

**Trust Board Paper U**

<b>To:</b>	<b>Trust Board</b>
<b>From:</b>	<b>Kate Bradley, Director of Human Resources</b>
<b>Date:</b>	28 March 2013

<b>Title:</b>	<b>Pensions Act Auto Enrolment Transitional Arrangement</b>
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**Author/Responsible Director:**  
 Kate Bradley, Director of Human Resources

**Purpose of the Report:**  
 To confirm and ratify the decision made in March 2013 to utilise the transitional arrangements contained within the Pensions Act.

**The Report is provided to the Board to provide:-**

Decision		Discussion	
Assurance		Endorsement	√

**Summary / Key Points:**  
 The Pensions Act has been implemented by the Government to ensure that all members of staff are able to save for their future by enrolling them in a workplace pension scheme. The Act has introduced a number of legally enforceable employer duties. The NHS Pension Scheme is a recognised qualifying scheme and is widely adopted across the service it does not however, in itself, remove the employer duties. If a member of staff is ineligible to join the NHS scheme we must offer an alternative scheme.

The Pension Act, amongst other provisions, allows employers to apply transitional arrangements to certain of its staff that will enable the application of employer duties to those individuals to be deferred until 30 September 2017. In essence this means that those meeting age and earnings criteria currently opted out of the NHS Pension Scheme (NHSPS) would not have to be automatically re-enrolled into NHSPS until that date. The consequence is that there are potential employer pension cost savings to be gained over that period of time.

Following circulation of a note setting out the transitional arrangements, it was decided that UHL would utilise the transitional arrangements for the appropriate group of staff. Essentially this means that the c1100 members of staff who are not in the NHS Pension Scheme but who are eligible to opt in the pension scheme will not be opted into the scheme until September 2017.

In the meantime, we will continue to promote the benefits of pension scheme membership to staff.

**Recommendations:**  
 To ratify the decision to utilise the transitional arrangements.

<b>Strategic Risk Register</b> N/A	<b>Performance KPIs</b> N/A
<b>Resource Implications (e.g. Financial, HR):</b> Support for PWC to review correspondence c£10k	
<b>Assurance Implications:</b> N/A	
<b>Patient and Public Involvement (PPI):</b> N/A	
<b>Equality Impact:</b> We are assessing the impact in relation to the protected characteristics	
<b>Information exempt from Disclosure:</b> N/A	
<b>Requirement for further review?</b> To be determined.	

## UNIVERSITY HOSPITALS OF LEICESTER NHS TRUST

**REPORT TO:** Trust Board  
**DATE:** 28 March 2013  
**REPORT FROM:** Kate Bradley, Director of Human Resources  
**SUBJECT:** Pension Act Auto Enrolment –Transitional Arrangement

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### 1.0 BACKGROUND

1.1 The Pensions Act has been implemented by the Government to ensure that all members of staff are able to save for their future by enrolling them in a workplace pension scheme. The Act has introduced a number of legally enforceable employer duties which if we fail to comply with can result in daily £10K fines. Although the NHS Pension Scheme is a recognised qualifying scheme under the Act and is widely adopted across the service, it does not of itself remove the employer duties.

1.2 The Act requires employers to assess each worker against a series of criteria, including their age and earnings, to establish which of three categories of worker they fall into; namely:-

- eligible jobholder
- non-eligible jobholder or
- entitled worker

The category determines the actions the Trust is required to take.

1.3 Once assessment has been completed during their first pay period, we are then required to write to all members of staff informing them individually of the outcome of the assessment together with details of their pension membership or their entitlement to join a pension scheme.

1.4 For those classified as an '*eligible jobholder*' we are legally required to automatically enrol them into a qualifying pension scheme and the Trust must pay contributions to the scheme. This process is known as '*Automatic Enrolment*'.

1.5 The definition of an '*eligible jobholder*' under the Act includes employees, bank staff, locums and some other groups (but excludes Non-Executive Directors and those claiming only expenses e.g. Honorary contract holders) where they are aged 22 or over, are under state pension age and earn more than a specific amount in their pay period i.e. £676 in any month if monthly paid or £156 in any week if weekly paid, equivalent to £8,105 a year (*the earnings threshold is subject to annual review and these values are 2012/13*).

1.6 If a worker is not deemed to be an '*eligible jobholder*' at first assessment, they must be re-assessed on a continuing rolling basis as they may become eligible in

any subsequent pay period. At this point they must be automatically enrolled into a pension scheme and notified within one month of the start of the pay period in which they were assessed as an 'eligible jobholder.'

- 1.7 For workers already employed by the Trust at the time that 'Automatic Enrolment' responsibilities commence the same assessment process applies and the employer duties under 'Automatic Enrolment' and associated communications must be completed within one month of the Trust's allocated compliance date, known as our 'Staging Date'.
- 1.8 The Trust's staging date was 1 March 2013 and the Trust has utilised the three month postponement period allowed.

## **2.0 TRANSITIONAL ARRANGEMENTS**

- 2.1 The Pension Act, amongst other provisions, allows employers to apply transitional arrangements to certain of its staff that will enable the application of employer duties to those individuals to be deferred until September 30<sup>th</sup> 2017 for specific types of pension schemes. In essence this means that those meeting age and earnings criteria currently opted out of the NHS Pension Scheme (NHSPS) would not have to be automatically re-enrolled into NHSPS until that date. The consequence is that there are potential employer pension cost savings to be gained over that period of time.
- 2.2 The jobs not currently enrolled in NHSPS and not eligible for transitional arrangements would join our alternative pension scheme (NEST) if ineligible for NHSPS, may opt into a pension scheme manually or may trigger auto enrolment at any time dependant on age and earnings in a given payroll period. Once these commence being assessed following the postponement period 'auto enrolment' will be undertaken with the largest enrolment expected in the first month and first weeks. These are excluded from both cost and quantity within this paper.

