

# Workplace pension reform

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# Workplace pension reform, **it's here**

**Under workplace pension reform the UK's employers will have to cope with major reforms to workplace pensions that will be implemented in stages that started in October 2012. The reforms will affect all employers, irrespective of their size or type of business.**

For the first time employers will have to automatically enrol certain workers into a pension scheme that meets a statutory quality criteria. And, also for the first time, employers will have to pay a minimum level of pension contributions or provide a minimum level of benefits for their workers.

This guide is intended to help demystify this complex new area of law. The first part focuses on employer duties and covers the range of new duties with which employers will have to comply under the reforms.

Part two guides employers and pension schemes through implementation of the reforms in respect of existing and new pension provision.

The third part covers the administration issues employers and pension schemes will need to consider when dealing with workplace pension reform.

The reforms are complex and present an array of issues for employers. Businesses need to consider how to administer new enrolment processes, how to pay for mandatory contributions and how to monitor their workforces to ensure compliance with the new employer duties.

Workplace pension reform has introduced a range of new terms and definitions into pensions and employment law.

To make this analysis easier to follow, these new terms are defined in the glossary.

## **A note on figures**

The figures used in this guide are in force with effect from 6 April 2014. These figures are subject to an annual review by the Secretary of State for Work and Pensions. We expect the outcome of the next review to be announced in November/December 2014. If the figures are revised we will update this guide.

## **A note on legislation**

This guide assumes that legislation will be enacted and brought into force in either its current form or in line with consultation.

# Part one employer duties

**Time is running out for employers to get ready for workplace pension reform. Many businesses, public sector bodies and other employers are now trying to work out exactly how the reforms will affect them.**

At the heart of workplace pension reform are the new employer duties. These will affect all employers, regardless of size, and will require them to:

- ensure all eligible jobholders are members of a qualifying scheme;
- automatically enrol all eligible jobholders who are not already enrolled in a qualifying scheme into an automatic enrolment scheme;
- either pay contributions on behalf of enrolled jobholders into a defined contribution scheme and ensure the total level of contributions is at least equal to a minimum statutory level, or provide a prescribed minimum level of benefits through a defined benefit scheme; and
- provide certain prescribed information to all workers.

Employers will have to administer a re-enrolment process every three years, administer and process opt-out notices and pay refunds. They will also be required to keep records and register with the Pensions Regulator. Finally, employers will be obliged to adhere to certain safeguards to ensure compliance.

### Assessing and categorising your workforce

Workplace pension reform will affect groups of employees and workers in different ways. The four main groups are eligible jobholders, non-eligible jobholders, workers (sometimes referred to as 'entitled workers') and others ('non-entitled workers').

To successfully implement workplace pension reform it is necessary to undertake a thorough assessment of the workforce to establish who falls into which category. These definitions then determine what an employer has to do in order to comply with its employer duties.

The definition of the four groups is summarised in the following table, and detailed below.

	Qualifying earnings		
Age of worker	<£5,772	£5,722 – £10,000	>£10,000
16 - 21	Entitled worker	Non-eligible jobholder	Non-eligible jobholder
22 – State pension age			Eligible jobholder
State pension age – 75			State pension age – 75

Eligible jobholders	Non-eligible jobholders	'Entitled' workers
<p><b>Who are they?</b></p> <ul style="list-style-type: none"> <li>■ A worker who works or ordinarily works in the UK;</li> <li>■ Aged at least 22 and under state pension age; and</li> <li>■ Has qualifying earnings above the automatic enrolment earnings threshold (which was set at £10,000 in 2014/15 and which will be reassessed on an annual basis)</li> </ul> <p><b>What are employers' obligations?</b></p> <ul style="list-style-type: none"> <li>■ Ensure all eligible jobholders are enrolled into a qualifying scheme</li> <li>■ Automatically enrol any eligible jobholders not in a qualifying scheme into an automatic enrolment scheme</li> <li>■ Provide prescribed information about the pension arrangements and the employer duties</li> <li>■ Automatically re-enrol any eligible jobholders not enrolled into an automatic enrolment scheme every three years</li> <li>■ Pay contributions on qualifying earnings (i.e. all earnings between £5,772 – the contribution threshold – and £41,865) if the employer is using a defined contribution scheme to fulfil its duties</li> <li>■ Provide a prescribed minimum level of benefits if the employer is using a defined benefit scheme to fulfil its duties</li> </ul>	<p><b>Who are they?</b></p> <ul style="list-style-type: none"> <li>■ A worker who works or ordinarily works in the UK.</li> <li>■ Aged at least 16 and under 75, and who either: <ul style="list-style-type: none"> <li>– has qualifying earnings between £5,772 and £10,000; or</li> <li>– earns more than £10,000 of qualifying earnings but is aged at least 16 and under 22 or between state pension age and under 75</li> </ul> </li> </ul> <p><b>What are employers' obligations?</b></p> <ul style="list-style-type: none"> <li>■ Provide prescribed information about the pension arrangement (including a statement that the non-eligible jobholder has a right to request membership of an automatic enrolment scheme)</li> <li>■ Permit non-eligible jobholders to opt in to membership of an automatic enrolment scheme. This membership will be on the same basis as an eligible jobholder</li> </ul>	<p><b>Who are they?</b></p> <ul style="list-style-type: none"> <li>■ A worker who works or ordinarily works in the UK;</li> <li>■ Aged at least 16 and under 75; and</li> <li>■ Earns below the qualifying earnings threshold (i.e. currently £5,772 per annum)</li> </ul> <p><b>What are employers' obligations?</b></p> <ul style="list-style-type: none"> <li>■ Providing prescribed information about the pension arrangement</li> <li>■ Allowing membership of a pension scheme (but this is not on the same basis as jobholders – no employer contributions are required in respect of workers)</li> </ul>

