

**Appendix C**  
**Local Government Pension Scheme (LGPS) legal position**

**Emails from the Pensions Section of the Workforce department of the LGA regarding the current Local Government Pension Scheme.**

**1)**

**From:** Mary Lambe  
**Sent:** 15 April 2014 14:25  
**To:** 'Sarah Short'; Jeff Houston  
**Subject:** RE: LGPS query

Hi Sarah,

As Jeff is currently on leave I've picked up your email.

As confirmed below a local authority cannot withdraw from the LGPS and the regulations below specify that those staff employed by the local authority are eligible for membership of the scheme. In addition a local authority cannot coerce staff to opt-out of the scheme given the safeguarding provisions of the Pensions Act 2008 -

<http://www.thepensionsregulator.gov.uk/docs/detailed-guidance-8.pdf>.

**Under the LGPS 2013 regulations:**

- Regulation 3 states who are eligible for membership of the scheme

***Active membership***

**3.—(1)** *Subject to regulation 4, a person is eligible to be an active member of the Scheme in an*

*employment—*

*(a) if employed by a body listed in Part 1 of Schedule 2;*

- Part 1 of Schedule 2, lists the employers and a local authority in England as defined in regulations is a scheme employer and must therefore offer those eligible under regulation 3.

***SCHEDULE 2 - Scheme employers***

***PART 1***

**1.** *In England, a county council, a district council, a London borough council, the Greater London Authority, the Common Council of the City of London and the Council of the Isles of Scilly.*

If every member opted out as per the example below then an exit payment would be required as per regulations 64(1) of the LGPS 2013 Regulations – see extract below.

***Special circumstances where revised actuarial valuations and certificates must be obtained***

**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.*

Kind regards,

Mary

**Mary Lambe**  
**Pensions Adviser**

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2)

**From:** Jeff Houston [<mailto:Jeff.Houston@local.gov.uk>]

**Sent:** 19 February 2014 14:44

**To:** Sarah Short

**Cc:** Cornelius Hargrave; Mary Lambe; Terry Edwards

**Subject:** RE: LGPS query

Hi Sarah

Couple of things to consider here;

1. Councils are included in the LGPS regulations 2013 - schedule 2 part 1 (1) as scheme employers and must therefore provide employees with access to the scheme
2. If a council did find itself with no active members for any reason (say they all opted out) then an exit payment equal to its total liabilities including the deficit would be immediately payable under regulation 64 (1). Currently the council's deficit is spread over a number of years and will be reduced due to an assumption of future investment performance.

So even if a council could withdraw (which it can't) it would face a pretty large bill (in the tens if not hundreds of millions) in the process.

Happy to clarify or provide extracts from legislation if needed.

Jeff

**Jeff Houston**

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