

Auto-enrolment ongoing duties

The questions employers need to ask

auto-enrolment

Auto-enrolment, ongoing duties

3

This is the third and final checklist in our series on auto-enrolment, each designed to help employers of all sizes to meet their auto-enrolment obligations. This checklist looks specifically at the various steps employers should bear in mind if their staging date is imminent or has already passed.

Please see our summary for further details of the new requirements.

Does auto-enrolment already apply to you?

- Has your staging date passed or is it still on the horizon (see the Pension Regulator's [staging date calculator](#))?
- Have you taken the initial preparatory steps outlined in our checklists No.1: [Auto-enrolment, are you ready?](#) and No.2: [Auto-enrolment taking action?](#)

How are you meeting your auto-enrolment duty?

- Are you bringing forward or postponing (by up to three months) your staging date?
- Will new hires be enrolled from their joining date or will they be subject to a waiting period (of up to three months)?
- If bringing your staging date forward, have you notified the Pensions Regulator at least one month in advance of your new staging date?
- If using a DB scheme for auto-enrolment, are you taking advantage of the transitional period (until 30 September 2017) in respect of existing “eligible jobholders” who have previously decided not to become scheme members?
- If using a DC scheme for auto-enrolment, are you phasing in contributions during the transitional period?
- Have you informed your workforce about any of the above decisions?

Is your formal registration in hand?

- Have you got a Government Gateway User ID (as used for HMRC online)?
- Have you completed your automatic enrolment registration with the Pensions Regulator (required within five months of your staging date)?

What options are you offering workers?

- Are you offering the same benefits to all workers?
- Are you allowing workers to opt out of auto-enrolment but remain in the scheme and pay contributions at a lower rate than required by legislation?
- Are you offering salary sacrifice and does this operate in a way which is consistent with auto-enrolment?
- Will new hires be eligible to join the employer’s main pension scheme or will some other arrangement be on offer?

Is your scheme fit for purpose?

- If using a DB arrangement, is it contracted-out or does it satisfy the “test scheme standard”? (see attached summary)
- If using a DC scheme, are minimum contributions set at the right level? (see attached summary)
- If using a personal pension arrangement, is it subject to regulation by the Financial Conduct Authority?
- In addition, are suitable agreements in place between the provider and the employer (and the provider and any worker required to contribute) dealing with contribution arrangements under the personal pension?
- If using “[contractual enrolment](#)” (rather than statutory), do the contractual terms make appropriate provision for scheme membership, deduction of contributions, and opting out?
- Is your scheme’s governing documentation generally fit for purpose?

How are you dealing with non-standard workers?

- How are you intending to monitor and assess the eligibility of any workers with fluctuating earnings or who are on zero hours contracts?
- What arrangements do you have in place for dealing with individuals with tax protection (such as enhanced or either type of fixed protection), who may lose protection if they are automatically enrolled into a pension scheme?

What procedures are in place for “non-eligible jobholders” who opt in or “entitled workers” who wish to join a pension scheme?

- Have you provided information to non-eligible jobholders about their right to opt in to auto-enrolment pension saving?
- Have you provided information to entitled workers about their right to join a pension scheme?
- Who can non-eligible jobholders or entitled workers approach to obtain an opt-in notice or joining notice (as appropriate)?
- On receipt of an opt-in notice, what systems are in place to:
 - check the validity of the notice¹;
 - check the category of the worker as at the date of receipt of the notice;
 - identify the enrolment or joining date (as appropriate); and
 - enrol the non-eligible jobholder or enable joining for the entitled worker?
- Will you allow individuals to opt in if they opted out of membership within the previous 12 months?
- Will contributions be payable for entitled workers?

How are you managing opt-outs?

- Do you have a named contact from whom jobholders can obtain an opt-out notice (this should be someone acting for the pension scheme rather than the employer)?
- Do you have a procedure for checking that opt-out notices received are valid?
- Are your systems set up to stop paying contributions on receipt of an opt-out notice and to let the scheme know when a jobholder has opted out?
- Can your systems deal with refunds of contributions (both contributions deducted from a jobholder's pay and contributions paid by the employer) so that jobholders are treated as never having been members of the scheme?

Can your systems cope with monitoring changes in the workforce?

- Are your systems (particularly payroll) set up to monitor the age and earnings of your workforce for each pay reference period?
- Will your systems identify when workers move between different categories?

¹ It must be in writing and signed or, if sent by email, it must include a statement from the worker that they have personally submitted the notice

3

Are you ready to deal with ongoing communications?