### Obligations to all workers

Employers have certain obligations that apply to all categories of workers, including:

- Keeping records
- Registering with the Pensions Regulator
- Providing notification if using 'postponement'
- Providing prescribed information about the pension arrangement
- Adhering to the safeguards in place to protect workers' rights

## Issues in assessing the workforce

Dividing the workforce into the appropriate categories will be a big task, especially for larger employers or employers with complicated workforces. There are additional complexities in the detail that employers should consider. These include:

### Who are 'workers'?

This is a wide definition, and covers many people traditionally considered to be self-employed contractors and consultants. It is not the same as the definition for worker used in tax legislation. It may, therefore, capture individuals who are not covered for other employment purposes.

### Office holders

The 'worker' category does not cover 'office-holders' (e.g. non-executive directors or trustees), sole person directors or members of the armed forces.

### 'Works or ordinarily works in the UK'

Employees who conduct some of their work in the UK may be caught. Particular care will have to be paid to employees who travel and work in different countries, offshore workers and seconded and expatriate employees.

### Age and earnings thresholds

Employees' ages will change and their earnings may fluctuate. Employers need to ensure that their payroll systems can cope with the changes to an employee's age and earnings as this may trigger new duties, for example:

- when a 21-year-old employee who earns £12,000 per annum turns 22; or
- a 25-year-old employee gets a pay rise, taking their earnings from £6,000 per annum to £10,500 per annum.

In both of these cases, the employee will have switched from non-eligible jobholder to eligible jobholder status.

See our alert on the practical implications for employers and new employee rights (available at [http://www.wragge-law.com/alert\\_8021.asp](http://www.wragge-law.com/alert_8021.asp)).

### Qualifying earnings

The list of employer duties makes it clear that the definition of qualifying earnings is crucial for both assessing the workforce and administering pensions under the reforms.

Qualifying earnings are all earnings between £5,772 and £41,865 (in 2014/15). These figures will be reviewed annually and may be changed by the Secretary of State for Work and Pensions.

The definition of qualifying earnings is wide and includes: salary or wages, commission, bonuses, overtime and a range of statutory payments (e.g. statutory maternity and paternity pay and statutory sick pay).

Employers will need to use a 'pay reference period' to determine if a worker is an eligible or non-eligible jobholder. These figures are rounded up based on the annual amounts set out in this document. For example:

1. if a worker is paid on a weekly basis, their earnings thresholds will be £192 per week (the automatic enrolment earnings threshold i.e. for eligible jobholder status) or £111 per week (qualifying earnings threshold i.e. for non-eligible jobholder status); or
2. for monthly employees this will be £833 and £481 respectively.

### Contributions

The final major change under workplace pension reform is the new employer duty to pay a minimum level of pension contributions if it is using a defined contribution scheme to discharge its duties.

The exact amount that will need to be paid will depend on the type of pension scheme that is used to discharge the employer duties (see 'qualifying schemes' and 'automatic enrolment schemes' in part two) and whether the employer decides to base contributions on qualifying earnings or to take advantage of the 'certification' regime (see 'certification' in part two).

At its simplest, at the end of phasing (i.e. when the reforms are in 'steady state') the minimum level of contributions based on qualifying earnings into a defined contribution (money purchase) scheme will be:

- three per cent of qualifying earnings paid by the employer; or
  
- eight per cent of qualifying earnings paid in total.

The five per cent between the minimum employer contributions of three per cent and the total minimum contributions of eight per cent may be paid by either the employee or the employer. Employee contributions will usually attract tax relief.

The amount of contributions will be phased in and the Government has now confirmed the final phasing plan. This will require one per cent employer contributions and two per cent total contributions from an employer's staging date until 1 October 2017.

From 1 October 2017 until 30 September 2018 minimum contributions of two per cent (employer) and five per cent (total) will be required. The final 'steady state' (as outlined above) will be reached from 1 October 2018.

# Part two implementing the reforms

The Pensions Regulator provides a quick and easy online tool that enables employers to find out their staging date. This can be found on the Pensions Regulator's web page at the following address: <http://www.thepensionsregulator.gov.uk/employers/tools/staging-date.aspx>.

**The new employer duties under workplace pension reform will be introduced gradually over four years. They started to apply to the UK's largest employers (i.e. those employing more than 120,000 people) from 1 October 2012.**

#### **When do I have to do anything?**

On a monthly timetable starting from 1 October 2012, new groups of employers become subject to the employer duties. By 1 February 2018 all UK employers will be subject to the employer duties. An employer will become subject to employer duties when it reaches its staging date. Staging dates are determined by reference to the size of an employer's PAYE scheme as at 1 April 2012.

The Pensions Regulator is writing to UK employers informing them of their staging dates.

#### **Information provision**

Employers will have to provide certain prescribed information about their pension arrangements to all of their workers. The duty will apply from the point at which they are subject to employer duties (see 'when do I have to do anything?' above).



