioner members will affect the funding position as the active lifetime of the remaining members, where no new 'younger' employees are being admitted will result in any past service deficit being payable over a shorter period of time.
- ***Termination of admission agreement.*** A closed scheme may have the impact of bringing forward the date that the admission agreement ends, the point at which a cessation valuation is undertaken by the Fund actuary and therefore the date at which any termination cost may be due.

Any New Admission Body considering closing an existing open agreement should contact the Pension Fund immediately so that the actuary can carry out an assessment of the funding position of the Admission Body and any adjustment required to the employer contribution rate.

Protecting the Pension Fund

When a Scheme employer decides to outsource a service to a private contractor and that contractor seeks to become a New Admission Body within the Shropshire County Pension Fund, the Fund has a responsibility to ensure that such a decision made by one Scheme employer does not have a detrimental impact on the funding level of the Scheme benefits attributable to the employees involved in the transfer of their employment to the New Admission Body nor that the decision impacts unfavourably on the other employers participating in the Pension Fund.

As previously mentioned throughout this guide it is a requirement of 'the Regulations' for the New Admission Body to carry out an assessment, to the satisfaction of the Transferor Scheme Employer and Shropshire Council having taken account of actuarial advice, of the level of risk arising on the premature termination of the provision of the contract services by reason of insolvency, winding up or liquidation of the New Admission Body.

In order to protect the Pension Fund against the identified risk, the New Admission Body is required to provide a bond or indemnity to the value as actuarially assessed or to provide details of a guarantor (usually the Transferor Scheme Employer). Both the Transferor Scheme Employer and the New Admission Body will therefore need to consider and determine whether or not a bond should be provided or if the Transferor Scheme Employer is prepared to act as a guarantor to the Pension Fund. Depending on the amount of the bond this could have an impact on the contract price negotiated between the Transferor Scheme Employer and the New Admission Body so it is important for this information to be available early on in the tendering process.

It is worth noting that in accordance with Regulation 64(3)(a) where a New Admission Body is not able to pay for the liabilities it has accrued at the date of termination of the admission agreement, the shortfall attributable to the New Admission Body will revert back to the Transferor Scheme Employer. This includes the commitment to maintain all liabilities relating to deferred and retired members whose pension payments will continue to be made long after the termination of the admission agreement.

In addition to assessing the risk of premature termination of the admission agreement, the value of the bond or indemnity as actuarially assessed also takes account of:

- The risk to the pension fund of the New Admission Body retiring their pension scheme members earlier than their expected or normal retirement date. This may be due to redundancy (compulsory or voluntary), business efficiency, flexible retirement, early retirement with employer consent or possibly even ill health retirement. 'The Regulations' state that where a scheme member who is aged 55 or over is made redundant (including retirement on the grounds of business efficiency) the member is entitled to the immediate release of their accrued benefits without actuarial reduction to reflect their early payment. This generates a strain cost for the Pension Fund as, due to an employer's decision to make a scheme member redundant, benefits are paid earlier than anticipated and therefore over a longer period of time. As those benefits cannot be actuarially reduced to compensate for their early release, a shortfall in funding arises and the employer is required to make a capital payment to the Pension Fund to ensure that there are sufficient funds available to pay those benefits over a longer period than anticipated. It is important that before taking any decision that may lead to the early release of a scheme member's benefits the New Admission Body contacts the pension scheme administrators to discuss the potential costs involved.
- Discretionary awards of additional benefits in line with the employer's policy statement. Further details as to what these discretions are can be found on the pension fund website – www.shropshirecountypensionfund.co.uk .
- Funding shortfall as a result of a difference between actuarial assumptions and actual experience. For example the investment returns of the Pension Fund were less than anticipated, or a change in regulations increased the cost of providing benefits under the Scheme.