- Are you ready to give information to workers who change category for the first time (eg when they qualify as an eligible jobholder on turning 22 earning more than the earnings trigger)?
- If a waiting period is used for new joiners, does your joining information include a notice with details of an eligible jobholder's enrolment date?
- Do you have measures in place to ensure that statutory information is given within the prescribed timeframes?
- How will auto-enrolment information be provided (eg by post, by hand or by email)?
- What procedures do you have in place to deal with returned post or email bounce backs?

Have your systems been set up to deal with automatic re-enrolment?

- Have you set your re-enrolment date (broadly, three years from your staging or postponement date)?
- Are you ready to assess eligible jobholders who have opted out or voluntarily ceased active membership?
- Have you prepared the information which needs to be given to eligible jobholders who are being automatically re-enrolled?
- Is your pension scheme or pension provider on standby to process a number of new joiners within a short timeframe?
- Are you ready to manage opt-outs in the month following the re-enrolment period?

Do you have adequate record keeping systems in place?

- Do you have systems for keeping records of workers (including their name, NI number, opt-in and joining notices)?
- What procedures do you have in place for ensuring that membership records are complete, accurate and up-to-date?
- Is the pension scheme or provider able to keep records, including details of the employer scheme reference and the scheme name and address?
- How long will your records be kept?²

² Most records need to be kept for a minimum of six years, while opt-out records must be kept for four and be retained in the original format as proof of an individual exercising a right

Summary of the auto-enrolment requirements

Background

In October 2012, a requirement for employers to enrol their “eligible jobholders” into a qualifying pension scheme was introduced. This duty first applied to larger employers (those with 120,000 or more people in their PAYE scheme) and is being phased in gradually for smaller employers, so that by February 2018 it will apply to all employers.

Employers will be able to choose to enrol “eligible jobholders” into their own designated “qualifying scheme” or use the Government established pension scheme, NEST (National Employment Savings Trust).

Who are your workers?

The term “worker” is broadly defined to include individuals who work under an employment contract or under a contract to perform work or services personally, where the work is not undertaken as part of their own business. Employees in the traditional sense will be covered.

However, certain atypical personnel, for example, agency workers (where there is no worker’s contract between the agency worker and the agent or principal), can also be workers. By contrast, those who are paid a fee as a self-employed contractor and office holders (including trustees) will not normally be workers. It will therefore be necessary to consider the specific circumstances of atypical personnel to determine whether the auto-enrolment requirements apply.

Once an employer has identified its workers, it must place each individual into one of three categories which will determine the level of pension obligations the employer owes.

Eligible jobholders

Eligible jobholders are workers:

- aged at least 22 but under State Pension Age (“SPA”)
- who earn more than the “earnings trigger” (£10,000 for the tax year 2014/15)
- who work or ordinarily work in Great Britain.

Once enrolled, eligible jobholders will have a period of time during which they can opt out of membership, subject to an obligation on their employer to re-enrol them every three years.

Non-eligible jobholders

Although there is no requirement on an employer to enrol non-eligible jobholders automatically into a qualifying scheme, such workers have a right to opt in. If they do so, the employer is then obliged to make contributions in respect of them. Workers are non-eligible jobholders if they:

- are aged at least 16 but under 75 with earnings at or below the “earnings trigger” (see above) but more than the “qualifying earnings threshold” (£5,772 for the tax year 2014/15)
- are aged 16 to 21 or SPA to age 74 and are earning more than the “earnings trigger”
- work or ordinarily work in Great Britain.

Entitled workers

Entitled workers are individuals who:

- are aged at least 16 but under 75 who earn at or below the “qualifying earnings threshold”
- work or ordinarily work in Great Britain.

Although such workers may join a pension arrangement, they can be admitted to a scheme which is not a qualifying scheme and there are no minimum benefit or contribution (including employer contribution) requirements.

Qualifying schemes

A qualifying scheme can either be an occupational pension scheme or a personal pension scheme and must normally be a registered pension scheme under the Finance Act 2004. However, for a scheme to be used for automatic enrolment purposes, it must satisfy certain quality requirements which vary depending on whether the scheme is a DB or a DC arrangement.

Qualifying earnings

Qualifying earnings³ are broadly defined under the legislation to include: salary, wages, commission, bonuses, overtime, statutory sick pay, statutory maternity pay, ordinary and additional statutory paternity pay, and statutory adoption pay.

