ALLEN & OVERY

Auto-enrolment and re-enrolment deconstructed

2015

For help with auto-enrolment or re-enrolment, talk to us:

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Auto-enrolment and re-enrolment deconstructed

The idea behind automatic pension enrolment is simple – all UK workers should be in a good pension scheme unless they actively choose not to be.

Unfortunately the actual requirements applying to employers are not simple. There are a lot of individual components to get right, and they all interact.

As you approach re-enrolment, you need to assess how the regime is working in your business, and how systems and rules have changed over the past three years. Is there anything you could or should do differently this time round?

It's up to you to apply the rules to your business and workforce, but we're here to help. We have been doing this since the start; we know about the tricky bits and what can catch you out.

SPECIALIST TERMS

Where we use a particular term or expression which has a specific auto-enrolment meaning it is in bold. Have a look in the glossary at the end for signposts to the right place in this guide to find out more.

For ease of reading, where the context permits we use the term 'auto-enrolment' to cover both the first enrolment under the regime and subsequent re-enrolments. Details specific to the re-enrolment process can be found on pages 24 and 25.

NEED TO FIND OUT EVEN MORE?

This guide is a very high level summary. It aims to deconstruct the components to give you a reference guide to work with the regime over time. The Pensions Regulator's website offers extensive guidance on the details of the processes. See page 38 for more resources.

You need efficient HR systems to manage auto-enrolment

The auto-enrolment regime covers a set of processes that each employer must apply to its own workforce. It applies across the board to all employers (British or otherwise) with workers ordinarily working in the UK, and it applies to almost all of those workers. Only specific types of worker are excluded, for example:

– the lowest paid

– the very young or old.

For other workers, auto-enrolment is permissive rather than mandatory, for example:

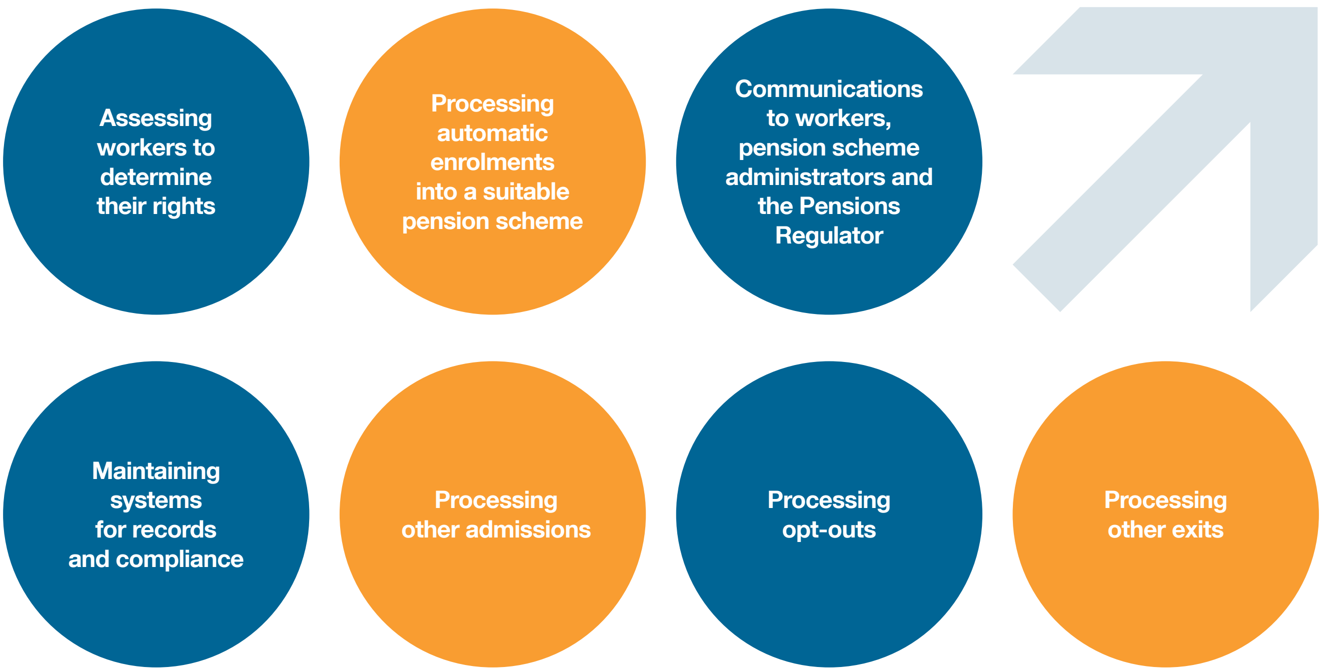
– workers in a notice period

– workers who have recently opted out or ceased membership

– workers with specific tax protections in relation to existing pension savings.

For more details, see page 11.

The key to the whole regime is having HR and payroll systems that sort your workers into categories at each key assessment date, and then trigger communications and apply processes according to those categories. Outlined below are the main processes you need to cover.



Deconstructing the puzzle

Each of the following sections of this guide looks at one component in turn.

1. Who gets what?
2. What action, and when?
3. What my pension scheme has to do
4. Getting people enrolled
5. Letting people exit the scheme
6. Communications
7. Compliance
8. What else should I be thinking about?

1. Who gets what?

One of the key elements of the auto-enrolment regime is working out which of your workers is entitled to what, and when. The timing of the tests is discussed in **What action, and when?** (see page 12 onwards). In this section we look at the basic entitlements and how you work them out.

Overview of who gets what

There are three categories of worker who have rights within the automatic enrolment regime: eligible jobholders, non-eligible jobholders and entitled workers. Here are their basic rights, plus details of where to find out more.

Eligible jobholder

Automatic enrolment into an automatic enrolment scheme (see page 18) with minimum employer contributions.

Re-enrolment rights (see pages 24 and 25).

Opt-out rights (see page 27).

