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Practice Groups:

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Local Government Pension Scheme: Potential Cost Implications of Recent Changes to Regulations

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The Local Government Pension Scheme (the "LGPS") is one of the largest pension funds in the UK. It is a statutory pension arrangement and comprises 99 separate funds operated by local authorities throughout the UK to provide pension benefits for their employees. The terms governing the LGPS are set out in UK legislation. Much of the detail is contained in regulations. Local authorities have for many years outsourced services to the private sector usually involving the transfer of employees from local authorities to service providers. To protect employees in terms of their pension benefits, the LGPS has been available to the private sector for quite some time enabling employees who have transferred from local authorities the opportunity to continue to benefit from the defined benefits on offer under the LGPS. To do so, a service provider participates in the LGPS as an admission body by signing up to an admission agreement.

What are the changes?

In August 2012, changes to the LGPS regulations were laid before Parliament by the Department for Communities and Local Government ("DCLG"). The changes will impact all local authorities and service providers when they come into force on 1 October 2012. Most of the changes are administrative in nature or are otherwise relatively immaterial. However, the DCLG has slipped into the amending regulations certain provisions requiring the automatic enrolment of transferring employees into the LGPS.

In relation to outsourcing contracts entered into on and after 1 October 2012, service providers who are admission bodies will be obliged to automatically enrol their employees into the LGPS either when employees join the service providers or, if later, at the date on which the service provider becomes an admission body.

For this purpose, employees include:

- those who are existing active LGPS members
- those who are not active members but are eligible to join the LGPS; and
- in some circumstances, future new employees of the service providers.

The requirement to enrol automatically does not apply to employees on contracts of less than 3 months. In addition, affected employees may, if they wish, expressly opt out of the LGPS.

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So what are the main implications?

The two key implications of the new LGPS auto enrolment requirement are as follows:-

Financial: in relation to transferring employees who are not currently active members of the LGPS and potentially in respect of future new employees, there may be cost implications not only for such employees in terms of member contributions but also for service providers and, ultimately, for local authorities in having to fund employer costs.

Administration: the legislation is written in such a way that all transferring employees will automatically enrol on the transfer date (and future new employees on the joining date) but they have the right to opt out either (i) before the transfer (or joining) date (which could be impractical) or (ii) during the period of 3 months following the transfer (or joining) date (which would be onerous from an administration perspective not only for service providers but also for the administering authorities of the relevant LGPS funds).

What needs to be done and how can it be achieved?

We have been considering the changes in some detail and have developed a practical solution which will not only comply with the new LGPS auto enrolment requirement when it comes into force from 1 October 2012 but will also, from the local authorities' perspective, satisfy the principles of Fair Deal in protecting transferring employees' pension benefits.

Who should take action?

The changes will affect all local authorities and service providers who enter into outsourcing contracts involving the transfer of employees. They will apply to all contracts entered into on and after 1 October 2012. Service providers with existing contracts should also check their terms, the reason being that the changes also apply to new employees of service providers in certain circumstances.

If you have concerns as to how the changes will impact your contracts or if you have any questions, please contact the author or your usual K&L Gates contact.

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