## **3.0 APPLICATION**

- 3.1 There are strict criteria all of which must be met in order for the transitional arrangements to apply to a worker.
  - They must be an Eligible Job Holder under the definitions of the Pension Act i.e. between age 22 and State Pension Age and meet the earnings triggers (currently £156 per week or £656 per month)
  - They must have been in post for a continuous period prior to the Staging Date which for UHL is 1<sup>st</sup> March 2013
  - They must be eligible to be a member of the NHS Pension Scheme at or before that date
  - They must remain eligible to join the NHS Pension Scheme throughout the transition period
  - The scheme must be a qualifying scheme which the NHS Pension Scheme is
- 3.2 The use of a transitional arrangement can only be applied up to 1<sup>st</sup> March 2013 and does not apply to new starters after that date.

- 3.3 Advice provided by PWC and through our employment solicitor's pension specialist confirm that UHL is able to apply the transitional arrangements.
- 3.4 An assessment using February payroll data of the workforce has identified that of the jobs currently opted out of the NHS Pension scheme 1,109 would appear to meet all of the criteria to have the transitional arrangement applied. The final figure will be based upon payroll earnings associated with 1<sup>st</sup> March 2013 and may be greater or lesser than this.

#### **4.0 IMPACT OF APPLYING TRANSITIONAL ARRANGEMENT**

- 4.1 Under normal auto enrolment arrangements the jobs identified for transitional arrangements would have been automatically enrolled into the NHS Pension scheme with effect from 1<sup>st</sup> June 2013 (following our three month postponement). After that time individuals would have to decide whether or not to opt out again from the pension scheme. There will be employer costs associated with these individuals joining the scheme and it is those costs that could be avoided by applying the transitional arrangements.
- 4.2 If the transitional arrangements were applied then the potential to avoid employer contributions of up to £3.9 million exists in 2013/14. There will be a proportion of staff (estimated at c.26% of the staff to which transitional arrangements would apply) who would probably join NHSPS once notified of the application of the transitional arrangements and their right to join NHSPS if they wish. The notification is a legal requirement to be given to individuals.

#### **5.0 MANAGEMENT OF TRANSITIONAL ARRANGEMENTS**

- 5.1 Applying the transitional arrangements places a number of additional demands on the Trust in terms of monitoring the maintenance of the eligibility criteria. This is not something that ESR is able to do automatically as once a job is flagged as being in transition it will not be automatically assessed by ESR under auto enrolment rules in an on-going way until the end date (30<sup>th</sup> September 2017) is reached. It will be incumbent on the Trust to monitor those individuals and their jobs over that time and remove the transitional arrangements and apply the auto enrolment rules if any of the criteria no longer apply.

#### **6.0 EXTERNAL OPINION**

- 6.1 PWC confirmed the legislative eligibility of transitional arrangement during initial discussions. Further discussions have been undertaken with our legal advisers who have provided further advice and clarification that this transitional arrangement is within the legislation framework.
- 6.2 As part of discussions within the last two weeks PWC have confirmed that in circumstances where transitional arrangements come to an end and employment remained we would have to enrol the person into either NHSPS if they were eligible or NEST. Where NEST is used due to them being ineligible for NHSPS, employer contributions would be backdated to 1<sup>st</sup> March 2013 regardless of when they became ineligible. This is a relatively low risk/low value issue with a maximum annual cost of approximately £358 per full time individual (based on 2012/13 financial year's eligible pensionable earnings and the minimum 1% legally required

contribution). The worst case scenario if all those identified for transition were ineligible to join NHSPS at 30<sup>th</sup> September 2017, based on current earnings (February 2013), would be £932k for 4½ years back contributions.

- 6.3 The circumstances under which the transitional arrangements would end for an individual prior to 30<sup>th</sup> September 2017 other than through leaving relies on their eligibility for NHSPS. The two key areas of potential ineligibility are holding 1 wte membership of NHSPS (potentially by working elsewhere at the same time) and absence from work.
- 6.4 Our employment solicitor's pension specialist has explored ineligibility due to absence from work and concluded that during absence the individual continues to be eligible to become a member of the NHS Pension scheme because they continue to be in pensionable service.
- 6.6 A discussion with Staff Side on 6<sup>th</sup> March 2013 confirmed they were supportive of use of the transitional arrangement.

## **7.0 OTHER TRUSTS**

- 7.1 From contact with other Trusts either directly or through AUKUH, we have established that a cluster in the North West are proposing to adopt the transitional arrangement, Sheffield Teaching Hospitals, Oxford University Hospitals and Nottingham University Hospitals decided week commencing 4<sup>th</sup> March 2013 to utilise the transitional arrangement.

## **8.0 PROMOTION OF PENSIONS MEMBERSHIP**

- 8.1 On an on-going basis over the coming year we will promote joining a pension scheme to ensure that staff are aware of the benefits of saving for the future.
- 8.2 Staff will not be affected adversely by the adoption of the transitional arrangement as they would have the right to opt into the pension scheme at any point should they choose to.

## **9.0 RATIFICATION OF DECISION**

- 9.1 The Chief Executive sought the agreement of the Chairman on the proposed use of the transitional arrangements. This decision was then circulated to other Trust Board members for their consideration and support.
- 9.2 Trust Board members confirmed their support of the recommendation to utilise the transitional arrangements contained within the Pension Act. We are confident by using the transitional arrangement no member of staff will be adversely affected nor that the Trust would be in breach of its employer duties under the Pension Act.