Where the decision is taken to provide a bond, paragraph 7 of Part 3 to Schedule 2 of 'the Regulations' sets out the conditions under which a bond must be provided. The value of the bond must be kept under review by both the Transferor Scheme Employer and the Pension Fund and the New Admission Body is responsible for all costs associated in procuring and maintaining the bond (subject to any alternative agreement that may have been negotiated between the Transferor Scheme Employer and the New Admission Body).

Impact on the Transferor Scheme Employer

Subject to obtaining the appropriate legal advice and as part of the main contract negotiations between the Transferor Scheme Employer and the New Admission Body, it is possible for alternative arrangements to be considered and agreed between the two parties. For example 'pass through' is where the cost of providing a defined benefit contribution scheme such as the LGPS is shared between the Transferor Scheme Employer and the New Admission Body. The Transferor Scheme Employer may consider a fixed employer contribution rate for the New Admission Body for the duration of the contract with any excess being paid by the Transferor Scheme Employer. Or the Transferor Scheme Employer and the New Admission Body may agree an upper or lower employer contribution rate and providing the rate calculated by the actuary falls within the range agreed, the New Admission Body pays all of the contributions. However, where the actuarial rate is either side of the range an adjustment is made to the cost of the service provided by the New Admission Body to the Transferor Scheme Employer.

It must be noted that any arrangement made between the Transferor Scheme Employer and the New Admission Body will not impact upon the Pension Fund liabilities identified by the actuary and any such arrangements **must be included in the main service contract**. The Pension Fund will not be a party to the arrangements and so they will not be included as any part of the pension admission agreement.

If other options are required details can be obtained from the Pension Team.

Pension Scheme Administration

The role of Scheme employers in administering the LGPS cannot be under-estimated. Much of the information held by the administering authority on their pension administration systems is obtained from data supplied to them by the Scheme employer, normally by one or other or a combination of both the payroll and Human Resource sections.

To ensure that performance standards are maintained and that Scheme members receive an efficient and effective service, every Scheme employer, including a New Admission Body, is required to supply information to the Scheme administrators in a prescribed format. This includes (but is not limited to):

- Notifications of employees joining the LGPS;
- Notifications of contract changes throughout an employee's employment;
- Notifications of employees leaving the LGPS;
- Making payment of employee and employer contributions by the 19th day of the month following deduction;
- Providing year end data by the 30th of April each year;
- Responding to enquiries made by the pension administration team within specified deadlines;
- Providing details of pensionable pay and assumed pensionable pay;
- Administering and enforcing auto-enrolment legislation as it applies to the LGPS.

This is by no means an exhaustive list but highlights many of the responsibilities that a New Admission Body will need to adopt upon completion of the admission agreement.

Communications

The Shropshire County Pension Fund has produced and keeps under review an 'Administration Strategy and Communications Policy'. As part of the admission process a New Admission Body will be required to provide details of who will be the main contact for pension, who will be the Pension Fund's first point of contact for all pension related issues. Additional contacts need to be supplied at this stage are the Finance Contact, HR Contact and Payroll Contact.

In addition, the New Admission Body will be required to specify a person to deal with complaints that may arise under stage one of the Internal Dispute Resolution Procedure (IDRP). The IDRP is a two-stage complaints procedure and can be used by a Scheme member where they feel a decision that has been taken in respect of their pension rights is wrong. Stage one of the process is undertaken by the Scheme member's employer, stage two by Shropshire Council as the administering authority to the Shropshire County Pension Fund.

Employer Policy Statement

The LGPS is a statutory pension scheme governed by Regulations and as such the pension benefits that it provides for its members are set out in law. However, within the Scheme regulations there are a number of employer discretions as to how the Scheme rules might be applied and each Scheme employer is required to formulate, produce, publish and keep under review a policy statement as to how it intends to use those discretions.

As part of the admission process a New Admission Body will be required to produce a policy statement in respect of its discretions under the Local Government Pension Scheme Regulations. It may be that the New Admission Body is happy to adopt the policies of the Transferor Scheme Employer but irrespective of this the New Admission Body will be required to produce its own policy document.

