Department for
Communities and
Local Government

Pooling arrangements for Academies within the Local Government Pension Scheme

Consultation

October 2013
Department for Communities and Local Government

This document/publication is also available on our website at www.gov.uk/dclg

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The Consultation Process and how to Respond

Basic Information

To:	This consultation is aimed at Academies, Local Authorities and Administering Authorities of the Local Government Pension Scheme.
Body responsible for the consultation:	The Department for Communities and Local Government
Duration:	This is a 6 week consultation which will conclude on 15 November 2013
Enquiries:	For enquiries and to respond to this consultation. Please e-mail Robert.ellis@communities.gsi.gov.uk
How to Respond:	When responding, please ensure you have the words Academy and the Local Government Pension Scheme in the email subject line. Alternatively you can write to: Local Government Pension Scheme – Academies and pooling in the Local Government Pension Scheme Department of Communities and Local Government 5/F5 Eland House Bressenden Place LONDON SW1E 5DU For more information, please see https://www.gov.uk/government/organisations/department-for-communities-and-local-government

Freedom of information and data protection applicable to consultation

Representative groups are asked to give a summary of the people and organisations they represent and, where relevant, who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Overview

Topic of this consultation:	Arrangements for Academies to enter into pooling ar rangements with the local authority.
Scope of this consultation:	This consultation seeks views on potential pooling arrangements, within the Local Government Pension Scheme Regulations, for Academies and Local Authorities.
Geographical scope:	England.
Impact Assessment:	Not required as there is no specific regulatory change being proposed.

Chapter 1

Introduction

Academies within the Local Government Pension Scheme

1. The Academies Act 2010 sets out the government's policy of improving education provision by encouraging the establishment of Academies that are independent of local authority control. There are more than 3000 Academies and the number will grow year on year.

2. Non teaching staff in Academies are eligible to join the Local Government Pension Scheme (the scheme) and the proprietor of an Academy is listed in Part 1 of Schedule 2 of the Local Government Pension Scheme (Administration) Regulations 2008. An Academy is defined in the Regulations as a proprietor of an Academy within the meaning of section 579 (general interpretation) of the Education Act 1996, who has entered into Academy arrangements within the meaning of section 1 (Academy arrangements) of the Academies Act 2010.

3. Each Academy proprietor is a separate employer within the scheme and is set an individual employer contribution rate by the relevant scheme administering authority to secure sufficient funds to pay pensions to their non teaching staff.

4. In cases where a local authority maintained school converts to Academy status, staff members transfer from local authority employment to employment by the Academy or Multi-Academy Trust. The staff's pension rights are maintained during this transfer process. The Commercial Transfer Agreement between the local authority and the Academy or Multi-Academy Trust sets out responsibilities for Scheme liabilities. These arrangements can vary across local authorities. Commonly the ceding local authority will keep the liability for scheme members who are in receipt of benefits (pensioner members) and those that have deferred rights to benefits (deferred members). Academies will only have the liabilities for those staff transferred to their employment (active members). Under the Commercial Transfer Agreement, the local authority retains sufficient assets in the pension fund to fully meet all the liabilities of the pensioner and deferred members as there is no future local authority funding for these members. The remaining assets associated with the converting school are transferred to the new Academy. An actuary acting for the administering authority calculates the amounts to be transferred according to the standards and codes of practice of the actuarial profession.

5. The employer contribution rate set for the new Academy can be higher or lower than the rate for the ceding local authority and, in some cases the increase can be sufficient to act as a barrier to converting to Academy arrangements or introduce unexpected additional costs. The reasons cited for increased employer contribution rates are:-

    a) Differences in staff demographic between the local authority and the Academy. These variations result from separating the former school from the broader local authority group.

b) A changed forecast of investment returns between the date of the last Fund valuation in 2010 and the date when the Academy joins the scheme ie when its assets and liabilities are assessed as a new separate employer.

c) An Academy is a company limited by guarantee with charitable status and does not have the constitutional permanence of a local authority maintained school. In particular, prior to the Education Secretary's Minute to Parliament (see Chapter 2), administering authorities had concerns about how liabilities would be addressed should it ever have been decided to close an Academy for whatever reason. This has led to some local authorities being reluctant to enter into risk sharing arrangements with Academies. It also deterred some administering authorities from setting deficit recovery periods over a longer period of time which in some cases has led to higher employer contribution rates in the short term.

d) Some administering authorities assumed that Academies only have guaranteed funding for 7 years as this is the period of notice set out in the Funding Agreement between the proprietor of the Academy and the Secretary of State for Education. Academies do, in fact, have an open ended rolling funding agreement with the Education Secretary which includes a 7 year no fault written notice period.

