

## CABINET

19 December 2012

<b>Title:</b> Automatic Enrolment to the Local Government Pension Scheme	
<b>Report of the Cabinet Member for Finance</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> None	<b>Key Decision:</b> Yes
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<b>Summary:</b>  The Pensions Act 2008 requires employers to start automatically enrolling eligible staff into qualifying pension scheme. This report sets out this Council's response to these requirements and provides implementation options and a recommendation that the Council apply transitional arrangements for the implementation of Automatic Enrolment.	
<b>Recommendation(s)</b>  The Cabinet is recommended to agree that the Council uses the transitional arrangements as outlined in Option 2 in the report and that the following timetable to implement Auto-Enrolment is used:  (i) Identify all employees who are eligible job holders within 1 month of the staging date of 1 April 2013;  (ii) From 1 April 2013, enrol all new employees (as existing procedure) and any member passing age 22 or breaching the £8,105 threshold for the first time; and  (iii) On 1 October 2017, auto-enrol all current employees who are not currently scheme members (and who are on a salary greater than £8,105 and aged over age 22).	
<b>Reason(s)</b>  The Government has allowed employers offering a Defined Benefit pension scheme, which includes the Council, the ability to defer Auto-Enrolment for previously opted out staff until October 2017. For the reasons outlined in the report Cabinet are asked to agree to use the transitional arrangements to implement Auto-Enrolment.	

## **1. Introduction and Background**

- 1.1 From 1 October 2012 new legal requirements were introduced that placed a duty on all employers in England, including public sector employers, to automatically enrol 'eligible jobholders' into a pension scheme that meets certain minimum requirements, known as an automatic enrolment scheme. The new requirements are generally referred to as Auto Enrolment (AE)
- 1.2 The Local Government Pension Scheme (LGPS) and the Teachers Pension Scheme (TPS) both satisfy the minimum eligibility conditions so the scheme employers will not need to provide a new scheme for eligible staff.
- 1.3 Councillors are not classed as 'workers' but rather as office holders as they do not have a contract of employment by which they are undertake or perform services. Councillors are elected to hold office and provide services as an elected representative and therefore, the AE rules do not apply, although Councillors can elect to join the LGPS at any time.
- 1.4 The introduction of AE is a 'soft' compulsion, i.e. the auto enrolled job holder has the right to opt out but will be re-enrolled every following 3 years. The Employer must comply with these new legal requirements from their individual 'staging date', which is generally determined by the number of people in its largest PAYE payroll scheme immediately prior to 1 April 2012.
- 1.5 The Council's 'staging date' is 1 April 2013 and processes are in place to ensure that the Council is ready for its implementation.
- 1.6 The regulations differentiate between Type 1 'eligible jobholder', Type 2 'non eligible jobholder' and Type 3 'entitled worker' to determine whether each is auto enrolled or has the right to join. The overarching regulations of LGPS and TPS means the Council needs to continue to auto enrol all new staff.
- 1.7 The Council currently automatically enrolls new staff into the appropriate Pension Fund and there is a requirement for staff to actively opt out of the pension scheme if they do not wish to be a part of the scheme. This has resulted in there being a high uptake within the Council.
- 1.8 The Government has included a late amendment giving certain employers offering Defined Benefit pension schemes (including Local Authorities) the ability to defer AE for previously opted out staff until October 2017.
- 1.9 During the transitional period to October 2017, employers only have to enrol new eligible workers into the scheme, though eligible workers in employment at date 1 April 2013 can choose to join the scheme before October 2017 and must be informed of this right within one month after 1 April 2013. Importantly, because the transitional period is optional, the employer must issue a notice of its intention to delay auto-enrolment – and must do so within one month of the staging date. If this is not done then the AE obligation will be triggered straight away.
- 1.10 This paper seeks to outline the main requirement of AE, provides an outline of how staff are currently automatically enrolled in the scheme and outlines the proposal to delay the implementation of AE until October 2017 for current eligible staff.