The exact content of the information will depend on the type of worker (see ‘assessing and categorising your workforce’ in part one) and whether the employer is using a waiting period (see ‘waiting periods and notification’ below).

#### **Information to be provided to eligible jobholders**

Eligible jobholders must be told that they have been, or will be, automatically enrolled or, if applicable, that they are already a member of a qualifying pension scheme.

If the eligible jobholder is to be automatically enrolled, they must be provided with the following further information:

- What automatic enrolment means for them.
- That they can opt out of membership (and, if they choose, opt back in, in certain circumstances). Employers must be careful not to phrase this in such a way as to induce workers to opt out.
- A generic statement telling them where they can find more information about pensions and retirement saving. If the employer chooses to use a personal pension scheme as its automatic enrolment scheme, it must provide the terms and conditions of this scheme.

#### **Information to be provided to non-eligible jobholders**

Non-eligible jobholders must be told that they have the right to opt in to an automatic enrolment scheme and what it means if they exercise this right.

If the non-eligible jobholder does opt in, they need to be provided with the automatic enrolment information set out for eligible jobholders above.

#### **Information to be provided to entitled workers**

Entitled workers must be told that they have the right to join a pension scheme (i.e. it does not have to be an automatic enrolment scheme or a qualifying scheme) and what it means if they exercise their right to do so.

#### **Information to be provided to all workers if applicable**

If an employer makes use of the three-month waiting period, it must tell all workers who are being postponed that it has done so.

The information must be provided within six weeks of either the date the employer duties apply or, for automatic enrolment information, the jobholder’s enrolment date. If the employer uses a waiting period it must issue notification to the workforce within six weeks and then the prescribed information must be provided six weeks after the waiting period has expired.

The only exception to the six-week rule, is for telling workers that they are already a member of a qualifying pension scheme. Employers have two months to provide this information, starting from the date their employer duties apply.

The information must be provided in writing, which includes sending it to workers by email. But, according to the Pensions Regulator, providing an internet or intranet site or a poster will not be sufficient.

#### **Waiting periods and notification**

Employers will be able to introduce a waiting period of up to three months. If an employer uses a waiting period, then its workers’ automatic enrolment date will be delayed until the end of the waiting period.

If an employer uses a waiting period, it will have to provide prescribed information in the form of a notification to all affected workers. Employers will have to provide this notification within one month of the start of the waiting period.

Employers will be able to issue a generic notice to all workers at the beginning of the waiting period. The employer will have six weeks after the end of the waiting period to provide further prescribed information to all its workers, automatically enrol all eligible jobholders and complete registration with the Pensions Regulator.

Employers will therefore have to assess their workforces during the waiting period to ensure they comply with the relevant employer duties for each group of workers.

### Qualifying schemes

The employer duty in respect of pension scheme membership depends on whether the eligible jobholder is an active member of an existing pension scheme:

- If the eligible jobholder is an active member of an existing pension scheme, the employer will have either to ensure that this scheme is a qualifying scheme or automatically enrol them into an automatic enrolment scheme.
- If the eligible jobholder is not an active member of an existing pension scheme, the employer must automatically enrol them into an automatic enrolment scheme.

A pension scheme will be a qualifying scheme if it meets both the:

- qualifying criteria; and
- minimum requirements.

The qualifying criteria are quite simple for UK schemes. They require the scheme to be either an occupational or personal pension scheme and be tax registered. The scheme must also meet the minimum requirements, which are based on an entitlement to a minimum level of contributions (both total and employer) or benefits. The minimum requirements will depend on the type of pension arrangements.

For defined contribution pension schemes, the minimum requirements will be for:

- (a) the employer to make contributions in respect of the jobholder;

- (b) employer contributions to be at least three per cent of qualifying earnings; and
- (c) total contributions to be at least eight per cent of qualifying earnings.

The level of minimum contributions is subject to phasing, and it is expected that the final contribution levels outlined above will be reached from October 2018.

The minimum requirements for defined benefit (including career average revalued earnings (CARE)) and hybrid schemes are different. These provisions are covered in detail under the section headed defined benefit (DB schemes).

### Automatic enrolment schemes

An employer can only automatically enrol eligible jobholders into an automatic enrolment scheme. A scheme is an automatic enrolment scheme if:

- it is a qualifying scheme (see 'qualifying schemes' above); and
- it meets the automatic enrolment criteria.

To be an automatic enrolment scheme and meet the automatic enrolment criteria, a pension scheme must not have any barriers that prevent an employer from using it to fulfil its employer duties (e.g. a fixed waiting period) or require any choice or information from the member for them to become or continue to be an active member (e.g. an investment choice).

### Defined contribution scheme certification

The Department for Work and Pensions has introduced certification to try and make it easier for employers to comply with their employer duties. Many employers and pension schemes do not operate on the basis of qualifying earnings. Instead, they have narrower definitions of pensionable pay that may only cover basic pay or salary.

To tackle this, an additional certification regime is being devised which will enable employers to choose an alternative method of complying with their employer duties and meeting minimum levels of contributions.

Under the certification regime, employers will be able to confirm to the Pensions Regulator that the contribution levels in whatever pension scheme they are using to discharge their employer duties comply with an alternative set of minimum standards. This is an alternative to paying contributions based on qualifying earnings as set out under the 'qualifying schemes' section above.