Contract / Admission Agreement Termination

In most cases the date on which a service contract and the associated admission agreement is expected to end is known. So long as the agreement is kept under review and notification of any pending termination is given to the Pension Fund within a reasonable period in advance of the termination date, the cessation valuation required under the Regulations should not be cause for too much concern.

However, where the New Admission Body becomes insolvent, is wound up or goes into liquidation it is essential that the Pension Fund acts as soon as possible to safeguard itself and the other Scheme employers contributing to the Fund. A Scheme employer should always make every effort to notify the Pension Fund as soon as it knows that the admission agreement is likely to be terminated early for the reasons given previously. In this way the Pension Fund can act quickly to obtain an actuarial valuation of the liabilities pertaining to the employer and for a revised rates and adjustment certificate to be issued setting out the amended employer contribution rate required of the employer.

The assets and liabilities of each Scheme employer are monitored by the actuary and it is the policy of the Shropshire County Pension Fund to ensure that each employer is held accountable for its own funding experience. Therefore, providing that the Pension Fund is made aware as early as possible that a Scheme employer will be ceasing membership of the LGPS, an assessment can be made as to the level of employer contribution required of the Scheme employer to extinguish any identified liability before the Scheme employer leaves the Pension Fund.

Where a shortfall exists at the termination date the Pension Fund will pursue the Scheme employer, any insurer providing a bond or any guarantor as appropriate but ultimately, if unsuccessful, the Transferor Scheme Employer will become liable for any outstanding costs in accordance with Regulation 64(3)(a) of 'the Regulations'.

It is therefore very important that a Transferor Scheme Employer is clear about their potential risk exposure from the outset and put in place whatever mechanisms they deem appropriate to protect themselves against those potential risks.

6) COMPLETING THE ADMISSION AGREEMENT

As explained throughout this guide, there are 3 parties to any admission agreement:

1. The Transferor Scheme Employer;
2. The New Admission Body; and
3. The administering authority to the Shropshire County Pension Fund (i.e. Shropshire Council)

The 3 parties need to be in a position to sign off the admission agreement prior to the contract start date with Shropshire Council being the final party to complete the signing and sealing process.

In order to prepare the documentation there is some important information required prior to signing:

- i) Date of agreement
- ii) Name and address of Transferor Scheme Employer
- iii) Name, registered office and registered number of the New Admission Body
- iv) Date that agreement is made
- v) Commencement date of the transfer of the service to the New Admission Body
- vi) Details of the service to be provided under the contract
- vii) Whether the Admission is to be open or closed to new employees
- viii) Value of the Bond or Indemnity (even where a bond/indemnity is not initially required)
- ix) Name of Guarantor where a bond/indemnity is not required
- x) A separate list of transferring active employees and transferring non-active employees
- xi) Name, job title and contact details of the Pension Lead Officer(s)

7) GLOSSARY OF TERMS

Actuary	A professionally qualified independent person appointed by the administering authority in order to value the Pension Fund and therefore set contribution rates.
Administering authority	The local authority responsible for running a Local Government Pension Fund. For the Shropshire area the administering authority is Shropshire Council.
Bond or Indemnity	The actuarially assessed value of the level of risk to the Pension Fund associated with an admission body prematurely terminating the admission agreement. See paragraph 6 and paragraph 7 of Part 3 of Schedule 2 of 'the Regulations'.
Closed agreement	An admission agreement that only provides access to the LGPS for those employees of the New Admission Body, who were contributing to the Scheme, or who were eligible to contribute to the Scheme but for whatever reasons were not, at the date of transfer from the Transferor Scheme Employer.
Employed in connection with the provision of the service or assets	Employees of the New Admission Body must be working on the service contract outsourced by the Transferor Scheme Employer for at least 50% of their normal working hours at any given time.
Employer policy statement	A statement of policy about the exercise of certain discretions available to the New Admission Body under Regulation 60 of the LGPS Regulations 2013.
LGPS	Local Government Pension Scheme.
New Admission Body	Admission Body – the contractor appointed by the Transferor Scheme Employer to provide the services being outsourced and which is seeking admission to the Pension Fund.
Open agreement	An admission agreement that provides access to the LGPS for not only those employees of the New Admission Body, who were contributing to the Scheme, or who were eligible to contribute to the Scheme but for whatever reasons were not, at the date of transfer from the Transferor Scheme Employer but also to new future employees appointed by the New Admission Body to work on the service contract.
'the Regulations'	The Local Government Pension Scheme Regulations 2013 (and any amendments thereto).
Transferor Scheme	The Scheme Employer outsourcing a service to a private contractor.