The DB test

A DB scheme will meet the quality test if it is contracted-out on the reference scheme test basis⁴ or, if contracted-in, it is broadly equivalent to, or better than, the “test scheme standard”.

The test scheme standard is based on a pension payable from age 65 equal to 1/120th of average qualifying earnings in the last three tax years before the end of pensionable service for each year of pensionable service (subject to a maximum of 40 years). This standard also assumes that the pension is revalued in deferment and increased in payment in line with the increase in CPI (subject to a maximum of 2.5% per annum).

Employers offering membership of a qualifying scheme with DB benefits may choose to delay auto-enrolment during the “transitional period”⁵ in respect of an eligible jobholder, subject to certain conditions being met. These include that the eligible jobholder:

- must have been employed for a continuous period by the employer since before the employer’s “first enrolment date”⁶
- was entitled to join the DB scheme at some point before the employer’s first enrolment date
- remains eligible to join the DB scheme throughout the transitional period
- is given notice that the transitional period will apply no later than six weeks⁷ after the employer’s first enrolment date.

Whilst the effect of using the transitional period is to delay auto-enrolment in respect of specific eligible jobholders, such individuals may opt in to scheme membership during the transitional period.

[DWP guidance for DB and hybrid schemes](#) sets out how to determine whether such schemes can be used for automatic enrolment and how employers can certify that their schemes are qualifying.

3 Earnings of more than £5,772 but not more than £41,865 for the tax year 2014/15

4 Broadly, for a scheme to satisfy the reference scheme test basis at least 90% of members must have benefits equal to or better than a “reference scheme”. The reference scheme is a notional scheme which provides a pension of 1/80th of qualifying earnings for each year of service and also provides a 50% dependant’s pension on death of the member

5 The transitional period for this purpose generally starts on the employer’s staging date and will end on 30 September 2017 or, if earlier, the date on which any of the conditions for taking advantage of the transitional period cease to be met

6 The employer’s staging date or the automatic enrolment date of the first eligible jobholder after the staging date

7 Before 1 April 2014, this timeframe was one month

The DC test

The quality test for a DC arrangement is based on the contributions made to that arrangement. Minimum contribution levels will be phased in during a transitional period (ending on 30 September 2017). The precise level of minimum and overall contributions required to be paid during the transitional period and beyond will depend upon how an employer chooses to meet its auto-enrolment obligations.

By the end of the transitional period (from 1 October 2018), contributions payable in respect of the jobholder must be at least 8% of qualifying earnings overall, with a minimum 3% contribution from the employer. Employers may also be able to self-certify that their DC scheme is a qualifying scheme if:

- a minimum contribution of 9% of pensionable earnings is paid to the scheme for each jobholder, including at least a 4% employer contribution
- a minimum contribution of 8% of pensionable earnings is paid (with at least a 3% employer contribution), provided that total pensionable earnings of all relevant jobholders in aggregate constitute at least 85% of their total earnings
- a minimum contribution of 7% of total earnings is paid (with at least a 3% employer contribution) where 100% of earnings are pensionable.

“Pensionable earnings” here means whichever is the higher of the employer’s definition of pensionable earnings or basic pay, from the first pound.

The DWP has also produced [guidance for DC schemes](#), to help employers (and their advisers) certify that their scheme qualifies for automatic enrolment purposes.

CARE schemes

A CARE scheme can count as a qualifying scheme if it:

- is broadly equivalent to, or better than, the test scheme or if it is contracted-out
- accrued benefits are guaranteed to revalue at a rate of no less than CPI capped at 2.5%.

If revaluation is only applied on the exercise of a discretionary power contained in the scheme rules, the scheme will be able to qualify if the scheme’s funding takes account of the discretion. The rate of revaluation must also be at least CPI capped at 2.5% and must be expressly provided for in the scheme’s statement of funding principles.

Compliance and enforcement

The Pensions Regulator (TPR) is responsible for ensuring that employers understand their duties and it has published comprehensive [guidance](#) to help employers implement automatic enrolment, as part of its goal to establish and maintain a “pro-compliance” culture.

TPR has also published a [compliance and enforcement strategy](#), outlining the approach it will take for detecting non-compliance and for dealing with employers who fail to comply with the new requirements.

Contact

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Staging dates

October 2012 – February 2014	≥ 250 people PAYE
April 2014 – April 2015	50 – 249 people PAYE
June 2015 – April 2017	<50 people PAYE
May 2017 – February 2018	New employers > April 2012