The mechanism for how certification will work has been set out in regulations that have not yet been finalised. The latest draft of the regulations suggested it will be based on three tiers:

- (a) Tier one – based on a contribution of at least nine per cent of the jobholder's pensionable earnings (inclusive of a four per cent employer contribution). Pensionable earnings must be at least equal to basic earnings (a detailed definition of 'basic earnings' is set out in the regulations).
- (b) Tier two – based on a contribution of at least eight per cent of the jobholder's pensionable earnings (inclusive of a three per cent employer contribution). This tier will only apply if the total pensionable earnings of all relevant jobholders to whom the tier applies, in aggregate, are at least 85 per cent of their total earnings (i.e. on the wide, qualifying earnings basis).
- (c) Tier three – based on a contribution of at least seven per cent of the jobholder's total earnings (inclusive of a three per cent employer contribution). Under tier three, contributions must be based on all earnings.

Contributions under certification are based on earnings from £1 upwards and the latest draft of the regulations includes the ability to set a cap on pensionable earnings as long as imposing the cap does not result in contributions that are less than the relevant 'quality requirement'. This allows comparison with the definition of qualifying earnings, which are currently based on a band of earnings between £5,772 and £41,865 (in 2014/15).

### Defined benefit (DB) schemes

For DB pension schemes the minimum requirement is for either jobholders to be in contracted-out employment or for the scheme to satisfy the test scheme standard. Additional requirements apply to career average revalued earnings (CARE) schemes (see below).

In order to satisfy the "test scheme" standard, pensions provided to relevant members of the scheme must be broadly equivalent to, or better than, the pensions which would be provided to them under a test scheme. The test scheme is a hypothetical scheme which is used as a benchmark. The process of determining whether a pension scheme satisfies the relevant quality requirement is called "certification". (above) will be reached from 1 October 2018.

The scheme actuary will usually do the comparison of a scheme's benefits with those provided by the test scheme. However, an employer may self-certify that their scheme meets the test scheme standard if no actuarial calculations or comparisons are required. The Pensions Regulator has issued guidance for employers and actuaries on certifying DB and hybrid schemes.

A scheme actuary or employer can only certify that a scheme satisfies the test scheme standard if the benefits to be provided for at least 90 per cent of relevant members are at least as valuable as the benefits which would be provided for them under a test scheme. Two tests need to be satisfied: an aggregate test (i.e. overall benefits provided by the scheme) and an individual test (i.e. for each member of the scheme).

The test scheme is an occupational pension scheme which provides members with an entitlement to a pension commencing at the "appropriate age" (currently age 65) which continues for life. The annual rate of the pension at that age is 1/120th of average qualifying earnings in the last

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three tax years preceding the end of pensionable service, multiplied by the number of years of pensionable service (up to a maximum of 40 years). Statutory revaluation and increases to the pension in payment are applied.

### CARE schemes

A CARE scheme must satisfy the minimum requirements set out above (i.e. jobholders are in contracted-out employment or the scheme satisfies the test scheme standard) and meet additional prescribed requirements. The additional requirements are that, during a jobholder's pensionable service, any benefits that accrue to the jobholder are revalued by at least the lower of the annual increase in the general level of prices (CPI), the annual increase in RPI and 2.5 per cent. If a discretionary power may be exercised in relation to the revaluation of such benefits, revaluation at or above the minimum rate must be funded for and included in the scheme's statement of funding principles.

The government has consulted over how to allow for further flexibility so that good quality CARE schemes are qualifying schemes, while protecting the interests of workers. The government is considering in particular how it could allow CARE schemes to revalue benefits by the increase in average earnings, while ensuring that the value of members' benefits remain protected. It has also been suggested that CARE schemes should be able to qualify if the scheme actuary certifies that the benefits under the scheme are at least as good as those provided by the test scheme (assuming benefits are revalued at the minimum rate). The Government is keeping this suggestion under review.

### Cash balance schemes

Under a cash balance scheme the employer promises the member a certain sum of money at normal pension age. The member uses this money to purchase an annuity from an insurance company. This is a risk sharing mechanism where the employer takes on pre-retirement investment risk and the member takes on longevity and interest rate risk at retirement.

On the assumption that a cash balance scheme is classified as a DB scheme, it must satisfy the minimum requirements for a DB scheme i.e. the member must be in contracted out employment or the scheme must satisfy the test scheme

standard. For a cash balance scheme, the test scheme is an occupational pension scheme which provides for a sum of money to be made available for the provision of benefits to a member commencing at the "appropriate age" (currently age 65) and continuing for life. Statutory revaluation requirements apply. The scheme must also satisfy additional requirements which depend on whether or not the scheme calculates the "sum of money" by reference to final pensionable pay.

If the "sum of money" is calculated by reference to final pensionable pay it must accrue at an annual rate of at least 16 per cent of average qualifying earnings in the last three tax years preceding the end of pensionable service, multiplied by the number of years of pensionable service (up to a maximum of 40 years).

If the "sum of money" is not calculated by reference to final pensionable pay it must either:

- accrue at an annual rate of at least 16 per cent of average qualifying earnings multiplied by the number of years of pensionable service (up to a maximum of 40 years); or
- accrue at an annual rate of at least 8 per cent of average qualifying earnings and be increased until the member attains the "appropriate age" (currently age 65) by at least 3.5 per cent p.a., in addition to statutory revaluation.