Non-eligible jobholder

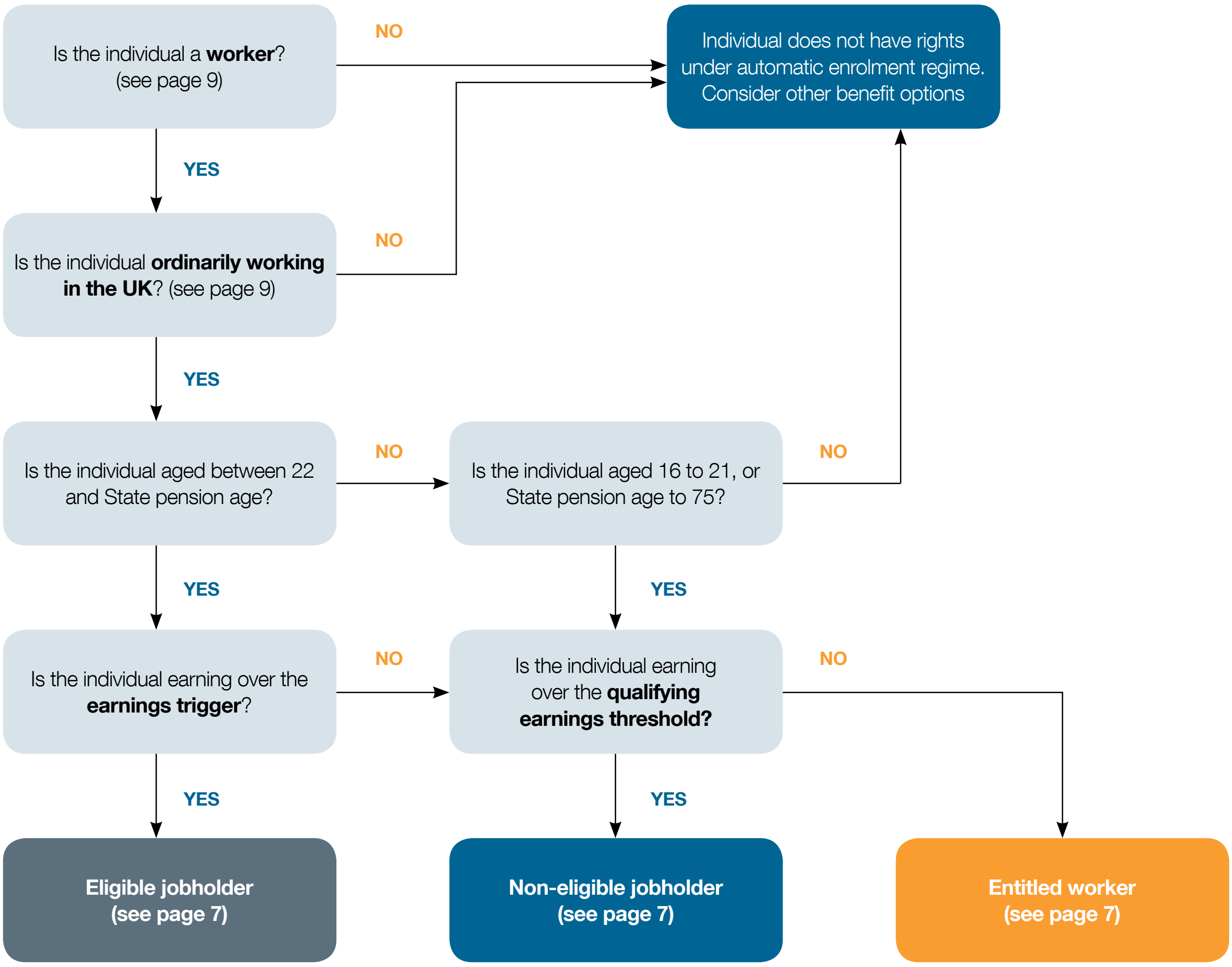
Right to require enrolment into an automatic enrolment scheme with minimum employer contributions.

If that right is exercised, opt-out right.

Entitled worker

Right to require enrolment into a pension scheme, but no minimum employer contributions or quality standards.

Working out who is in which category and monitoring for changes



Notes

If someone in your workforce is not an eligible jobholder, keep monitoring the situation for any changes – you will need to go through the test again.

The **qualifying earnings threshold** is £5,824 in tax year 2015/16. Qualifying earnings are earnings over the threshold, up to £42,385.

The **earnings trigger** for automatic enrolment is £10,000 in tax year 2015/16.

A person has no auto-enrolment regime rights if he:

– is not a worker; or

– is not ordinarily working in the UK.

Working out who is a "worker" and "ordinarily working in the UK"

Worker?

Yes, if they are under a contract (express or implied) to perform work or services personally. Trainees and apprentices, as well as temps/agency workers (if paid by you) can all count as workers. There is no minimum service requirement.

Officeholders and volunteers don't usually count.

Your contractors and consultants may need to be covered unless they are in business on their own account (i.e. you are a client of their business).

Ordinarily working in the UK?

This is not about nationality. Where is the contract based? How does it work in practice? Is the employment still based in the UK?

Outbound secondees may need to be covered if they would ordinarily be working in the UK, ignoring the secondment – provided they are expected to return to the UK and their contract remains with the UK employer.

Inbound secondees may not need to be covered if they are expected to return home at the end of their secondment and their contract remains with their home employer.

Notes

A Supreme Court decision in May 2014 clarified that partners in a limited liability partnership (LLP) may also qualify as 'workers' for some employment law purposes, potentially including auto-enrolment (if other eligibility requirements are met).

Working out earnings for eligibility thresholds and contributions

A worker's rights, and the contributions payable in respect of him, will vary depending on what he earns during a **pay reference period**. This is the period by reference to which you pay the worker their regular wage or salary. This may differ from pay frequency.

A joining date late in the pay reference period may mean auto-enrolment is not triggered until the next period. If you have a worker with multiple contracts but in reality there is one employment relationship, assess earnings based on aggregate pay across all contracts.

Earnings means gross earnings, including overtime, bonuses and commission and any statutory payments such as sick pay/maternity pay.

Qualifying earnings are a band of earnings used as the basis for assessing eligibility and contributions. Not everyone with qualifying earnings is eligible for auto-enrolment: only those who earn more than the earnings trigger are eligible jobholders who need to be auto-enrolled.

Pay reference period	Level at which earnings become qualifying earnings (£)*	Earnings trigger (£)*
1 week	112	192
4 weeks	448	768
1 month	486	833
1 quarter	1,456	2,499
Bi-annual	2,912	4,998
Annual	5,824	10,000

*Figures shown are for 2015/16

Contractual enrolment: putting workers into pension schemes first

Contractual enrolment is any enrolment of workers outside the strict terms of the auto-enrolment regime, for example, employer-initiated automatic processes for new joiners applying before the staging date. Contractual enrolment also applies where the employer over-complies, for example enrolling all workers irrespective of whether they are eligible jobholders or not, or enrolling workers before their automatic enrolment date.

Employers may prefer to use contractual enrolment to:

– Smooth salary sacrifice processes for new joiners.

– Offer the same pension provision to all workers.

However, there are risks to individual workers:

– No automatic opt-out rights apply – the worker would have to exercise the normal scheme exit option and is treated as having been a member (see page 27) unless the scheme has its own binding opt-out rule. No opt-out is automatically available from a personal pension, but a right to cancel the contract may apply.

– A worker with fixed or enhanced protection will lose their tax protected status if they join a new money purchase arrangement or accrue new benefits in a defined benefit scheme (see page 21).

To operate contractual enrolment you will need workers' consent to deductions from pay (e.g. in their contracts). You will still have to meet some information obligations under the auto-enrolment regime.

