Workplace Pension Reform

Starting from October 2012, any UK employer who employs at least one person will be legally obliged to:

- set up and register a pension scheme suitable for automatic enrolment
- automatically enrol certain workers (known as eligible jobholders) into that pension scheme
- arrange membership of a pension scheme for certain other workers
- make contributions for eligible jobholders and certain other workers
- manage the automatic enrolment, joining and opt out processes
- provide specific information to workers, pension scheme providers and The Pensions Regulator (TPR)
- keep records of how they have fulfilled and continue to fulfil their duties

When is it happening?

The employer duties will be introduced in stages from October 2012 to April 2017. Each employer will have a specified date when their duties commence – this is known as their 'staging date'. Larger employers will have their duties imposed first, smaller employers last. The Pensions Regulator (TPR) will generally determine the size of the employer based on the Pay As You Earn (PAYE) scheme information available to them on 1 April 2012. Any fluctuation in the number of people in the PAYE scheme after that date will not change the staging date. Employers with less than 30 people in their PAYE scheme will have their staging date set depending on the last two characters of their PAYE reference number.

Different types of worker

Employers will have different duties depending on the type of worker. Employers will need to identify each type of worker and perform the relevant duties for each type.

Workers are defined as anyone who works under a contract of employment or who works for or performs services personally for another party to the contract. Exclusions are the self employed, the armed forces and directors of companies where there is no contract of employment and/or there are no other workers.

The different types of worker			
Earnings (Age inc)	16-21	22-State Pension Age	State Pension Age-74
Under earnings threshold (£5,824 or below)	Entitled worker		
Between £5,824 and £10,000)	Non-eligible jobholder		
Above £10,000	Non-eligible jobholder	Eligible jobholder	Non-eligible jobholder

Your Employer duties

Eligible jobholder – automatic enrolment

Within six weeks of an eligible jobholder's automatic enrolment date (for example, the day they start work), the employer must provide them with certain information. This must include details of when they will be automatically enrolled, their right to opt out and the terms and conditions or details of the scheme into which they will be automatically enrolled. Once an eligible jobholder is automatically enrolled, the employer must continue to deduct/make contributions as long as they remain in the scheme.

Non-eligible jobholder – right to opt in

Within six weeks, the employer must provide non-eligible jobholders with certain information. This must include a statement that they can require the employer to enrol them into an automatic enrolment scheme by completing an opt-in notice. Where a non-eligible employee opts in, the employer must deduct/ make contributions as long as they remain in the scheme.

Entitled worker – right to join

Within six weeks, the employer must provide entitled workers with certain information. This must include a statement that they can require the employer to enrol them into a pension scheme by completing a joining notice. The pension scheme doesn't have to be an automatic enrolment scheme and the employer is under no obligation to make contributions. However the employer must deduct the entitled worker's contributions from their salary and pay these to the pension scheme on their behalf.

Automatic re-enrolment

Employers must re-assess their workforce on the employer's re-enrolment date. The re-enrolment date will generally be every three years from the employer's staging date. The employer may adjust the re-enrolment date by up to three months before or after the three year anniversary of the staging date if required – for example to coincide with their payroll or accounting year end date.

Opting out

Eligible and non-eligible jobholders may opt out by completing an opt-out form. They must get the opt-out form from the pension scheme or pension scheme provider. They have one calendar month from the later of the date active membership was achieved, or the date they received the employer's letter with the enrolment information.

Once completed, an opt-out form must be returned to the employer. Once the employer receives the opt-out form, they must:

- check that the form is valid. If the opt-out form is not valid, the employer must inform the jobholder and ask them to resubmit the form
- stop deducting contributions from the jobholder's salary
- refund any contributions that have already been taken from the jobholder's salary.

Employers are under no obligation to continue making contributions if an eligible jobholder or non-eligible jobholder opts out.

Any worker (including entitled workers) in a pension scheme can decide to stop saving into the pension at any time. They will not need to complete an opt-out form outside the opt-out period of one month. They will not receive a refund of any contributions they have made if the automatic enrolment scheme is a group or individual personal/stakeholder pension or if the scheme rules don't permit this option.

Automatic enrolment schemes explained

Employers must register with TPR that they have an automatic enrolment scheme in place within four months of their staging date then re-register every three years. An automatic enrolment scheme must satisfy certain requirements including the ‘quality requirement’.

Other than for final salary schemes, the quality requirement is primarily based on minimum contribution level. The minimum contribution levels will be phased in over a maximum of six years from the start of the employer duties based on their staging date. Employers may pay the whole of the total minimum or just their part then require jobholders to make up the difference to the total minimum. Employers may use one of the options below or a combination of them to meet the minimum contribution level.

Qualifying earnings

Minimum contributions will be based on an earnings band between £5,824 and £42,385 pa, called qualifying earnings. The band earnings will change each year and these figures are for 2015/16.