### Hybrid schemes

Depending on the type of hybrid pension scheme it will have to meet the same minimum requirements as for a DB scheme (or a modified version) and/or as for a DC scheme (or a modified version).

The general rule for hybrid schemes is that the DB and DC benefits should be treated as if they were provided under separate schemes. The DC quality requirements apply to the DC benefits and the DB quality requirements apply to the DB benefits. The scheme will satisfy the quality requirement if either the DB or DC quality requirements are satisfied. If the scheme is contracted-out it will satisfy the quality requirement in relation to jobholders who are in contracted-out employment. This general rule is modified in respect of the types of hybrid scheme listed below.

Sequential hybrid scheme - this is a scheme which provides both DB and DC benefits to members. Members cannot accrue DB and DC benefits at the same time, but they can cease accruing one type of benefit and start accruing the other. The DC quality requirements apply to the DC benefits and the DB quality requirements apply to the DB benefits. The scheme will satisfy the quality requirement if both the DB and DC quality requirements are satisfied.

Self-annuitising hybrid scheme - this is a scheme where member benefits are calculated wholly by reference to payments made by the member and others in respect of them (including transfers and other credits) and a number of members' pensions are provided from the scheme. The scheme will satisfy the quality requirement if the DC quality requirement is satisfied.

Combination hybrid scheme - this is a scheme under which members accrue

DB and DC benefits in respect of the same period of service. The DB and DC benefits should be treated as if they were provided under separate schemes. The scheme will satisfy the quality requirement if either the DB or DC quality requirements are satisfied. Alternatively, if prescribed different quality requirements can be satisfied in aggregate then the scheme may be treated as having satisfied the quality requirements.

#### Transitional period for DB and hybrid schemes

An employer can delay its automatic enrolment obligations in relation to any person who on its first enrolment date (i.e. staging date) is an eligible jobholder, provided certain conditions are satisfied, and continue to be satisfied, during the transitional period. The conditions which must be satisfied are as follows:

- the eligible jobholder has been employed by that employer for a continuous period beginning before the employer's first enrolment date;
- at a time in that period before the employer's first enrolment date, the eligible jobholder became entitled to become an active member of a DB or a hybrid scheme;
- the eligible jobholder is, and always has been since that time, entitled to become an active member of a DB or a hybrid scheme; and
- the scheme to which that entitlement relates is a qualifying scheme and any pension scheme to which it has related on or after the employer's first enrolment date has been a qualifying scheme.

If an employer wants to use a transitional period it must give notice to eligible jobholders of its intention to do so. The notice must be provided in writing within six weeks of the employer's first enrolment date and include prescribed information.

An employer who uses a transitional period must make arrangements for eligible jobholders to become active members of an automatic enrolment scheme which is a defined benefit or a hybrid scheme with effect from the end of the transitional period (unless they are already active members of a qualifying pension scheme on that date). The transitional period will end on 30 September 2017. An eligible jobholder can opt in to active membership of an automatic enrolment pension scheme at any time during the transitional period.

# Part three

# administering

# the reforms

**Automatic enrolment is at the heart of workplace pension reform. One of the key employer duties, it is the ‘push’ that policymakers and politicians hope will result in much greater levels of occupational pension scheme participation and contributions.**

## Automatic enrolment

There are four key factors employers will have to consider in order to operate a successful automatic enrolment system:

- Who do we have to automatically enrol?
- When do we have to automatically enrol them?
- What do we automatically enrol them into?
- How do we automatically enrol them?

## Who do we have to automatically enrol?

Employers will have to automatically enrol eligible jobholders. In addition, employers will have to enrol any non-eligible jobholder who exercises their right to opt in (see ‘assessing and categorising your workforce’ in part one).

## When do we have to automatically enrol them?

Employers have to automatically enrol eligible jobholders within six weeks of their automatic enrolment date. They will have to enrol non-eligible jobholders who have opted in within six weeks of their enrolment date.

## What do we automatically enrol them into?

Eligible jobholders (and any non-eligible jobholders who have opted in) must be enrolled into an automatic enrolment scheme (see ‘automatic enrolment schemes’ in part two).

## How do we automatically enrol them?

This will depend on the pension arrangement that is being used as an automatic enrolment scheme. It will usually involve:

- providing prescribed information to the eligible jobholder (or the non-eligible jobholder who has opted in – see ‘information provision’ in part two);

- providing the necessary information on the jobholder to the automatic enrolment scheme (either the provider, scheme administrator or trustee, as appropriate); and
- ensuring active membership, including the provision of prescribed information, is achieved within the 'joining window' (i.e. within six weeks of the automatic enrolment date or the enrolment date).

### Automatic re-enrolment

Employers will have to repeat the automatic enrolment process once every three years. This process is known as automatic re-enrolment.

The default automatic re-enrolment date is the third anniversary of the employer's staging date. An employer with a staging date of 1 April 2013 will therefore have a default automatic re-enrolment date of 1 April 2016.

As a result of the 'Making Automatic Enrolment Work' review, the government has proposed two amendments which should make automatic re-enrolment easier for employers:

- Flexibility to choose an automatic re-enrolment date – employers will be able to choose an automatic re-enrolment date as long as it is within a six-month period starting three months before the default automatic re-enrolment date. Being able to choose an earlier or later automatic re-enrolment date may suit businesses facing periods of peak demand.
- Workers who have opted out in the previous 12 months – these workers will not have to be automatically re-enrolled.