Notes

Until 1 April 2015, employers were required to auto-enrol workers, who had previously been contractually enrolled and had opted out or left the scheme, as soon as they became eligible. In some cases this could be as early as the next pay reference period, and the requirement depended on whether or not workers in this category were eligible jobholders during their period of membership (if any). From 1 April 2015, a worker who is contractually enrolled in a qualifying scheme, and then opts out or leaves the scheme, will not trigger mandatory auto-enrolment within the next 12 months. Enrolment for these workers remains permissive so, for example, an employer reaching its re-enrolment date could decide to include them for re-enrolment purposes. After the 12-month period has ended, the duty to enrol is lifted until the next three-yearly re-enrolment date.

Jobholders may still exercise opt-in rights if they choose to do so.

Permissive enrolment

From 1 April 2015, enrolment is permissive, rather than mandatory, for certain categories of eligible jobholder.

The main categories are:

– **Workers who are in a notice period** (including notice of resignation, retirement and dismissal), where notice is given (either by the employer or the worker) within 6 weeks after the automatic enrolment date or re-enrolment date. If notice of termination is withdrawn, the duty to enrol ceases to be permissive, in which case eligible jobholders should be enrolled as normal. Note that this easement does not apply where a fixed-term contract is due to come to an end.

– **Workers who cancel membership** of a qualifying scheme within the 12-month period before the employer's staging date or re-enrolment date. For example, if a contractually-enrolled member leaves a qualifying scheme less than a year before the re-enrolment date, the employer may choose whether or not to include them in the re-enrolment process. If the worker is not included, then (subject to the worker exercising opt-in rights) there would normally be no duty to re-enrol the worker until the employer's next three-yearly re-enrolment date.

– **Workers with tax-protected status** (fixed, enhanced, primary or individual protection). This exception applies where the employer has reasonable grounds to believe that the individual has the relevant tax protection (for example, based on having seen the relevant HMRC certificate).

There is no permissive exception linked to workers flexibly accessing their DC pension rights. If a worker opts out of active membership to gain a statutory right to transfer their existing funds to another provider in order to gain flexible access, they may exercise a right to opt in to active membership again immediately afterwards.

2. What action, and when?

Enrolment duties, assessment of rights, communications and opting-in and -out rights are all tied to specific dates and periods. In this section we look at working out the key dates, and what you need to do for each.

Key dates

These are the key dates you need to know:

Staging date
The date the regime first applies to you

Automatic enrolment date
The date auto-enrolment first applies to an eligible jobholder

Assessment date
The date as at which you test eligibility and earnings

Deferral date
The date auto-enrolment will apply to a worker if you postpone enrolment, for example to align it with your payroll cycle

Enrolment date
The date enrolment applies to a jobholder who opts in to scheme membership

Re-enrolment date
The date re-enrolment duties apply to the employer, normally at three-yearly intervals after the staging date

Key windows

Transitional period

This applies where workers will be enrolled into a defined benefit or hybrid scheme. Employers can defer auto-enrolment for existing workers at the staging date who are eligible to become members of the scheme, until 1 October 2017. Opt-in rights apply during this period.

Joining window

The six-week period from the automatic enrolment date or enrolment date during which the employer must ensure the individual is enrolled in an automatic enrolment scheme and all processes are completed. Enrolment must be effective from the automatic enrolment date or enrolment date. If using a personal pension scheme, enrolment only happens once the individual receives the provider's terms and conditions and the employer and provider have entered into a minimum contribution contract (see page 26).

Opt out period

The one-month period starting on the date of actually being admitted to membership (or later provision of enrolment information) during which the worker can opt out of membership and have everything undone as if they had never been admitted. The period is extended to six weeks if an invalid opt out notice is given (see page 27).

Working out the automatic enrolment date

An individual's automatic enrolment date is the date on which all assessments are made and from which scheme membership begins. It will be whichever is the latest of these dates:

Staging date
Your staging date is listed on the Pensions Regulator's website and you should receive letters from the Regulator 12 and three months before to confirm your date.

If you are using a defined benefit or hybrid scheme, and opt to use the transitional period, auto-enrolment is deferred to 1 October 2017.

Automatic enrolment date
The date the worker first becomes an eligible jobholder. Monitor for changes, for example with worker pay rises or birthdays.

The jobholder's first day at work if he is already eligible.

Deferral date
If you are applying **postponement**, use the last day of your postponement period (the date you selected and notified to your jobholders as the start of enrolment).

Working out the enrolment date for opting in

If a jobholder opts in to membership (see page 23), they should be enrolled with effect from their enrolment date (provided they are still a jobholder with qualifying earnings as at that day). You need to make sure that actual membership is arranged before the end of the **joining window.**

Normal enrolment date

First day of next pay reference period after valid opt in notice received (provided jobholder has qualifying earnings as at that day).

If an opt-in notice is given after payroll has closed for the period, enrol from the first day of the following pay reference period instead.

If you are operating postponement

Enrol on whichever comes first: the deferral date for the postponement period, or the normal enrolment date for this opt-in.

Using the automatic enrolment date and the enrolment date

The automatic enrolment date is used for a variety of triggers and, where a jobholder opts in, the enrolment date takes its place in most cases.

Assessment date for testing the status of the individual: age, earnings, relationship with employer.

Start of **joining window**: effective start date of active membership of auto-enrolment scheme (you must complete all arrangements within six weeks).

Effective date for calculation of contributions.

Six-week countdown for information packs (see page 17).

Opt-out rights don't start immediately – they only apply once the jobholder has actually been admitted to the scheme or, if later, has received the enrolment information.

Postponing enrolment

What is postponement?

You can defer the auto-enrolment process for up to three months. You choose the deferral date.

Why do it?

– To align with payroll dates and avoid part-period contributions (postpone to first day of next pay reference period).

– To maximise the opt-out period before payroll (aiming to limit the number of opt-out refunds).

– To help with contractual enrolment and salary sacrifice arrangements.

– To avoid auto-enrolling short-term/seasonal workers (although they can opt in) (postpone to last possible date).

Postponing auto-enrolment

How do you do it?

Send a postponement notice to each affected worker (see page 17 for deadlines).

Effect of postponing enrolment and its limits

You postpone the requirement to test eligibility for auto-enrolment to the deferral date.

If a worker meets the eligibility criteria on the deferral date you must auto-enrol them (no further postponement).

If the worker is not eligible on that date, monitor his/her eligibility at each pay reference period. When the worker does become eligible, postponement is available again.

If the worker becomes eligible during the postponement period, you cannot impose a further postponement period from that date.

When don't I have to enrol someone?

Notes

Remember that in some cases, enrolment is permissive rather than mandatory – see page 11 for more details of the categories of worker to which this may apply.