## 2. Details

- 2.1 The Council's AE staging date has been set at the 1 April 2013. The Council has the option to postpone the application of full AE for a period of not greater than 3 months. This could be used to align the start date with the beginning of the year so that the impact can be built into the 2013/14 budget year. Alternatively the staging date can be brought forward. The Council's staging date is the same as its financial year start date. At the staging date the Administrative authority (the Council) is responsible for the following actions (applied each month from the staging date):
- enrol any new employees into the LGPS / TPS;
  - enrol any employees who are not a member of the scheme but reach the age of 22 (currently the Council employs 328 staff who meet this criteria); and
  - enrol any employee who is passing the rate of salary of £8,105 per annum (inclusive of overtime payments) for the first time. Currently the Council employs approximately 2,600 staff who meet this criteria, with 1,700 already in the pension scheme.
- 2.3 When an employer enrolls a member under the above conditions it must not provide an opting out form directly to the employee as the Pensions Regulator has stated that this could be seen as an inducement not to join the scheme and could leave the employer liable to a fine from his office. Instead the employer must inform employees that they will be automatically enrolled into the scheme but can obtain an opting out form directly from the Local Government Pension or Teachers Pension departments.
- 2.4 Under AE the employer is also required to enrol all employees (who are on salary of greater than £8,105 or are aged over age 22) who have previously opted out. Under transitional arrangements brought in by the Department of Works and Pensions, any Defined Benefits scheme (such as the LGPS and TPS) employer can extend the period to when they must bring such members into the scheme until 30 September 2017 (at 1 October 2017 any employees who are not members of the pension scheme would need to be enrolled). If the Council decides to take advantage of these transitional arrangements it would be required to:
1. notify all employees of the staging date for AE;
  2. notify all directly affected member (those being auto enrolled and those for whom transitional arrangements are being invoked) - individual letters from the employer would be required; and
  3. notify the Pension Regulator of the Council's intention to make use of the transitional arrangements.
- 2.5 Employees who are enrolled through AE have the right to opt-out of the pension scheme. The scheme must have a specific opt-out period (likely to be two years) where any deductions made from salary will be refunded. It should be noted that although an employee can choose to opt-out at any time, they will not be entitled to a cash refund of contributions after the opt-out period expires. Instead they will have built up a pension benefit, regardless of how small, which will increase in accordance with Scheme Rules up to retirement age.
- 2.6 An employee would only be refunded their contributions with any employer contribution being refunded to the employer.

- 2.7 If a qualifying employee opts-out of the pension scheme the Council must re-enrol them automatically every three years. The employee must then choose to opt-out again. Appendix 1 provides a more detailed outline of AE and how it will affect the Council.
- 2.8 The options before Cabinet are whether they wish to apply AE to all staff or to invoke the transitional arrangements thereby delaying implementation to 1 October 2017. The advantages and disadvantages of each option are detailed below:

**Option1: apply AE to opted-out staff at the staging date (01/04/2013)**

Advantages

1. Improve the Pension Fund's cash flow from 2013/14 onwards;
2. If take-up increases then this may help to mitigate the reduction in Pension Fund member numbers and income collected in recent years; and
3. The LGPS / TPS, even after reform, will still provide staff with one of the best means to save for their retirement, helping to avoid reliance on the state pension.

Disadvantages

1. LBBD currently employs around 8,300 staff. Of these, 5,800 are already in the LGPS or TPS. Excluding staff not classed as eligible job holders, there are approximately 1,500 staff that would need to be auto enrolled from 1 April 2013. Staff will have their salaries reduced in one month, with the Council providing a contribution of 20.5% of salary for each member of staff. If staff decide to then opt-out the amounts will have to be refunded both to the staff and to the Employer the following month.
2. There could be significant budget implications for the Council's revenue budget at a time when employer budgets are under significant pressure. These pressures will only be known after AE is implemented but on the basis that 120 staff are auto enrolled into the scheme at an average salary of £20k per year, the increase over one year will be £492k. The budget pressure of £492k will need to be factored into the Council's Medium Term Financial strategy which will increase the level of savings the Council is required to find.
3. The Council already carries out an auto-enrolment system, whereby staff must actively opt-out of the scheme. Letters will be sent out to all staff, including those not currently in the scheme, outlining the advantages of being a member of the scheme. Adopting AE in full from 1 April 2013 will force staff to be opted into the scheme and then potentially have to wait up to three months to receive a cash refund if they subsequently opt-out.
4. To implement the full AE by April 2013 requires additional costs to be incurred to install a new system to identify relevant staff. Currently a new system will cost £15k to install and then will require an annual charge of £10k to maintain, which will be charged to the pension fund. Additional staff hours will also be required to manage the AE process and to ensure deductions and refunds are made each month to affected staff.