Qualifying earnings includes salary, wages, overtime, bonuses, commissions, statutory sick pay, statutory maternity pay, ordinary/additional statutory paternity pay and statutory adoption pay.

Employers must check that their minimum contributions are made, any difference is deducted from employees, and the total is paid to the pension provider each time a contribution is due.

Minimum auto enrolment scheme contribution rates as a percentage of qualifying earnings			
Date	Minimum Employer	Minimum Employee (if employer only pays minimum)	Total Minimum
Staging Date to Sept 2017	**1%**	**1%**	**2%**
Oct 2017 to Sept 2018	**2%**	**3%**	**5%**
Oct 2018 onwards	**3%**	**5%**	**8%**

Self-certification

As an alternative to using the qualifying earnings definition, employers may choose to self-certify.

- Minimum contributions will be based on the employer's definition of 'pensionable salary'.
- Pensionable salary must be at least basic contractual salary and need not include variable salary such as bonuses, overtime and commission.
- Contributions may be based on the first pound of pensionable salary or on a band of earnings different to qualifying earnings.
- Employers may certify in advance that their scheme will meet the quality requirement for up to 18 months.
- Employers may delegate the calculations to an authorised person (e.g. adviser, accountant) but remain responsible for the certification itself.

9% of pensionable salary			
Date	Minimum employer	Minimum difference made up by employee (gross)	Total
Staging Date to Sept 2017	**2%**	**1%**	**3%**
Oct 2017 to Sept 2018	**3%**	**3%**	**6%**
Oct 2018 onwards	**4%**	**5%**	**9%**

8% of pensionable salary, provided 85% of total payroll is pensionable			
Date	Minimum employer	Minimum difference made up by employee (gross)	Total
Staging Date to Sept 2017	**1%**	**1%**	**2%**
Oct 2017 to Sept 2018	**2%**	**3%**	**5%**
Oct 2018 onwards	**3%**	**5%**	**8%**

7% of pensionable salary, provided total salary is pensionable			
Date	Minimum employer	Minimum difference made up by employee (gross)	Total
Staging Date to Sept 2017	**1%**	**1%**	**2%**
Oct 2017 to Sept 2018	**2%**	**3%**	**5%**
Oct 2018 onwards	**3%**	**4%**	**7%**

The role of The Pensions Regulator (TPR)

TPR will be responsible for making sure employers comply with their duties. TPR's approach to compliance will include:

- telling employers when their staging date is and how they can comply with the employer duties
- making guidance and information available to employers, workers, pension schemes and professional advisers
- educating employers about their duties to help them comply
- fining employers who fail to comply depending on the severity of the breach

Enforcement

TPR has powers to issue compliance notices to and impose penalties on employers who do not comply with their automatic enrolment duties, for example failing to automatically enrol eligible jobholders or failing to refund contributions to those who have opted out.

There is a three stage process that TPR is expected to use although this may be preceded by informal intervention. Employers may appeal to TPR by using a specific procedure which will be set out in compliance notices.

Stage 1 Compliance/unpaid contributions notice

This notice will detail the breach and require the employer to put things right within a specific timescale. A notice may also include a requirement to make contributions with interest added.

Stage 2 Fixed penalty notice – £400

This notice will require employers to put right the breach identified in the previously issued compliance notice. Employers will be given at least four weeks from the date of the fixed penalty notice to put things right. Failure to comply by the specified date will result in the fixed penalty being applied.

Stage 3 Escalating penalty notice

If an employer fails to comply with the original compliance notice and subsequent fixed penalty notice, they will face daily escalating penalties. These will start to be calculated from the date specified in the fixed penalty notice and will depend on the size of the employer.

Number of people affected by breach*	Daily Rate
1 - 4	£50
5 - 49	£500
50 - 249	£2,500
250 - 499	£5,000
500 or more	£10,000

*This is generally the number of workers in the employer's PAYE scheme or the number of workers affected by unpaid contributions. Where this number is not readily available, TPR may use various sources of information to estimate this number.

The National Employment Savings Trust (NEST)

Employers who do not have, or who do not set up, their own automatic enrolment scheme with a pension provider have the option of using NEST. This scheme is designed to be low cost and is specifically aimed at low to medium earners and micro employers. NEST can also be used in conjunction with a provider's scheme – for example for workers who are on probationary periods, or a section of low paid workers within the workforce.

There are certain restrictions that apply to NEST:

- There is currently a general ban on transfers in or out.
- There is currently an upper contribution limit.
- Retirement options are limited to annuity, triviality, or open market option which will result in less choice and flexibility for workers.
- Limited investment options. Workers will be automatically invested in a default fund depending on their chosen retirement date. These default funds are based on the time to retirement and are not based on the individual's attitude to risk.
- Death benefits paid from NEST are potentially subject to inheritance tax

All information based on latest TPR update as at April 2015.

Useful Link: The Pension Regulator