If you already offer a **qualifying pension scheme** to your **jobholders**, you may not have an immediate enrolment duty for existing members at your staging date, though you will still have assessment duties. If it is a defined benefit arrangement, you can defer assessment and enrolment for those eligible to join.

	Eligible jobholders employed as at the staging date, who are already active members of a qualifying scheme	*Eligible jobholders employed on the staging date who are entitled to join a qualifying defined benefit scheme or section*
Action	No need to go through the enrolment process for these workers unless and until they stop active membership. Re-enrolment duties then apply.	You can delay formal enrolment processes for these workers for a transitional period ending on 30 September 2017, provided they can join the defined benefit arrangement at any time throughout that transitional period. The automatic enrolment date for these workers moves to 1 October 2017 (unless the condition above is no longer met in which case backdated contributions may be required).
Information rights	Issue notice to affected workers within two months of the staging date. Confirm status of existing scheme membership and explain auto-enrolment will apply if active membership stops (other than by the worker's choice) and where to get information about pensions and saving for retirement.	Send out a transitional period notice to affected jobholders before the original staging date or within one month after it, or lose the option.
Opt-in rights	Jobholders can still opt in to pension scheme membership if they cease to be a member of a qualifying scheme (see page 19).	Jobholders can still opt in to pension scheme membership during the transitional period.

Notes

If the option of using the transitional period for defined benefit schemes interests you, talk to the Allen & Overy pensions team well in advance to get the set-up and notices right. The consequences of not continuing to satisfy all of the conditions can be expensive.

Deadlines for information: the first notices and packs

The employer has to provide a raft of notices and information to each worker and to its scheme provider or trustees. Each information requirement has a deadline. The ones below are the very first notices and packs. For more information on the notices, see page 31.

Before or within one month from the staging date	Transitional period notice. If you give this notice, read reference to staging date below as referring to the end of the transitional period (see page 13).
Before or within six weeks of the staging date or if later the first day of work or the first day the worker becomes a jobholder	Postponement notice (see page 15). If you give this notice you could include the rights packs below, or wait until the end of the deferral period.
	Eligible jobholder's rights pack.
	Non-eligible jobholder's rights pack (only needs to be given the first time the individual becomes a jobholder).
	Entitled worker's rights pack (only needs to be given the first time the individual becomes an entitled worker).
Before or within two months of qualifying as a jobholder	Active members of qualifying schemes only: active member rights pack.
Within five months of the staging date	Register with the Pensions Regulator once all postponement periods have ended and provide a breakdown of your compliance with the auto-enrolment regime by category of worker. This is known as a declaration of compliance.

These packs have to be given by the employer when the individual qualifies, if not given before (for example with the postponement notice). This obligation applies again at re-enrolment (see pages 24 and 25).

Before or during the joining window (see page 13)	Eligible jobholder's rights pack and information about the scheme and contributions.
Within six weeks of first qualifying, or deferral date if applicable	Non-eligible jobholder's rights pack.
	Entitled worker's rights pack.
Within joining window	Jobholder's information (give to scheme provider or trustees, as applicable).
Within two months of date that would be automatic enrolment date	Active members of qualifying schemes only: active member rights pack.

The trustees or scheme provider must give the following information:

Occupational pension scheme	Normal scheme joining information pack	One month from the trustees receiving the jobholder's information from the employer (statutory disclosure requirements).
Personal pension scheme	Terms and conditions of the pension contract (plus normal key features information required by the Financial Conduct Authority)	Employer must arrange for this to happen within the joining window.

3. What my scheme has to do

Depending on the category of worker, you must provide a scheme which is either an automatic enrolment scheme, a qualifying scheme or a UK tax-registered scheme. The quality tests are just minimum requirements. Think about whether you want to offer more generous structures to some or all of your staff.

For auto-enrolment and enrolment of opting-in jobholders you need an automatic enrolment scheme.

To be exempt from the need to enrol someone into an automatic enrolment scheme, they should be in a qualifying scheme (see page 19) or, if you are taking advantage of the transitional period for defined benefit offerings (see page 13) a defined benefit qualifying arrangement should stay open to them.

If complying with a joining notice to enrol an entitled worker, you need to offer a UK tax-registered pension scheme; an entitled worker who is already an active member of such a scheme has no right to join a different scheme.

This section looks at what makes a scheme an automatic enrolment scheme or a qualifying scheme.

Automatic enrolment schemes and qualifying schemes

Auto-enrolment scheme: UK scheme test

Qualifying scheme.

The benefit structure is open to existing members and new enrolment.

Nothing in the rules prevents automatic enrolment (e.g. worker, employer, trustee or provider consent).

Nothing in the rules requires the worker to make a choice e.g. investment selection, or to provide any information (see Notes).

A scheme administered in the European Economic Area can qualify as an automatic enrolment scheme. Additional regulatory and structural conditions apply

Qualifying scheme: UK scheme test

UK tax registered occupational or personal pension scheme.

All schemes: satisfy the relevant quality test (see page 19 for the options) and have evidence of compliance (the evidence required depends on the option).

Personal pension schemes only: formal agreements for employer contributions and any worker contributions, plus direct pay arrangements.

A scheme administered outside the UK can qualify as a qualifying scheme. Specific additional tax, regulatory and benefit requirements apply

Notes

As workers may not be required to exercise any choice under the rules of a qualifying scheme (e.g in relation to investment selection), all schemes that are used to meet auto-enrolment duties must have a default fund. Default funds of DC qualifying schemes are subject to specific regulation on governance and charges.

Qualifying schemes: quality tests

Whatever pension arrangement you offer to a particular jobholder, it must satisfy one of the quality standards.

DEFINED BENEFIT OR HYBRID SCHEMES

Up to 6 April 2016, a DB scheme that is used to meet auto-enrolment duties will be a qualifying scheme either automatically if it is contracted-out, or if it is certified as meeting the test scheme standard.

The defined benefit **test scheme standard** is a notional test scheme providing a pension of up to 40/120ths of average **qualifying earnings** in the three tax years before retirement. For the tax year 2015/16, qualifying earnings are gross earnings in the band £5,824 to £42,385.

Following the abolition of defined benefit contracting-out from 6 April 2016, all defined benefit schemes will have to certify that they meet specific quality standards in order to be a qualifying scheme for auto-enrolment purposes. In addition to the defined benefit test scheme standard, a number of alternative quality tests are available, based on the cost to the scheme of future accruals of active members' benefits.

CAREER AVERAGE SCHEMES

Make sure the scheme also provides for revaluation of earnings during active membership. Revaluation can be discretionary but must be funded (minimum of limited price indexation up to 2.5%), and included in the scheme's funding plan.