APPENDIX 1 – RELEVANT PART OF THE LOCAL GOVERNMENT PENSION SCHEME REGULATION 2013 RELATING TO ADMISSION AGREEMENTS

Regulation 3 – Active membership

(5) Where an administering authority enters into an admission agreement with an admission body:

- (a) the admission body must comply with the requirements specified in paragraphs 3 to 12 of Part 3 of Schedule 2; and*
- (b) these Regulations apply to the admission body and to employment with the admission body in the same way as if the admission body were a Scheme employer listed in Part 2 of Schedule 2.*

Schedule 2 Part 3

1. *The following bodies are admission bodies with whom an administering authority may make an admission agreement:*

- (a) a body which provides a public service in the United Kingdom which operates otherwise than for the purposes of gain and has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest (whether because the operations of the body are dependent on the operations of the Scheme employer or otherwise);*
- (b) a body, to the funds of which a Scheme employer contributes;*
- (c) a body representative of:
 - (i) any Scheme employers, or*
 - (ii) local authorities or officers of local authorities;**
- (d) a body that is providing or will provide 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 (Secretary of State's powers),*
 - (iii) directions made under section 497A of the Education Act 1996;**
- (e) a body which provides a public service in the United Kingdom and is approved in writing by the Secretary of State for the purpose of admission to the Scheme.*

2. *An approval under paragraph 1(e) may be subject to such conditions as the Secretary of State thinks fit and the Secretary of State may withdraw an approval at any time if such conditions are not met.*

3. *The Scheme employer, if not the administering authority, must be a party to the admission agreement with a body falling within the description in paragraph 1(d).*

4. *In the case of an admission body falling within the description in paragraph 1(b), where at the date of the admission agreement the contributions paid to the body by one or more of the Scheme employers equal in total 50% or less of the total amount it receives from all sources, the Scheme employer paying contributions (or, if more than one pays contributions, all of them) must guarantee the liability of the body to pay all amounts due from it under these Regulations.*

5. *If the admission body is exercising the functions of the Scheme employer in connection with more than one contract or other arrangement under paragraph 1(d)(i), the administering authority and the admission body shall enter into separate admission agreements in respect of each contract or arrangement.*

6. *An admission agreement must require the admission body to carry out, to the satisfaction of the administering authority, and to the satisfaction of the Scheme employer in the case of a body falling within paragraph 1(d)(i), an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of service or assets by reason of insolvency, winding up, or liquidation of the admission body.*

7. *Notwithstanding paragraph 6, and subject to paragraph 8, the admission agreement must further provide that where the level of risk identified by the assessment is such as to require it, the admission body shall enter into an indemnity or bond in a form approved by the administering authority with:*

- (a) *a person who has permission under part 4 of the Financial Services and Markets Act 2000 to accept deposits or to effect and carry out contracts of general insurance;*
- (b) *a firm in an EEA state 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*

8. *Where, for any reason, it is not desirable for an admission body to enter into an indemnity or bond, the admission agreement must provide that the admission body secures a guarantee in a form satisfactory to the administering authority from:*

