

INTRODUCTION AND LEGISLATIVE BACKGROUND

This ALP Member Brief updates and replaces ALP Member Brief 154 dated April 2016.

Under the Pensions Act 2008 (as amended), all employers are now required to enrol their eligible employees into a qualifying pension scheme and collect contributions from the employee and the employer, passing them to the pension provider (Auto-enrolment).

The relevant regulations originate in the Department for Work and Pensions who have vested the autonomous Pensions Regulator (TPR) with stringent powers to combat non-compliance or evasion.

The legislation makes no distinction between types of employment; Employment Businesses/Labour Providers are regarded as the employers of their temporary or flexible workers, no matter what the terms of their contracts contain. All references to workers include both agency workers on a contract for services and contract of employment; the term “workers” should be viewed in line with the European and DWP social security legislation, which is drafted wider than the definition of employees (hence the use of this term below rather than employees).

Since it is the employer’s duty to auto-enrol their workers, labour providers have no responsibility for workers supplied by other companies such as Limited Company Contractors, Umbrella organisations or other agencies.

The requirements cover all workers but, provided each scheme qualifies under the legislation, separate schemes may be used for different types of workers; the substantive, permanent, workforce may have a different scheme to the temporary or flexible workers. Alternative schemes can be used by the various companies within a controlling Group.

The provision of pension arrangements to permanent workforces has been a recognised benefit for some time, with a market for providers who can sustain acceptable returns with costs based on the expectation of consistent earnings over a period of time. There is a wider scope for choice when considering providers for the permanent workforces. Traditionally the temporary and other lower paid workforces have been the most reluctant /least able to make their own pension arrangements; it is these sectors that the legislation targets.

The Pensions Regulator has produced [a Step-by-Step guide](#) written specifically for employers, many of whom will have limited pensions experience. The guide explains how to complete key tasks such as knowing when to be ready, providing a point of contact for the Regulator, checking who needs to be enrolled and creating a plan of action specifically for the smaller business staging in the next few years.

The Government published its latest [review](#) in December 2017 which confirmed that more than 9 million individuals have now been automatically enrolled and proposes, on a date yet to be confirmed, to:

- Lower the age for automatic-enrolment from 22 to 18 years old
- Remove the lower earnings limit so that contributions are calculated for all earnings.

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Please contact the ALP directly should you wish to discuss any of the points raised in this Brief.

THE REQUIREMENT

Employees are assessed on the basis of their age and earnings in each pay period to determine their category.

Age (inclusive) --> Earnings	Age 16-21	22 - State Pension Age	State Pension Age - 74
At or under Lower level of qualifying earnings (£5,876pa, £490pm or £113pw) *	Entitled worker	Entitled worker	Entitled worker
Between Lower level of qualifying earnings and Enrolment threshold	Non-eligible jobholder	Non-eligible jobholder	Non-eligible jobholder
Enrolment threshold over (£10,000pa, £833pm or £192pw) *		Eligible jobholder	
Upper level of qualifying earnings	£45,000pa, £3,750pm, £866pw*		

*2017/18 figures – reviewed annually from each November. See [DWP site for details](#).

If a worker is not assessed as an Eligible jobholder in a pay period, they must be re-assessed in each subsequent pay period to identify whether they cross either the age or the earnings thresholds.

Eligible jobholders must be enrolled in an appropriate scheme but may be deferred for up to three months from the assessment date, provided the employee has been notified in advance.

Once enrolled, employees may opt-out within a one-month window and receive a refund of contributions, as will the employer. Opting out after this window results in no further contributions being made but not in a refund to either.

If, having been enrolled and not opted out, an employee's earnings drop below the Lower threshold in a pay period, membership of the scheme remains but contributions will stop until earnings increase.

Employees may not be induced or coerced to opt out by their employer. The employer may not discriminate against employees who do not opt out.

A Non-eligible jobholder may request to opt into the pension scheme provided at any time during their employment/engagement using a prescribed "opt in notice" form. The employer is obliged to make contributions and must process employee and employer contributions.

An Entitled worker may request to join a pension scheme at any time during their employment/engagement. The scheme offered is not necessarily the same as that offered to jobholders. The employer is not obliged to make any contribution. This is equivalent to the current Stakeholders pension requirement.

The contributions calculation mirrors existing National Insurance arrangements, being a percentage of "Qualifying Earnings" including salary, wages (post salary sacrifice), commission, bonuses, overtime, SSP, SMP, SPP and SAP between the Lower and Upper thresholds.

The minimum contributions for employee and employer will rise to 8% of Qualifying Earnings in steps as follows:

% of Qualifying earnings	Employer	Employee	Total
From Staging date to April 2018	1%	1%	2%
From April 2018 to April 2019	2%	3%	5%
From April 2019	3%	5%	8%

Fluctuations in earnings may take an employee below the threshold on occasion. This will result in no contributions for that pay period but will not alter their membership of the scheme.

Some employers used existing pension schemes to implement auto-enrolment, and some of these may not be able to apply the new higher contribution rates. Labour Providers should check if the pension scheme they are operating for auto-enrolment has rules that allow for an increase in contributions to meet the minimum requirements for a qualified scheme. If they do not allow for this, the rules will need to be amended which may require a consultation process with members of the scheme. The Pension Regulator website has [more information](#) on this.