6. The joint letter from the Secretaries of State for Education and Communities issued in December 2011 stated that should it be found that Academy arrangements are not proceeding such that their scheme costs remain stable, consideration will be given to the need for any regulatory measure to achieve this aim. While some administering authorities have implemented practical solutions to changes in the sector, it was considered that insufficient progress had been made to ensure the long term stability of scheme costs, with some Academies suffering, or at risk from, dramatic increases in employer contribution rates.

7. The Academy programme is a major Government policy to raise standards in education and Ministers consider that specific regulatory intervention might provide a more stable solution for the schools and Academies sector. To support any stabilising regulatory solution for Academies and address some concerns that an Academy may be of weaker covenant than a local authority maintained school, a guarantee came into effect from 18 July which means that the Department for Education will meet any outstanding scheme liabilities on the closure of an Academy Trust.

Pooling arrangements that can operate in the Local Government Pension Scheme

8. A pool is a mechanism for two or more employers to share actuarial assumptions and risks relating to participation in the scheme as an employer. The scheme regulations do not expressly provide for pooling pension arrangements but employers can be brought together to share costs and risks For example, if more employees than actuarially assumed receive benefits as a result of ill health retirements, there could be an

additional charge to that employer (see Reg 41 of the LGPS (Administration) Regulations)[1]. This can expose smaller employers to very high increases in pension costs and pooling arrangements that involve similar sized employers, serves to spread this risk across a broader pool and reduce the potential volatility of contribution rates for all those involved.

[1] http://timeline.lge.gov.uk/LGPS2008Regs/SI20121989/20080239.htm#reg41

Chapter 2

Rationale to introduce Academy and Local Authority Pooling Arrangements

9. Local authority maintained schools and Academies are public bodies with state funding. Local authorities retain a duty to provide sufficient school places for children, through maintained schools or academies. There is, therefore, a rationale for linking the two types of bodies for scheme purposes.

10. A more structured regulatory arrangement for creating pooling mechanisms, whereby risks and costs are shared between Academies and the local authority should reduce the volatility of Academies' employer contribution rates but there may be a number of ways to achieve this aim. This consultation offers some options for pooling but invites comments about how best stability of Academy employer contribution rates can be achieved.

11. Options for regulations include:
    a) requiring that pension arrangements for an Academy, or several Academies, and the ceding local authority are pooled together should the Academy want this; or
    b) providing that the Academy, or several Academies, and the ceding local authority should be pooled together without any choice between the parties; or
    c) providing that the schools sector – Academies and local authority maintained schools – are pooled together.
    d) providing pooling arrangements for Academies only.

12. An advantage of any compulsion between the parties is stability across the pool. Frequent dipping into and out of a pooling arrangement alters the profile of the pool membership and scheme actuaries would not be able to have certainty about who would be in a pool at any one time. This then increases risks and costs, not just for Academies, but across the whole pool. Compulsion could, however, increase the costs of some Academies as the pool might generate an employer rate that is higher than that currently set for the individual Academy. However, the benefit of pooling pension arrangements is that there is a sharing of risks eg the additional costs of having more ill health retirements than previously anticipated by the fund actuary. There are various ways that pooling arrangements can be implemented which affect the balance between the cost and risk sharing which the administering authority, with the advice of their fund actuary, needs to consider carefully.

How Academy and local authority pools might operate

13. Any pooling arrangement could have different characteristics and this might include a requirement that:-

a) to join or leave a pool, an Academy would need to notify the administering authority six months before joining and, if leaving the pool, six months before the date of a scheme valuation exercise.

b) An Academy could decide whether to remain in or to opt out of the pool after every second scheme valuation or some such specified period.

c) The fund actuary determines the assets and liabilities as if the pool was a single employer and assets and liabilities are apportioned between the different employers so that each had a proportionate share.

d) Each employer's contribution rate would be set so that, overall, the cost of benefits and any deficit would be recovered over the same period for all employers in the pool.

e) Employers within the pool could retain freedom to use their discretions to manage their workforce but, to ensure costs did not unfairly fall on other employers in the pool, the administering authority could make an extra charge on that employer if;
   - the employer increases pay rates for scheme members above the assumed level;
   - they have used their discretion to increase the total service of a member or award additional pension (Administration Regulation 40[2]);
   - if members becomes entitled to benefits on the grounds of ill health, redundancy, efficiency or flexible retirement (Administration Regulation 41[3]);
   - a contribution towards the administration of the pension fund is due under Administration Regulation 42[4];
   - if the administering authority has incurred additional costs resulting from the level of performance of the employer (Administration Regulation 43[5]);
   - if due to late payment interest is due under Administration Regulation 44[6].