- (a) *a person who funds the admission body in whole or in part;*
- (b) *in the case of an admission body falling within the description in paragraph 1(d), the Scheme employer referred to in that paragraph;*
- (c) *a person who:*
 - (i) *owns, or*
 - (ii) *controls the exercise of the functions of, the admission body; or*
- (d) *the Secretary of State in the case of an admission body:*
 - (i) *which is established by or under any enactment, and*
 - (ii) *where that enactment enables the Secretary of State to make financial provision for the admission body.*

9. *An admission agreement must include:*

- (a) *provision for it to terminate if the admission body ceases to be such a body;*
- (b) *a requirement that the admission body notify the administering authority of any matter which may affect its participation in the Scheme;*
- (c) *a requirement that the admission body notify the administering authority of any actual or proposed change in its status, including a take-over, reconstruction or amalgamation, insolvency, winding up, receivership or liquidation and a material change to the body's business or constitution;*
- (d) *a right for the administering authority to terminate the agreement in the event of:*
 - (i) *the insolvency, winding up or liquidation of the admission body;*
 - (ii) *a material breach by the admission body of any of its obligations under the admission agreement or these Regulations which has not been remedied within a reasonable time;*
 - (iii) *a failure by the admission 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.*

10. *An admission agreement must include a requirement that the admission body will not do anything to prejudice the status of the Scheme as a registered pension scheme.*

11. *When an administering authority makes an admission agreement it must make a copy of the agreement available for public inspection at its offices and must promptly inform the Secretary of State of:*

- (a) the date the agreement takes effect;*
- (b) the admission body's name; and*
- (c) the name of the Scheme employer that is party to the agreement.*

12. *Where an admission body is such a body by virtue of paragraph 1(d), an admission agreement must include:*

- (a) a requirement that only employees of the body who are employed in connection with the provision of the service or assets referred to in that sub-paragraph may be members of the Scheme;*
- (b) details of the contract, other arrangement or direction by which the body met the requirements of that sub-paragraph;*
- (c) a provision whereby the Scheme employer referred to in that sub-paragraph may set off against any payments due to the body, an amount equal to any overdue employer and employee contributions and other payment (including interest) due from the body under these Regulations;*
- (d) a provision requiring the admission body to keep under assessment, to the satisfaction of the bodies mentioned in paragraph 6, the level of risk arising as a result of the matters mentioned in that paragraph;*
- (e) a provision requiring copies of notifications due to the administering authority under paragraph 9(b) or (c) to be given to the Scheme employer referred to in that sub-paragraph; and*
- (f) a provision requiring the Scheme employer referred to in that sub-paragraph to make a copy of the admission agreement available for public inspection at its offices.*

13. *Where an admission body of the description in paragraph 1(d) undertakes to meet the requirement of these Regulations, the appropriate administering authority must admit to the Scheme the eligible employees of that body.*

Special circumstances where revised actuarial valuations and certificates must be obtained

Regulation 64

(1) *If a person:*

- (a) ceases to be a Scheme employer (including ceasing to be an admission body participating in the Scheme), or*
- (b) was a Scheme employer, but no longer has an active member contributing to a fund,*

that person becomes "an exiting employer" for the purposes of this regulation and is liable to pay an exit payment.

(2) *When a person becomes an exiting employer, the appropriate administering authority must obtain:*

- (a) an actuarial valuation as at the exit date of the liabilities of the fund in respect of benefits in respect of the exiting employer's current and former employees; and*
- (b) a revised rates and adjustment certificate showing the exit payment due from the exiting employer in respect of those benefits.*

(3) *Where for any reason it is not possible to obtain all or part of the exit payment due from the exiting employer, or from an insurer, or any person providing an indemnity, bond or guarantee on behalf of the exiting employer, the administering authority must obtain a further revision to any rates and adjustment certificate for the fund showing:*

- (a) in the case where a body is an admission body falling within paragraph 1(d) of Part 3 of Schedule 2 to these Regulations (Scheme employers: bodies providing services as*

- a result of transfer of a service), the revised contribution due from the body which is the related employer in relation to that admission body; and
- (b) in any other case, the revised contributions due from each Scheme employer which contributes to the fund,

With a view to providing that assets equivalent to the exit payment due from the exiting employer are provided to the fund over such period of time as the administering authority considers reasonable.