## **Option 2: apply transitional arrangements for AE to current opted-out staff.**

### Advantages

1. Ease pressure on current budgets and allow for better budget planning;
2. Once the LGPS scheme details are known then it would enable time to target promotion material to the current opted-out staff and encourage them to join voluntarily either at the AE date in 2017 or before if they choose to do so;
3. Provides an extended lead-in time to enable proper communications to take place; and
4. Allows any issues with implementing the scheme to be identified between now and the transitional implementation date. (October 2017)
5. A large portion of staff (approximately 900) that have opted out of the pension scheme earn less than the £8,105 threshold and will therefore not initially be auto-enrolled under either option. However under both options staff will be auto-enrolled when they reach the £8,105 threshold. Therefore the use of transitional arrangement will not affect staff who currently earn below the threshold.
6. Equally staff under the threshold age of 22 will still be auto-enrolled under both options when they turn 22.

### Disadvantages

1. Auto-enrolment in April 2013 would help ease any pressure to the Pension Fund's cash flow, although this is not a major issue for the Fund.
2. It delays the time when currently opted-out staff (their current preference) will start saving toward their retirement thereby resulting in a lower pension than if AE was applied in April 2013.

2.9 It is recommended that if Cabinet chooses to use the transitional arrangements then the following timetable is used:

1. Identify all employees who are eligible job holders within 1 month of the staging date;
2. From 1 April 2013: Enrol all new employees and any member passing age 22 or breaching £8,105 for the first time.;
3. 1 October 2017: Auto-enrol all current employees who are not currently scheme members (and who are on a salary greater than £8,105 and aged over age 22).

## **3. Options Appraisal**

3.1 There are two main options available to the Council, including:

1. From 1 April 2013: Enrol all new employees and any member passing age 22 or breaching £8,105 for the first time; and
2. 1 October 2017: Auto-enrol all current employees who are not currently scheme members (and who are on a salary greater than £8,105 and aged over age 22).

3.2 Both these options have been included in the main body of the report.

#### **4. Consultation**

- 4.1 No consultation is required regarding the application of the transition arrangements. However, employees and trade unions will be advised and kept informed of the implications of the revised pension arrangements.

#### **5. Financial Implications**

Implications completed by: Jonathan Bunt, Divisional Director of Finance

- 5.1 This report provides options available to the Council to implement and meet the AE requirements.

#### **6. Legal Implications**

Implications completed by: Eldred Taylor-Camara, Legal Group Manager

- 6.1 Changes to the automatic enrolment regime were made through the Pensions Act 2011 and final regulations were published in February 2012. The Pensions Regulator also has produced detailed guidance for employers and schemes on implementing the reforms.
- 6.2 This report details 2 options, both of which are compliant with those Regulations and guidance. Given that no disadvantage to employees results from either option, there are no specific legal implications to be considered.

#### **7. Other Implications**

- 7.1 **Risk Management** - The risk associated with not applying the transition arrangements in respect of pension auto-enrolment is that further financial pressure could result. Delaying auto-enrolment to September 2017 will reduce the risk to the Medium Term Financial Strategy.
- 7.2 **Staffing Issues** - The implications for staff are explained in the body of the report.

#### **Background Papers Used in the Preparation of the Report:**

- The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012

#### **List of Appendices**

**Appendix 1** - Outline of Auto-enrolment