### Processing member opt-outs

One of the most important administrative functions under workplace pension reform will be the processing of opt-out notices. Enrolled jobholders are able to 'opt out' of pension scheme membership within a prescribed time limit and will then receive a refund of any contributions that have already been deducted from their pay.

### How does an enrolled jobholder opt out?

An enrolled jobholder can opt out by requesting an opt-out notice (or form) from the pension scheme and submitting the properly filled in and signed opt-out notice to their employer within the opt-out period.

### What is the opt-out notice?

An opt-out notice is the form by which an enrolled jobholder tells their employer they wish to opt out of pension saving. To be a valid opt-out notice it has to contain certain information about the jobholder, a general statement and warning, and a printed section entitled 'what you need to know'.

Sample wording is provided in the Pensions Regulator's detailed guidance (see page ten): <http://www.thepensionsregulator.gov.uk/docs/Pensions-reform-opting-out-v2.pdf>.

### Why does the opt-out notice have to come from the pension scheme?

In most cases the opt-out notice has to be provided by the enrolled jobholder's pension scheme. This procedure is in place to ensure that jobholders are not put under pressure to opt out by employers providing the forms.

There is an exception if the employer is the delegated administrator of a pension scheme. In this case, the employer can provide the opt-out form, but the usual safeguards protecting workers from being pressured into opting out would apply (see 'enforcement' below).

### What is the opt-out period?

The opt-out period is the month-long period in which an enrolled jobholder can exercise their right to opt out by providing their employer with a valid and signed opt-out notice.

The opt-out period begins on the later of the jobholder:

- becoming an active member of the pension scheme; or
- being provided with the prescribed information for enrolment.

### What does an employer need to do when they receive an opt-out notice?

The employer should follow these steps to ensure the opt-out is valid:

- (a) check that the opt-out notice is valid (i.e. that it contains all the required statements and warnings);
- (b) check that the opt-out notice has been signed; and
- (c) check that it has been provided within the opt-out period.

If the answer to (a) to (c) above is yes, the employer should:

- (d) immediately stop deduction of contributions;
- (e) provide the pension scheme with the opt-out notice; and
- (f) check whether any refunds of contributions, are due and, if so, begin processing the refund within the time limits (see 'paying refunds of contributions' below).

### What if the employer receives an invalid opt-out notice?

If an employer receives an invalid opt-out notice it must tell the jobholder why it is invalid. The jobholder is then given an extension of up to two weeks on top of the normal month-long opt-out period in which to provide a valid opt-out notice.

### Paying refunds of contributions

A jobholder will be entitled to a refund of contributions if they:

- have submitted a valid and signed opt-out notice to their employer;
- submit their opt-out notice within their opt-out period; and
- they have had contributions deducted from their pay.

If a jobholder is entitled to a refund of contributions, this must be paid by the employer within the following time limit:

- (a) within one month of receiving the valid opt-out notice; or
- (b) if the payroll arrangements for the next pay date have already closed by the time they receive the opt-out notice, by the second pay date.

Any contributions that have already been paid over to the pension scheme must be refunded to the employer. This needs to be done by the pension scheme within one month of the employer receiving a valid opt-out notice.

### Record keeping

Both employers and pension schemes will have to keep a range of records in relation to workplace pension reform.

Employers must retain:

- Jobholders' names, national insurance numbers, dates of birth, total earnings in each pay reference period, details on contributions and, if applicable, the automatic enrolment date.
- Any opt-in or opt-out notices.
- Details about the pension scheme, including the scheme's name and address and the employer pension scheme reference. Additional requirements may apply to defined benefit schemes, personal pension schemes and non-UK administered schemes.

Pension schemes must retain:

- Details on all their active members, including name, date of birth, national insurance number, address, date of active membership and a description of their status in the scheme.
- Details of any opt-outs (schemes will be provided with the opt-out notice, but do not have to keep this original document).

Full details of the records that must be kept, and how long they need to be kept for, are set out in the Pensions Regulator's detailed guidance. See detailed guidance number nine – keeping records: <http://www.thepensionsregulator.gov.uk/docs/Pensions-reform-keeping-records-v2.pdf>.

### The Pensions Regulator's role in workplace pension reform

The Pensions Regulator has been tasked with leading the enforcement regime for workplace pension reform. It will



have to ensure that employers comply with their obligations under the reforms.

As part of its enforcement remit, the Pensions Regulator will:

- provide information and guidance to employers and their advisers;
- require employers to register and provide it with a range of information that will facilitate enforcement;
- require employers to keep records (see 'record keeping' above); and
- lead the enforcement regime (see 'enforcement' below).

In addition, employers must not:

- (a) engage in 'prohibited recruitment conduct' (e.g. telling a job applicant that they will only be employed if they opt out of the pension scheme);
- (b) induce a jobholder to opt out of pension saving (e.g. offering a one-off bonus payment for workers that opt out); or

- (c) unfairly dismiss a worker or take any other action that means they suffer a detriment in respect of workplace pension reforms.

The Pensions Regulator's detailed guidance on safeguarding individuals provides examples of conduct that would amount to prohibited recruitment conduct and inducements to opt out.