SAFEGUARDS FOR INDIVIDUALS

There are [duties and safeguards](#) that employers must adhere to, to protect both job applicants and once that person is a member of a pension scheme which cover:

- Stopping active membership of a qualifying auto-enrolment scheme
- Actions or omissions by which a scheme ceases to be a qualifying auto-enrolment scheme
- Unfair treatment of workers because they are a member of a auto-enrolment scheme
- Inducements to opt out or leave an auto-enrolment scheme
- Prohibited recruitment conduct.

POSTPONING THE FIRST ASSESSMENT

An employer may opt to postpone the initial assessment and/or consequent actions for up to three calendar months from either the date of engagement or the date the worker first meets the criteria of an eligible jobholder.

The postponement is intended to enable the assessment to mesh with current payroll processes/ timetables, but can also be used to reduce the burden of short term employees. The employees must be advised of the deferral when it is applied and may request an immediate assessment. If deemed eligible, they must be auto-enrolled within one month.

It is not necessary to apply the same deferment dates to all employees but business process will dictate some consistency.

The choice of deferment criteria is mutually exclusive. It is not possible to delay from date of engagement, and then postpone again, from when the criteria are met.

Specific mention is made of deferment options at the staging date to smooth the initial implementation.

PAYMENT OF CONTRIBUTIONS

Having assessed the worker is an eligible jobholder; they must be enrolled within one month. Contributions will be backdated to the date of assessment, which, unless the processing time by the Pension provider is very quick, could result in the first deductions being for more than one pay period.

Contributions must be passed to the Pension Scheme provider no later than the 19th of the month following the month in which the money was taken from the employee.

Subject to proper records, the transfer of funds relating to first contributions only can be delayed to the end of the next month to facilitate the full refund of any contributions made by employees who opt-out within the opt-out window.

OPTING OUT

Eligible job-holders must inform their employer of their wish to opt-out within one month of the later of becoming an active member or being sent their enrolment information. (The opt-out window).

If they do so, they are entitled to a full refund of any contributions taken and the employer retains their contributions, as if enrolment had never taken place.

Workers may not opt-out before being enrolled.

After the one month window, the worker may opt to cease to be an active member but refunds of contributions to them or the employer will not occur, unless provided for within the pension scheme.

There are significant provisions safeguarding employees from being induced or coerced into opting out, or being discriminated against if they should not. As an anti-coercion measure, the opt-out notices must be provided by the scheme provider.

Any worker opting out must be auto-enrolled again after 3 years from the date of opting out (although not if they had opted out within the 12 months prior to the re-enrolment date).

COMMUNICATION PLAN

It is the employer's responsibility to ensure all employees are communicated with in accordance with the legislation. These communications must be in writing, including e-mail, and delivered to them personally. Communication cannot be by poster or link to internet or intranet sites. The content and timing of communications with employees is largely prescribed in the legislation.

Details of the scheme, notification of deferral and the right to an immediate assessment is to be provided by the employer, on employment.

Having been assessed, the employer is to inform those qualified as Eligible jobholders that they have been enrolled, at which point the pension provider will provide information about their membership of the scheme and the opt-out procedures. The despatch of this information sets the start of the opt-out window.

The employer will inform those qualified as Non-eligible jobholders about their right to opt-in to the scheme and their next deferral date.

Those who remain Entitled workers are simply to be informed of their rights to an alternative scheme, without employer contributions.

The legislation presumes monthly pay periods and makes no allowances for the time constraints of a weekly payroll.



RECORD KEEPING

The mandatory records, which correspond to existing HMRC fields, with the addition of pension scheme specifics such as details of scheme, date of membership and status/category are to be kept for a minimum of six years. Although information relating to the opt out process need only be retained for a minimum of four years. They must be available to the Pensions Regulator at any time during the storage period.

DECLARATION OF COMPLIANCE

Each employer must provide information to show they are meeting their automatic enrolment duties by completing a declaration of compliance using the online service, accessed through the Government Gateway, within five months from their Staging date. Use of any deferment does not extend this deadline.

Automatic enrolment duties will not have been fulfilled until the Declaration has been submitted and failure to do so may lead to investigation and potential penalties.

The information required is detailed in [this checklist](#) and should be prepared well in advance of the due date.

AUTOMATIC RE-ENROLMENT

Automatic re-enrolment occurs every three years and repeats the activities the employer carried out on their staging date or deferral date if they used postponement.

The employer must re-enrol relevant employees staff into a pension scheme that can be used for automatic-enrolment, if they're not already active members of one, even if they opted out previously.

Re-enrolment must occur between three months before the third anniversary of their original staging date and three months after it.

A re-declaration of compliance must be made no later than two months after the chosen re-enrolment date.

The Postponement, process, delaying workforce assessment available on staging cannot be applied at re-enrolment.

[Detailed Guidance](#) on re-enrolment can be found here.

PENSION PROVIDERS

The pension providers known to the ALP actively seeking to provide services to employers of low earning/high turnover workers without requiring additional fees from the employer are:

NEST (National Employment Savings Trust): <http://www.nestpensions.org.uk> Contact details [here](#)

NOW Pensions: <http://www.nowpensions.com> Contact details [here](#)

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