- (4) *Where in the opinion of an administering authority there are circumstances which make it likely that a Scheme employer (including an admission body) will become an exiting employer, the administering authority may obtain from an actuary a certificate specifying the percentage or amount by which, in the actuary's opinion:*
- (a) *the contribution at the primary rate should be adjusted; or*
- (b) *any prior secondary rate adjustment should be increased or reduced, with a view to providing that assets equivalent to the exit payment that will be due from the Scheme employer are provided by the fund by the likely exit date or, where the Scheme employer is unable to meet that liability by that date, over such period of time thereafter as the administering authority considers reasonable.*
- (5) *When an exiting employer has paid an exit payment into the appropriate fund, no further payments are due from that employer in respect of any liabilities relating to the benefits in respect of any current or former employees of that employer as a result of these Regulations.*
- (6) *Paragraph (7) applies where:*
- (a) *a Scheme employer agrees to pay increased contributions to meet the cost of an award of additional pension under regulation 31 (award of additional pension); or*
- (b) *it appears likely to an administering authority that the amount of the liabilities arising or likely to arise in respect of members in employment with a Scheme employer exceeds the amount specified, or likely as a result of assumptions stated, for that authority, in a rates and adjustment certificate by virtue of regulation 62(8) (actuarial valuations of Pension Funds: assumptions).*
- (7) *The administering authority must obtain a revision of the rates and adjustments certificate concerned, showing the resulting changes as respects that Scheme employer.*
- (8) *For the purposes of this regulation:*
“existing employer” means an employer of any of the descriptions specified in paragraph (1);
“exit payment” means the assets required to be paid by the exiting employer over such period of time as the administering authority considers reasonable, to meet the liabilities specified in paragraph (2);
“exit date” means the date on which the employer becomes an exiting employer; and
“related employer” means any Scheme employer or other such contracting body which is a party to the admission agreement (other than an administering authority in its role as an administering authority).

These above regulations will be referred to throughout this guide.

APPENDIX 2 – BEST VALUE STAFF TRANSFER (PENSIONS) DIRECTION 2007 AND COVERING LETTER FROM GOVERNMENT.

27 June 2007 To: Local Authority Chief Executives in England
Dear Chief Executive

SECTION 101 & 102 LOCAL GOVERNMENT ACT 2003 STAFF TRANSFER MATTERS (PENSIONS)

I attach a copy of The Best Value Authorities Staff Transfers (Pensions) Direction 2007 which comes into force on the Common Commencement date of 1 October 2007.

The intention of the Direction is to provide pension protection for employees of English best value authorities (and Welsh Police authorities) where the provision of services are contracted out, and staff transferred under TUPE.

Briefly, the Direction provides that:

- where an authority enters into a contract with a person for the provision of services and those services are, in the period immediately before the contract is entered into, provided by the authority and carried out by employees of the authority
- the contract between the authority and the contractor must require the contractor to secure pension protection for each transferring employee and provide that the provision of pension protection is enforceable by the employee; and,
- pension protection is secured if the transferring employee, after change in employer, has rights to acquire pension rights that are the same as or are broadly comparable to or better than those he had as an employee of the authority

The Direction also requires similar pension protection in relation to those former employees of an authority, who were transferred under TUPE to a contractor, in respect of any re-tendering of a contract for the provision of services.