14. It should be noted that Academies would still be bound by the requirements of the Education Funding Authority, including the need to provide Financial Reporting Standards 17 statements each year. Individual employers would still be responsible for the appropriate proportion of the pooled deficits.

Department for Education guarantee for the management of pension liabilities should an Academy be wound up.

15. It is important that all the parties in the pool should be aware of their responsibilities should they leave the pool or, indeed, cease participation in the scheme. It would not be acceptable to leave unmet pension liabilities in the pool for other members of that pool to pay for through their employer contribution rate.

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[2] http://timeline.lge.gov.uk/LGPS2008Regs/SI20121989/20080239.htm#reg40;
[3] http://timeline.lge.gov.uk/LGPS2008Regs/SI20121989/20080239.htm#reg41 ;
[4] http://timeline.lge.gov.uk/LGPS2008Regs/SI20121989/20080239.htm#reg42 ;
[5] http://timeline.lge.gov.uk/LGPS2008Regs/SI20121989/20080239.htm#reg43
[6] http://timeline.lge.gov.uk/LGPS2008Regs/SI20121989/20080239.htm#reg44

16. The Department for Education has provided a guarantee[7] to scheme administering authorities that, in the event of the closure of an Academy Trust,[8] any outstanding scheme liabilities will not revert to the relevant scheme administering authority. Providing these assurances will give administering authorities the confidence they need to treat academies equitably and ensure that there is no significant divergence in employer contribution rates upon academy conversion.

17. Where an Academy Trust closes, the Department for Education will ensure that the closure is effectively managed and would in the first instance expect the liabilities to be met from the Academy Trust's available assets on closure. The Secretary of State for Education has the power to determine how the remaining assets of an Academy Trust are disposed of which means that any outstanding Scheme deficit would then be met by the Department in full.

18. A Frequently Asked Questions document explain more about the guarantee is attached at Annex A.

Managing liabilities should a local authority maintained school close

19. If it was ever decided that a local authority maintained school should close, it would be the responsibility of the relevant local authority to manage the transfer of students and staff and defray any property, rights and liabilities (including scheme assets and liabilities) to a successor body where there is one. If there is no successor school where, for example, falling rolls means that there is no need for the school in the locality, the local authority remains responsible for any unmet pension liabilities in respect of that former local authority maintained school.

Next Steps

20. Depending on responses to this consultation and Ministerial decisions, any regulatory solution may impact on arrangements made to date for existing converted Academies i.e. how scheme assets and liabilities were apportioned at the point of transfer. There will need to be an assessment of how this would be managed under any pooling arrangement and officials in the Departments for Education and Communities will continue to work together on what, if any, changes might be needed to any Academy documentation including the Commercial Transfer Agreement and how pensions deficits are dealt with.

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[7] Minute to Parliament dated 2 July 2013 - http://www.education.gov.uk/schools/leadership/typesofschools/academies/la/a00204881/lgps

[8] the company which runs the academy and called an "Academy Trust"

Chapter 3

Questions for Consultation

Taking into consideration the issues and options set out above, the Department would be particularly interested in your views in response to the following questions.

The practical considerations of a pool

1. The proposal for this consultation is that stability of a converted Academy's scheme employer contributions will be best achieved by pooling the scheme arrangements of Academies and the ceding local authority. Is this the best way to achieve the stability needed? And, if not, what are the other solutions?

2. What bodies should be included in the pool: Academies and local authorities, Academies and local authority maintained schools, or only Academies? Please say what other arrangements would achieve this aim.

3. If pooling regulations are introduced, should an organisation have a choice about membership of the pool, and should this choice be permanent?

4. Should actuarial assumptions used for all employers in the pool be agreed at local level with expert advice from the fund actuary? Or should expert guidance be developed for use by each fund?

Effect of introducing a pooling regulation when many maintained schools have already converted to an Academy

5. What provisions might be needed to avoid any additional costs where transfers of assets and liabilities have already been made as a result of academy conversions?

6. If any administering authority has satisfactory arrangements already in place, or is in the process of implementing solutions that satisfy all parties, please could you provide a brief description of them? It is not the intention to disrupt successful local solutions, but rather to encourage the sharing of best practise which might best meet Ministers' aims of similar and stable employer rates when a maintained school converts to academy arrangements.