See detailed guidance number eight – safeguarding individuals: <http://www.thepensionsregulator.gov.uk/docs/Pensions-reform-safeguarding-individuals-v2.pdf>.

In addition, a comprehensive section of the Pensions Regulator's website deals with compliance and enforcement.

This can be found at <http://www.thepensionsregulator.gov.uk/employers/compliance-and-enforcement.aspx>

## Enforcement

### The first stage in enforcement is the Pensions Regulator's ability to issue various notices:

- Compliance notices – a notice directing the employer to take steps to remedy a breach.
- Third party compliance notice – as above, but directed to a third party if the third party is responsible for the breach.
- Unpaid contributions notice – a direction for the employer to pay unpaid contributions.

If a breach is not remedied, the Pensions Regulator may issue financial penalties:

- Fixed penalty notice – a flat rate fixed penalty notice for failure to comply with a notice. This is currently set at £400, but may increase in the final draft of regulations.
- Escalating penalty notice – a daily fine can be imposed for more serious, prolonged or repeated breaches. The size of the fine depends on the size of the employer,

and is currently set at £50 per day for employers with one to four workers and £10,000 per day for employers with more than 500 workers.

In addition, the Pensions Regulator has the power to fine employers who breach the prohibited recruitment conduct. These fixed penalties will range from £1,000 for employers with one to four workers to £5,000 for employers with more than 250 workers.

The Pensions Regulator can request documents from employers or inspect premises to investigate whether an employer has breached its duties. It can also request data held by HM Revenue and Customs to identify possible breaches.

Finally, there are criminal sanctions for any employer who wilfully fails to comply with the key duties of automatic enrolment, automatic re-enrolment and allowing a jobholder to opt in. If convicted, the employer will face imprisonment or a fine, or both.

# Glossary of terms

**Workplace pension reform has introduced a range of new terms and definitions into pensions and employment law. The key terms are defined here.**

## **Automatic enrolment criteria**

The automatic enrolment criteria are that the scheme must not contain any provisions that:

- (1) prevent an employer from using the scheme to comply with their employer duties (e.g. having a fixed waiting period or a minimum salary requirement); and
- (2) require a jobholder to make any choices or provide any information to become or remain an active member of the scheme (e.g. a requirement to provide an investment choice). This means that an automatic enrolment scheme has to provide a default investment option.

## **Automatic enrolment date**

The date on which an employer will have to automatically enrol its eligible jobholders. The automatic enrolment date could be:

- (1) an employer's staging date (for any workers who are eligible jobholders on this date);
- (2) the date a new employee starts work (as long as they meet the criteria to be eligible jobholders);
- (3) the date an existing worker meets the criteria to be an eligible jobholder (e.g. on turning age 22 and/or starting to earn above £10,000 per annum of qualifying earnings); or

- (4) the date a jobholder requests to opt in to an automatic enrolment scheme.

### **Automatic enrolment earnings threshold**

The level of qualifying earnings that a worker needs to earn to trigger the employer duty to automatically enrol them into an automatic enrolment scheme. This is £10,000 in 2014/15 but this amount will be reviewed annually and may be changed.

### **Automatic enrolment scheme**

A pension scheme that meets the automatic enrolment criteria, the qualifying criteria and the minimum requirements.

### **Contribution threshold**

The level of qualifying earnings that an employer needs to pay pension contributions. This is £5,772 in 2014/15 but this amount will be reviewed annually and may be changed.

### **Eligible jobholders**

Workers who work or ordinarily work in the UK, aged at least 22 and under state pension age and who earn qualifying earnings above £10,000.

### **Enrolled jobholders**

A jobholder who is enrolled into a qualifying scheme. This covers existing members of a qualifying scheme, eligible jobholders automatically enrolled into an automatic enrolment scheme and non-eligible jobholders who opt in to pension savings.

### **Enrolment date**

The enrolment date is the start date for active membership for a non-eligible jobholder who has exercised their right to opt in. It is either:

- (1) the first day of the next pay reference period after a valid opt-in notice has been received; or
- (2) if the payroll has already closed for the next pay reference period, the first day of the following pay reference period.

### **Entitled workers**

Workers who work or ordinarily work in the UK, aged at least 16 and under 75 who are not jobholders.

### **Jobholders**

Workers who work or ordinarily work in the UK, aged at least 16 and under 75 and who earn qualifying earnings above £5,772. This includes both eligible and non-eligible jobholders.

### **Minimum requirements**

For a pension scheme to meet the minimum requirements it must offer contributions that equal or exceed minimum benchmarks. These will vary depending on the type of scheme (e.g. defined contribution versus defined benefit).

### **Non-eligible jobholders**

Workers who work or ordinarily work in the UK, aged at least 16 and under 75 and who earn qualifying earnings above £5,772, but who do not qualify for eligible jobholder status.

### **PAYE scheme**

Most employers are required to operate 'pay as you earn' (PAYE) tax deductions for their employees. To do this, they register with HM Revenue and Customs and set up a PAYE scheme. Many employers have a single PAYE scheme that covers all of their employees. Some employers have multiple PAYE schemes for different groups of employees and some employers participate in a larger PAYE scheme (e.g. companies within a group structure).

An employer's staging date is determined by the size of the PAYE scheme as at 1 April 2012. If the employer operates multiple PAYE schemes, its staging date (for all employees) will correspond with that for the largest PAYE scheme.