In the case of employees who are members of the Local Government Pension Scheme, it will be possible for the new employer, if they wish, to seek admitted body status within the LGPS so that transferred staff continue to have access to that pension scheme for their future service. This would appear to satisfy the requirement contained in the Direction.

Yours faithfully

Melvin Hughes

Department for Communities and Local Government

The Best Value Authorities Staff Transfers (Pensions) Direction 2007

1. The Secretary of State makes this direction under section 101 of the Local Government Act 2003¹.

Application

2. This direction applies to best value authorities in England and police authorities in Wales.

Definitions

3. In this direction:

- (i) "best value authorities" are those listed in section 1 of the Local Government Act 1999²;
- (ii) references to "authority" are to authorities to which this direction applies;
- (iii) "The TUPE regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006³ or any regulations replacing those regulations, as from time to time amended;
- (iv) any expression used which is also used in the TUPE regulations, has in this direction the meaning that it has in the TUPE regulations.

Pension protection for authority employees where the provision of services are contracted-out

4. Paragraph 5 applies where an authority -

- (i) enters into a contract with a person for the provision of services, and
- (ii) those services are, in the period immediately before the contract is entered into, provided by the authority and carried out by employees of that authority.

5. The contract must provide –

- (i) that the contractor shall secure pension protection for each transferring employee and
- (ii) that the provision of pension protection is enforceable by the transferring employee.

6. For the purposes of paragraph 5 –

- (i) “transferring employee” means an employee of the authority whose contract of employment becomes, by virtue of the application of the TUPE regulations in relation to what is done for the purposes of carrying out the contract between the authority and the contractor, a contract of employment with someone other than the authority; and
- (ii) “pension protection” is secured for the transferring employee if after that change in employer he has, as an employee of his new employer, rights to acquire pension benefits and those rights –
 - (a) are the same as, or
 - (b) count as being broadly comparable to or better than,those that he had, or had a right to acquire, as an employee of the authority.

Pension protection for an employee of the authority in respect of a subsequent contract for the provision of services

7. Paragraph 8 applies where-

- (i) an authority has contracted with a person (“the first contractor”) for the provision of services,
- (ii) the application of the TUPE regulations or the Transfer of Undertakings (Protection of Employment) Regulations 1981⁴ in relation to what was done for the purposes of carrying out the contract between the authority and the first contractor resulted in employees of the authority becoming the employees of someone other than the authority, and
- (iii) the authority is contracting with a person (“the subsequent contractor”) for the provision of any of the services.

8. The contract between the authority and the subsequent contractor must provide-

- (i) that the subsequent contractor secure pension protection for any transferring original employees; and
- (ii) that the pension protection provided is enforceable by the employee.

9. For the purposes of paragraph 8-

- (i) “transferring original employee” means an employee of the authority –
 - (a) whose contract of employment becomes, by virtue of the application of the TUPE regulations in relation to what is done for the purposes of carrying out the contract between the authority and the subsequent contractor, a contract of employment with someone other than the authority; and
 - (b) whose contract of employment on each occasion when an intervening contract was carried out became, by virtue of the application of the TUPE regulations or the Transfer of Undertakings (Protection of Employment) Regulations 1981 in relation to what was done for the purposes of carrying out the intervening contract, a contract of employment with someone other than the existing employer;
- (ii) “pension protection” is secured for the transferring original employee if after the change in his employer referred to in paragraph (i)(a) he has, as an employee of his new employer, rights to acquire pension benefits and those rights –
 - (a) are the same as, or
 - (b) count as being broadly comparable to or better than, those that he had, or had a right to acquire, before that change of employer.

10. For the purposes of paragraph 9(i)(b) an “intervening contract” means a contract with the best value authority for the provision, at times after they are provided under the contract with the first contractor and before they are provided under a contract with the subsequent contractor, of the services to be provided under the contract with the subsequent contractor.

Timing

11 This direction takes effect from 1 October 2007.
Signed by authority of the Secretary of State.
Date