		Cost of future accruals	As a percentage of
Main quality test		10%	**Qualifying earnings**
Alternative tests:	Tier 1	11%	Pensionable earnings (at least equal to **basic pay**)
	Tier 2	10%	Pensionable earnings (at least equal to **basic pay** and, taking all relevant members together, at least 85% of total earnings)
	Tier 3	9%	Total earnings
Schemes which operate a basic state pension offset		13%	Earnings above the basic state pension or lower earnings limit for National Insurance contributions, where an offset is applied under the scheme rules

These alternative tests are available from 1 April 2015 and are intended to run parallel to existing scheme funding requirements so that employers should not be required to undertake additional actuarial work to certify a scheme.

A reduction of 1% applies to the minimum level of contributions quoted above, for schemes that do not provide dependants' benefits.

The tests apply at the level of benefit scales, so the cost of providing benefits to active members with different accrual rates is tested separately.

Notes

The Government has said that it will consider enabling the cost of accruals test to be satisfied on a scheme-wide average rather than at the level of benefit scales, for schemes that satisfy the contracting-out Reference Scheme Test on 5 April 2016. Further details are due in summer 2015.

DEFINED CONTRIBUTION SCHEMES

Main quality test		Minimum total contribution	Minimum employer contribution	As a percentage of
		8%	3%	**Qualifying earnings**
Alternative tests	Tier 1	9%	4%	Pensionable pay (which must be at least **basic pay**)
	Tier 2	8%	3%	Pensionable pay (which must be at least 85% of total pay for the relevant group of workers)
	Tier 3	7%	3%	Total pay

Defined contribution schemes: phasing-in contributions

Money purchase schemes don't have to require contributions at the full rate until October 2018. Employers and employees can phase in contributions gradually.

		Main quality test	Tier 1	Tier 2	Tier 3
Full requirement	Applies from 1 October 2018 onwards	Total 8% Employer 3%	Total 9% Employer 4%	Total 8% Employer 3%	Total 7% Employer 3%
Phasing-in period	From your staging date to 30 September 2017	Total 2% Employer 1%	Total 3% Employer 2%	Total 2% Employer 1%	Total 2% Employer 1%
	1 October 2017 to 30 September 2018	Total 5% Employer 2%	Total 6% Employer 3%	Total 5% Employer 2%	Total 5% Employer 2%

Remember that if your scheme meets the quality requirements now, but allows contributions below the full rates, you will need to increase minimum contributions before the end of the first or second phasing-in period. If you are increasing minimum member contributions, this will require consultation.

Notes

Basic pay means earnings ignoring any commission, bonuses, overtime or similar payments. It can exclude car/clothing allowances but includes geographical weighting payments.

Defined benefit or hybrid schemes can be certified as meeting an applicable quality test by the employer (in straightforward cases) or by an actuary. Defined contribution schemes can meet either the main quality test (which is based on qualifying earnings) or one of three alternative tests based on different pay definitions – in most cases, employers will have to self-certify that their scheme meets the standards. To do this, you must follow a certification process set out in DWP guidance (see page 38).

Talk to us if you need to use a non-UK scheme for auto-enrolment purposes.

Before you get workers enrolled

WARNING!

Before you go ahead and enrol someone, check if they have any special pension tax protection.

Workers with **fixed protection** or **enhanced protection** of their existing pension entitlements above the normal tax allowances will lose that protection if they become an active member of a pension scheme, unless they opt out again within the opt-out window (or, in case of contractual enrolment, under a binding scheme opt-out rule).

Talk to us if you have workers with tax protection – there are a number of things you could do to make life easier for you and your highly-paid workers.

In particular, auto-enrolment and re-enrolment is, from 1 April 2015, permissive rather than mandatory for workers with any of the following types of tax protection for existing pension savings:

– fixed protection

– enhanced protection

– primary protection

– individual protection

To use this easement, you must have reasonable grounds to believe that the individual has the relevant tax protection (for example, because you have seen the relevant HMRC certificate or have signed confirmation from the individual).

As the lifetime allowance changes (for example, reducing to £1 million in April 2016), it is likely that more individuals will claim tax protection and could fall into this permissive category for enrolment purposes.

4. Getting people enrolled

This section covers the process of getting people into schemes, whether automatically or on request.

Arrangements for enrolment: jobholders

Whether you are automatically enrolling an eligible jobholder or enrolling a jobholder who opts in, the process is the same during the **joining window**.

Step 1

Send information pack about the scheme and workers' rights to jobholder (see pages 17 and 31) and send jobholder's information to the trustees/scheme provider to set up membership (see page 31). Six-week window to complete this and the following steps.

Step 2

Start collecting worker contributions.

Step 3

Do whatever is needed to achieve membership for the jobholder with effect from the automatic enrolment date (or deferral date or enrolment date as applicable). For example, enter into contribution agreement with personal pension provider and get provider to give terms and conditions to jobholder.

Step 4

Record the date you achieve membership for the worker: opt-out window starts from this date or (if later) date on which information pack in Step 1 is received (see page 13).

Opt-ins and requests to join

You must tell jobholders and entitled workers about their rights to be admitted to pension saving (see page 7). If you get a **joining notice** from a non-eligible jobholder asking to opt into your scheme or from an entitled worker asking to join pension saving, what you have to do depends on the worker's status.

INITIAL CHECKS

- Is the worker a jobholder or an entitled worker?
- Is the notice valid (in writing or by email and signed or personally submitted)?
- Is the worker already an active member of a scheme?
- Has the worker applied before?
- **Don't enrol if:** the worker is already an active member of a qualifying pension scheme (jobholder) or UK tax-registered scheme (entitled worker) or already scheduled for auto-enrolment or re-enrolment.
- **Don't enrol (unless you want to) if:** the worker has previously given opt-in notice or joining notice in the last 12 months and subsequently left the scheme.
- Good to go? Apply normal auto-enrolment process (see page 22) from enrolment date (see page 13) for jobholders. See below for the process for entitled workers.

Notes

A worker may have flexed down below minimum contribution levels: an opt-in request would require contributions to be increased to the auto-enrolment minimum.

Admitting entitled workers

WORKERS' RIGHTS

Right to join a workplace pension scheme (UK tax-registered but not necessarily a qualifying scheme or auto-enrolment scheme) at any time while still an entitled worker.

No right to employer contributions.

Conditions: worker must give a valid joining notice to the employer, and comply with all the joining requirements of that scheme.

If worker leaves the scheme, employer is not bound to honour a second request within 12 months.

PROCESS FOR EMPLOYER

Contact trustees/provider of scheme to give information about the worker and check conditions for entry. Set up direct pay arrangements for worker if offering personal pension plan. No particular deadlines specified.

Choose whether or not to make employer contributions.

Keep record of joining notice.

Monitor the worker for any change in status to become a jobholder. Assess pay on the first day of each pay reference period.