### **Phasing**

The minimum contribution amounts required to meet employer duties and satisfy the minimum requirements will be phased in from 2012.

The following are the contribution rates that will be required to meet the minimum requirements for a defined contribution scheme. All the figures are based on percentages of qualifying earnings.

## Glossary of terms

- (1) Staging date – September 2017: one per cent employer and two per cent total;
- (2) October 2017 – September 2018: two per cent employer and five per cent total; and
- (3) October 2018 onwards: three per cent employer and eight per cent total.

### Prescribed information

Information that employers need to provide to all workers. What the employer needs to provide will depend on the type of worker, whether they are already in a qualifying scheme or being automatically enrolled, the type of pension scheme being used to discharge employer duties and whether a waiting period is being used.

### Qualifying criteria

A UK pension scheme will meet the qualifying criteria if it:

- (1) is an occupational or personal pension scheme;
- (2) is tax registered; and
- (3) meets the minimum requirements.

Different, and complex, rules apply to non-UK pension schemes.

### Qualifying earnings

The gross earnings payable to a worker over a period of 12 months between the qualifying earnings threshold and the upper contribution limit (i.e. between £5,772 and £41,865 in 2014/15).

Qualifying earnings is a wide definition that includes various components of pay, including salary, wages, commission, bonuses, overtime and statutory payments (e.g. statutory sick pay, statutory maternity pay etc).

### Qualifying earnings threshold

The level of earnings above which an employer needs to pay pension contributions (up to the upper contribution limit). It is also the threshold a worker needs to earn to be considered a non-eligible jobholder. The qualifying earnings threshold is £5,772 in 2014/15, but this figure will be reassessed on an annual basis.

### Qualifying scheme

A pension scheme that meets the qualifying criteria and the minimum requirements.

### Staging date

The date when an employer will be subject to employer duties under workplace pension reform. An employer's staging date can be found through the Pensions Regulator's online tool (see useful links in the next section).

### Upper contribution limit

The maximum amount of earnings that are considered for the purposes of qualifying earnings. The upper contribution limit is £41,865 in 2014/15, but this figure will be reassessed on an annual basis.

### Waiting period

Employers can use an optional three-month waiting period to delay the onset of employer duties. It is important to remember, however, that if an employer uses this waiting period they will need to notify all their workers. In addition, jobholders will be able to opt in to an automatic enrolment scheme at any point during the waiting period.

# Useful resources

## **The Pensions Regulator's guidance**

The Pensions Regulator has issued a series of detailed guidance notes on workplace pension reform along with summaries for pension providers and employers. Covering all aspects of workplace pension reform, the detailed guidance notes are written in plain English and contain practical examples.

<http://www.thepensionsregulator.gov.uk/pensions-reform.aspx>

<http://www.thepensionsregulator.gov.uk/pensions-reform/detailed-guidance.aspx>

## **The Pensions Regulator's interactive tools**

The Pensions Regulator's online tools allow a user to quickly and easily identify an employer's staging date, the extent of employer duties in respect of their staff and the minimum amount an employer will have to pay for an individual staff member. It also provides an explanation of the process an employer will need to follow to automatically enrol its staff. The tools can be accessed via this link:

<http://www.thepensionsregulator.gov.uk/employers/tools>

## **The Department for Work and Pensions**

The DWP has produced a useful workplace pension reform toolkit which offers guidance, fact sheets and case studies to show how individuals may be affected by the changes:

<http://www.dwp.gov.uk/policy/pensions-reform/workplace-pension-reforms/toolkit/>

The DWP carried out a review, 'Making automatic enrolment work', which looked at how it could support the implementation of automatic enrolment into workplace pensions. The results of the review were published on 27 October 2010 and are available on the website:

<http://www.dwp.gov.uk/policy/pensions-reform/workplace-pension-reforms/automatic-enrolment/>

The DWP has issued a consultation, 'Workplace pension reform – completing the legislative framework for automatic enrolment', which looks at the regulations required to support the reforms and provides further guidance on certification. The documents are available on the website:

<http://www.dwp.gov.uk/consultations/2011/workplace-pension-reform-2011.shtml>

# Contacts

**Wragge Lawrence Graham & Co's Combined Human Resources Solutions (CHRS) team offers advice on a unique combination of pensions, employment and HR law.**

This means it is ideally placed to advise on the implications of changes in pensions and employment law for HR departments, financial directors and pension schemes. With a breadth of expertise backed up by 70 dedicated pensions and employment experts, the team can help employers, trustees, consultants and pension schemes tackle all of the challenges posed by these far-reaching changes to the UK pensions system.

Richard Lee is a partner in the Human Resources group and is head of the CHRS team. Richard also leads the Workplace Pension Reform team and spent an extensive period of time working on site at the National Employment Savings Trust (NEST) as one of its lead pensions law advisers. He is a regular speaker at industry events, including the Money Purchase Pensions Forum, the National Association of Pension Funds and the Association of Consultant Actuaries.

Ian Curry has spent several years immersed in the world of workplace pension reform. In 2009 he was seconded to the Department for Work and Pensions and worked on legislation under the Pensions Act 2008. He has since worked extensively on site at NEST and advises a number of household names on compliance with workplace pension reform. He regularly speaks on this issue at seminars and workshops.



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