Re-enrolment duties

A duty to re-enrol workers into pension saving arises in two circumstances:

– Employers must re-enrol eligible jobholders who are no longer active members (because they chose to opt out or cease membership) on a periodic basis – broadly, every three years. The employer has flexibility to choose a re-enrolment date for its workers within a period three months before to three months after the precise three-year anniversary of the staging date or previous re-enrolment date. This is known as cyclical re-enrolment.

– Where jobholders' continuity of membership has been disrupted because of something outside their control – for example, where an existing scheme has ceased to meet the quality standards or has ceased to qualify because it has closed to future accrual or contributions – the employer must re-enrol jobholders back into a qualifying scheme immediately (normally from the next day) if specified conditions are met. This immediate re-enrolment duty will normally apply to both eligible and non-eligible jobholders whose active membership has been disrupted.

RE-ENROLMENT PROCESS

Whether re-enrolment is immediate or cyclical, the process will be very similar to auto-enrolment, with the following differences:

– The cyclical re-enrolment duty normally only applies to eligible jobholders who have already had an auto-enrolment date with that employer.

– The employer only needs to assess workers who have opted out or ceased active membership to work out whether they meet the eligible jobholder criteria.

– Postponement cannot be used with automatic re-enrolment. The re-enrolment date chosen by the employer will be the date from which active membership of a qualifying scheme must begin for jobholders who are re-enrolled, the start date for contributions and the start date of the joining window (the six-week period during which re-enrolment must be completed).

Notes

If the scheme allows members to reduce their level of contributions, this may in some cases mean that aggregate contributions for some members has fallen below the auto-enrolment minimum, without them actually ceasing membership. Eligible members who are not receiving minimum auto-enrolment contributions should also be re-enrolled at the minimum statutory levels.

Notes

Employers must make a further declaration of compliance with the Pensions Regulator, in relation to how they have complied with their re-enrolment duties, either within two months of the re-enrolment date if eligible jobholders are re-enrolled, or by the day before the third anniversary of the employer's first declaration of compliance. This could in some circumstances fall before the end of the period allowed for the employer to select a re-enrolment date, potentially creating a compliance issue if the assessment reveals that there is no-one in scope for re-enrolment.

Employers should ensure that they select a re-enrolment date which allows them to complete the processes in time to comply with their re-declaration duty.

EXCEPTIONS TO THE DUTY TO RE-ENROL

The employer may choose whether to automatically re-enrol eligible jobholders in certain categories, for example:

– individuals who opted out or voluntarily ceased active membership of a qualifying scheme less than twelve months before the re-enrolment date (whether they were previously auto-enrolled or contractually enrolled)

– individuals who have given notice of resignation or retirement or who have been given notice of dismissal by the employer

– individuals with primary, enhanced, fixed or individual protection from tax charges on their pension savings.

Page 11 provides more details on these categories. Where the employer chooses not to automatically re-enrol individuals in these categories, it will normally have no further duties to re-enrol until the next cyclical re-enrolment date. However, these individuals and any workers who do not meet the eligible jobholder criteria at the re-enrolment date retain opt-in and joining rights where applicable.

Getting contributions right

Employer and worker contributions are a key component of auto-enrolment.

CONTRIBUTION DOCUMENTATION FOR GPP

If you're using a group personal pension, you need three separate agreements to cover contributions:

– Direct payment arrangements between employer and worker to deduct contributions and pay provider.

– Agreement between employer and provider for employer to pay at least minimum employer auto-enrolment contributions for the worker.

– If the employer is not paying the full minimum contribution (see page 19), an agreement between the provider and the worker for the shortfall.

CONSENT TO DEDUCTIONS OF WORKER CONTRIBUTIONS FROM PAY

You don't need specific written consent from the worker for deductions from pay following automatic enrolment or enrolment to comply with an opting in or joining notice.

You do need consent if using contractual enrolment into a contributory scheme.

CONTRIBUTION DOCUMENTATION FOR OCCUPATIONAL PENSION SCHEME

This is the pension scheme's schedule of contributions or payment schedule. It documents contribution amounts and timetable. Should you change the schedule to cater for opt out periods? (see page 28).

OPERATING PAYROLL DEDUCTION IMMEDIATELY

Contributions are due from and in respect of an enrolling jobholder from their automatic enrolment date, or enrolment date as applicable. That means operating deductions from pay from the end of the pay reference period in which enrolment is treated as occurring, even if membership has not yet been established with the pension scheme.

CALCULATING CONTRIBUTIONS

Contributions should be calculated from the automatic enrolment date, or enrolment date as applicable. This can mean payments for part of a pay reference period.

NORMAL DEADLINE FOR CONTRIBUTIONS

19th day of month following month of payroll deduction (22nd if paying electronically).

DEADLINE FOR CONTRIBUTIONS DURING THE OPT OUT PERIOD

All contributions deducted during the first three months of scheme membership for auto-enrolled or contractually enrolled members must reach the scheme by the 19th day (or the 22nd day if paid electronically) of the fourth month of the individual's membership.

DELAYED AND UNPAID CONTRIBUTIONS

Trustees and providers are required to monitor contributions, chase late payments and report serious breaches to the Pensions Regulator.

Tip

Sorting out refunds from the scheme is complicated for everyone concerned and deadlines are tight.

Think about agreeing with the scheme provider or trustees a delayed payment date for contributions until the worker's right to opt out has expired. Don't forget to change your schedule of contributions or payment schedule accordingly if you are offering an occupational scheme.

5. Letting people exit the scheme

Workers cannot be compelled to remain active members of a pension scheme, and can stop active membership at any time by notice to the trustees or scheme provider. Their rights following that exit depend largely on how long they have been an active member. However, jobholders enrolled via automatic enrolment or via an opt-in notice have a unique (but temporary) right to exit and have the whole enrolment process undone and treated as not having taken place.

Workers' rights to exit

Before enrolment	Even if workers ask not to join, the employer is still bound to enrol them if they are eligible jobholders.
During opt-out period	Follow opt-out process (see page 28).
	Refund worker contributions.
	Cancel any applicable salary sacrifice.
	Enrolment duty applies again at the next re-enrolment date (see page 23).
After opt-out period (at any time if entitled worker or using contractual enrolment)	Follow scheme exit process (e.g. notice to trustees, provider and/or employer).
	Member of group personal pension or NEST: pension preserved, but available for transfer from personal pension (not currently available from NEST). No refund available.
	Member of occupational pension scheme: – if less than three months' membership, refund of worker contributions if scheme permits (see Notes below). – over three months and under two years: refund or transfer payment (see Notes below). – otherwise, pension preserved but available for transfer.

Notes

The ability to make short service refunds from an occupational DC scheme will be withdrawn from 1 October 2015, in relation to workers whose first day of pensionable employment falls after that date. Workers who leave scheme membership and who have even one day of qualifying service before 1 October 2015 retain the right to a short service refund of contributions, if this is permitted by the scheme rules. From 1 October 2015, the vesting period is reduced to 30 days, so that effectively any member who does not opt out will have vested DC rights in the scheme.

Opting out

The opt-out period opens when the worker joins the scheme (or, in a group personal pension plan, when the provider sends them information on terms and conditions), or, if later, when the worker is actually given enrolment information (see page 31).

It closes one month later. If the employer tells the worker the first notice was invalid the worker has a short extension, to six weeks, to give a second opt-out notice.

JOBHOLDER

- Contact trustees (or provider in a group personal pension) to get an opt-out form.
- Give notice to opt out before the end of the opt-out period to employer.
- To be valid, the notice must either be in writing and signed, or electronic with a declaration that it has been made by the jobholder personally.

EMPLOYER

- Check the notice is valid. If not, tell the worker what's wrong so they can try again.
- Stop deducting worker contributions and notify the trustees or provider.
- Pay refund of amount of worker contributions to worker.
- Record the opt-out for future reference.
- Re-enrol the worker on the next re-enrolment date if eligible (see page 26).

Dealing with refunds after an opt-out

If a jobholder opts out during the opt-out period, the employer must pay a refund of the jobholder's own contributions (subject to appropriate tax).

If you receive a valid **opt-out notice**, pay the refund to the jobholder within one month from the date on which you receive the notice. If you receive the notice after payroll has closed for the pay reference period, make the payment by the last day of the second pay reference period after the date on which notice is given.

You will be due a refund from the scheme of any contributions actually paid over to the scheme; however, you should consider changing your normal contribution transmission patterns for jobholders during the opt-out period to avoid a potential mismatch in timing of refunds (see page 27).

If the worker exits the scheme after the opt-out window has closed, normal rules apply. For workers whose pensionable service begins on or after 1 October 2015, this means they have a right to take a cash transfer sum to another registered pension scheme (see Notes on page 27).

Notes

The option to opt out of membership and undo the process does not apply to an entitled worker who has been admitted to membership; nor does it apply to someone who is contractually enrolled (see page 10) (although the scheme may have its own opt-out rule to provide similar flexibility).

NB: you should consider changing your scheme rules to allow this.

6. Communications

The auto-enrolment regime relies on a network of notices and information going to members and other parties. We've set out the key events when you will need to provide information – or might want to communicate about the process – in the table opposite, with a note of where you can find details about what the content should be. You'll find the detailed guidance notes referred to on the Regulator's website (see page 38).

Remember that these are in addition to all the normal communications that a pension scheme might provide to its members (investment options, scheme booklets, invitations to nominate dependants or others in relation to death benefits and so on).

Information packs and notices: what and when

Trigger	Resource	Deadline
Pre-staging date	DWP website (see page 38)	Optional
Transitional period	Guidance note 3B	Six weeks from staging date
Postponement (generic or tailored notice)	Guidance note 3A	Six weeks from staging date or auto-enrolment date
Staging date/later assessment – workers who are not active members	Eligible jobholder: guidance note 5	Six weeks from automatic enrolment date
	Non-eligible jobholder: guidance note 3C	Six weeks from date right to opt in applies
	Entitled worker: guidance note 3C	Six weeks from date right to join applies
Active members at staging or re-enrolment date	If not a jobholder: no information requirement. Assess at each pay reference period	No requirement
	If member is or becomes a jobholder: guidance note 3C. Notice is permissive rather than mandatory.	If notice is given, deadline is two months from staging date, or date worker becomes a jobholder
Information to scheme about individual's enrolment	Guidance note 5	Six weeks from automatic enrolment date or enrolment date
Enrolling into GPP	Guidance note 5	Six weeks from automatic enrolment date or enrolment date
Registration	Online registration via TPR website	Five months from staging date
Non-eligible jobholder opting in	Guidance note 6	Six weeks from enrolment date
Entitled worker joining	Guidance note 6	No specific time limit for providing information to trustees/provider
Opt-out	See guidance note 7	No specific requirement to confirm opt-out and refund but good practice to do so
Re-enrolment		Information requirements as above but could adjust to refer to re-enrolment

Notes

All of these packs and notices must be given in writing or by email. You can't just rely on poster displays or a website.

Go to the communications section of the Additional resources on the Regulator's website pages for help with writing to workers about auto-enrolment.

7. Compliance

The Pensions Regulator is the primary policeman of auto-enrolment, although employment law and financial services regulation also play their part. The Regulator has published its proposed strategy for delivering employer compliance. If the Regulator has any queries about compliance, you can expect an initial informal approach. If matters escalate, the Regulator may issue a warning letter and use its powers of inspection and information gathering before proceeding to the various statutory powers to enforce compliance and punish non-compliance. In the worst case scenario, criminal sanctions are possible. The Regulator publishes regular reports on its auto-enrolment enforcement activity.

Worker protection

Banned behaviour	Prohibited recruitment conduct	Inducements to opt out	Right not to suffer detriment	Right not to be unfairly dismissed	Contracting out of auto-enrolment
What can't the employer do?	Suggest applicants will be screened depending on their opt out intentions. Includes adverts, job description, contract offers, reference requests. Protected: anyone who could become eligible for enrolment during employment.	Any action with the sole or main purpose of inducing a jobholder to opt out or anyone to leave the scheme (unless they are re-enrolled the next day). Action doesn't have to be successful – breach is based on intention not outcome.	Subject workers to any detriment if they try to enforce their auto-enrolment rights.	Dismiss someone for an auto-enrolment-related reason. Dismissal is automatically unfair.	Agree with worker to exclude or limit auto-enrolment rights or prevent a worker who has suffered detriment bringing proceedings.
What happens if the employer breaches the ban?	Compliance notice: order employer to take steps to remedy the breach or prevent it being repeated. Penalty notice for contravention or failure to obey compliance notice. Fine of up to £5,000 depending on employer size.	Compliance notice ordering employer to take steps to remedy the breach. Notice can require payment of unpaid relevant contributions. Time limit: six months from complaint or four years from date employer is notified of investigation. Penalty notice for failure to obey compliance notice. Fixed penalty £400. Escalating penalty up to £10,000 per day depending on breach and employer size.	Complaint to employment tribunal.	Worker can complain to employment tribunal – no qualifying period of continuous service is required.	Agreement is void (unless it is a compromise agreement in relation to proceedings). Employer cannot recover any payment made under the agreement.

Notes

These protections came into effect on 1 July 2012.

Flex packages or offers of cash alternatives to pension contributions could be inducements, if offered with the sole or main purpose of encouraging or persuading a worker to opt out of auto-enrolment. Talk to us if you have any concerns about your benefit packages.

Other safeguards

ENDING ACTIVE MEMBERSHIP OR QUALIFYING SCHEME STATUS

Causing a jobholder to stop being an active member of a qualifying scheme (except through termination of employment or worker's request), or causing the scheme to cease to qualify, is a potential breach of employer duties. Enrol again from the next day.

WHISTLEBLOWING

Workers who make a protected disclosure (whistleblowing) about a breach of auto-enrolment duties will have protected status.

FAILURE TO COMPLY

A deliberate failure to comply with key auto-enrolment duties is a criminal offence (potential penalties: fines or imprisonment). Directors and officers can be liable.

NON-PAYMENT OF CONTRIBUTIONS

Accuracy and flow of contributions to be monitored by trustees and providers. The Pensions Regulator can fine an employer (up to £10,000 per day). Civil penalties up to £5,000 (individuals) or £50,000 (organisations) may apply.

Keeping records about workers

The employer must keep auto-enrolment records about its workers and be able to produce them to the Pensions Regulator when required.

FOR JOBHOLDERS AND WORKERS WHO BECOME SCHEME MEMBERS

– Name, NI number, date of birth.

For each relevant pay reference period, gross qualifying earnings and contributions payable (employer and aggregate) plus dates contributions were paid.

FOR JOBHOLDERS

– Auto-enrolment date, opt-in or opt-out notices, contributions to which member is entitled under scheme rules.

FOR ENTITLED WORKERS

– Effective date of joining, joining notice.

FOR ALL WORKERS FOR WHOM POSTPONEMENT IS USED

– Name, NI number and the date the notice was given to the worker.

Keeping records about pension schemes

The employer must also keep records about the schemes it is using for automatic enrolment.

FOR AN OCCUPATIONAL SCHEME

– Employer pension scheme reference, scheme name and address.

– **Schemes which are certified as meeting the quality standards:** certificate and underlying evidence; or (**DB schemes only**, before April 2016) contracting-out certificate.

– **Non-UK schemes only**: the address of the scheme and name of the applicable regulatory authority.

FOR A PERSONAL PENSION SCHEME

– Employer pension scheme reference, provider name and address.

– **Schemes which are certified as meeting the quality standards:** certificate and underlying evidence**.**

– **Non-UK schemes only**: address of scheme and name of applicable regulatory authority.

Notes

If you have used the certification process to certify that your scheme meets the quality tests for auto-enrolment, you must keep the certificate and the evidence underlying it for six years from the end of the certification period.

Keeping records: the scheme provider/trustee's duties

The trustees or provider of the pension scheme must also keep records and be able to produce them to the Pensions Regulator when required:

– Active members: name, date of birth, NI number, gender, residential address, joining date, date ceased membership (if relevant), membership status.

– Jobholders who opt out: name and date scheme was informed by employer of jobholder's decision to opt out.

– Employer pension scheme reference.

KEEPING RECORDS: HOW LONG FOR?

Most information has to be kept for six years (although schemes may need to keep appropriate information longer, for pension scheme administration purposes). Exceptions to the six-year rule are:

- scheme quality certificates and underlying evidence (see above)
- opt-out records, which must be kept for four years.

Notes

Under the test scheme standard which applies until 6 April 2016, once a DB scheme has been certified for auto-enrolment purposes as a qualifying scheme, it remains so. There is no requirement to re-certify at regular intervals, although employers should monitor the scheme's ability to meet the test scheme standard. The DWP suggests a review when there are significant changes to pay structures, scheme pension age or the membership profile.

Under the new alternative DB quality tests which apply from 1 April 2015, and for DC schemes, a certificate lasts a maximum of 18 months and the scheme must then be re-certified as meeting the quality standards. For DC schemes, the DWP suggests that certificates should be reviewed between certification dates if there is a change in law or guidance, a significant change in the earnings band or other relevant factors such as pay structures, contribution rates or the scheme membership profile. Further guidance on certification under the alternative tests for DB schemes is currently awaited.

8. What else should I be thinking about?

The auto-enrolment regime isn't static, and the UK pensions landscape is changing around it. There are a number of areas to watch out for.

Looking into the future

A number of changes have been made to, and around, the auto-enrolment regime since it was introduced in 2012, and more are planned. Keep an eye out for these changes:

RESTRICTION ON REFUNDS

The ability to pay refunds for early leavers from occupational money purchase pension schemes will be withdrawn from 1 October 2015 for workers whose qualifying service begins on or after that date. Refunds for opt-outs will continue. See pages 28 and 29 for more details.

THRESHOLDS

Thresholds for qualifying earnings and the earnings trigger change each year, requiring systems to be recalibrated.

AUTOMATIC TRANSFERS

A system is due to be introduced under which DC accounts of early leavers which are worth less than a specified threshold (expected to be £10,000) will be transferred to the worker's next automatic enrolment money purchase scheme. The current proposal is that the automatic transfer system will be phased in gradually from October 2015 but details have not yet been finalised.

Final checklist

Even if you have already been running auto-enrolment processes for several years, re-enrolment presents a good opportunity to re-examine a number of employer and scheme issues and processes. Does anything need to be adapted to address changes since your staging date or previous re-enrolment date? The regime has evolved since its introduction – how do any changes affect your current systems and processes?

New employers approaching auto-enrolment for the first time should also consider these wider employer and scheme issues.

- Check standard terms and conditions of employment. What needs to be changed?
- Train HR team on recruitment constraints, employee protections, enrolment duties and tax protection issues.
- Revisit your payroll/flex provider/administration agreements. What needs to be changed?
  Data protection, breach reporting and indemnity cover all need to be checked.
- Risk benefits: do you need to change insurance arrangements?
- Review your internal systems: establish protocols on turnaround times for auto-enrolment duties, record keeping and contribution arrangements with trustees/provider.
- Salary sacrifice and flex need to work around opt-out rules. What needs to be changed?

Resources

PENSIONS REGULATOR GUIDANCE

The Pensions Regulator's auto-enrolment webpages have an extensive collection of step-by-step guidance notes, flowcharts, resources for employers and templates to follow.
www.thepensionsregulator.gov.uk/automatic-enrolment.aspx

DWP GUIDANCE

The Department for Work and Pensions publishes guidance on certifying your pension scheme as meeting the quality standards to be a qualifying scheme:

– Defined contribution schemes: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307083/money-purchase-schemes-guidance.pdf

– Defined benefit and hybrid schemes: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307074/auto-enrol-guid-emp.pdf

These were last updated as at 1 April 2014.

ALLEN & OVERY ADVICE

For help with auto-enrolment and re-enrolment design and compliance, talk to us. We know how to solve the really tricky stuff.

Auto-enrolment terms

GLOBAL PRESENCE

Allen & Overy is an international legal practice with approximately 5,000 people, including some 525 partners, working in 46 offices worldwide. Allen & Overy LLP or an affiliated undertaking has an office in each of:

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