

# Pensions Reform



## Q&A Factsheet For Employers

**All Your Questions Answered**

## What is pensions reform?

Pensions reform is a package of state and private pension changes introduced in October 2012 with the aim of getting more people to save for their retirement. The Pensions Act 2008 sets out a number of new duties for employers and enabled the establishment of the National Employment Savings Trust (NEST), aimed at low to medium earners.

## When did it start?

The new employer duties and responsibilities began in October 2012 and have been phased in over several years according to the size of the company. Contribution requirements are also being introduced gradually to allow employers and staff to adjust their cash flow to meet these new responsibilities.

## What are the main employer duties introduced since 2012?

The main employer duties are:

- to register and re-register with the Pensions Regulator
- automatically enrol and re-enrol all eligible staff into a pension scheme which meets certain criteria
- pay the minimum employer contribution
- opt in relevant staff who request it
- opt out staff who request it
- facilitate the joining of a scheme registered under the Finance Act 2004 by relevant staff members who request it
- maintain adequate records

## What is automatic enrolment?

This is a core employer duty under the pensions reform legislation, and means that you must automatically enrol all eligible employees into a qualifying scheme, unless the employee:

- is already active in a qualifying scheme at the auto-enrolment date, or
- decides to stop their active membership of such a scheme within a certain period before the auto-enrolment date.

## Which 'eligible employees' have to be automatically enrolled?

All employees who are at least 22 and under state pension age, earning at least £10,000 (per 2019/20 tax year) in qualifying earnings, must be auto-enrolled into a qualifying scheme.

## How is automatic enrolment different to previous pension enrolment?

Previously an employee had to agree in writing to join a pension scheme and to have pension contributions deducted from their salary, and often it was they who decided where their contributions were invested. With auto-enrolment, they don't need to do anything to become or remain an active member of the scheme so they are not required to sign an application form.

### What does this mean if you have an existing pension scheme?

You must ensure that your existing scheme meets the qualifying criteria and auto-enrol all your eligible employees. You can use the new National Employment Savings Trust (NEST) if you wish and you can have different pension schemes for different employees, so long as the scheme(s) all qualify under the regulations.

### What is a qualifying scheme?

In relation to the UK, a qualifying scheme is:

- an occupational pension scheme (as defined in section 1(1) of the Pension Schemes Act 1993), or
- a personal pension scheme registered under the Finance Act 2004

which, while the employee is an active member, meets the quality requirements in relation to the staff.

There are different quality requirements for different types of schemes. These are:

**Defined benefit (DB) schemes.** There are two ways in which DB schemes can qualify:

- All schemes that are contracted out of the State Second Pension (S2P) will meet the quality requirement.
- Schemes whose members aren't contracted out of S2P must meet the test scheme standard. Broadly, this means these schemes must have a benefit accrual rate of 1/120th of qualifying earnings for each year of membership.

**Defined contribution (DC) schemes.** To be a qualifying scheme, the total contributions should be a minimum of 8% of an employee's qualifying earnings, of which the employer contribution must be at least 3%.

**Hybrid schemes.** These must satisfy the DB and DC tests in proportion to the benefits that are defined benefit and defined contribution.

### Can you use a group personal pension (GPP) and a group self-invested personal pension (GSIPP) as an automatic enrolment scheme?

Yes, contract-based group private personal pensions such as GPPs and GSIPPs can be used to auto-enrol eligible staff, as long as they meet the qualifying criteria.

### What does this mean if you don't have an existing pension scheme?

You need to set up a private pension scheme that meets the qualifying criteria or auto-enrol your eligible staff into the National Employment Savings Trust (NEST).

### What is the minimum contribution requirement?

The minimum employer contribution requirement is 3%. Of course, there is nothing to stop you paying more than the minimum amount required. The employee must make up the difference so that their overall contribution amounts to 8% of qualifying earnings.

## What are qualifying earnings?

Qualifying Earnings are the band of gross earnings above £6,136 and up to and including £50,000 per 12 month pay reference period (with proportionate amounts for periods less than 12 months). These figures are based on tax year 2019/20.

'Earnings' for these purposes include:

- salary or wages
- commission
- bonuses
- overtime payments
- statutory sick pay, statutory maternity pay, ordinary or additional statutory paternity pay and statutory adoption pay

## What if our scheme doesn't base contributions on all of these earnings?

Many schemes don't include all the elements of qualifying earnings in pensionable pay, however part of the qualifying criteria for a scheme is that the overall level of contributions must still be at least as good as the legislative minimum contribution.

## I currently pay more than the minimum requirement – what does this mean for me?

You can continue to do so, there's no change.

## Are part-time workers who don't earn the minimum level of qualifying earnings excluded?

Under the new legislation, those who work under, or have entered into, a contract to do work personally for the employer are defined as 'workers' (regardless of whether the contract is express or implied). Therefore part-time staff are included in the new requirements and the table below illustrates the different categories of worker and the main employer duties applicable to them.

Earnings	Age 16-21 (inclusive)	Age 22 to state pension age (inclusive)	State Pension Age to 74 (inclusive)
£6,136 or under*	Worker entitled to join/become active in registered pension scheme		
Over £6,136 and not more than £10,000**	Worker (or 'Jobholder ') entitled to opt in to auto-enrolment scheme, but not entitled to be automatically enrolled		
Over £10,000	Jobholder entitled to opt in but not entitled to be automatically enrolled	Jobholder eligible for automatic enrolment	Jobholder entitled to opt in but not entitled to be automatically enrolled

\* Although these workers are entitled to be enrolled into a registered scheme you are not obliged to pay employer contributions on their behalf.

\*\* You must inform these employees of their entitlement to join a qualifying scheme if they have qualifying earnings and if they choose to do so, you'll be required to pay contributions for them at the minimum level.

### **What about temporary, fixed-term, agency and foreign workers?**

These individuals are still classed as workers where there's a contract (express or implied) with the employer to do work for them, so long as it is not part of a business relationship.

In the case of agency workers, the party responsible for paying them is responsible for paying their contributions, be it the agency who supplies them, the employer to whom the agency worker is supplied or a third party.

### **What about company directors?**

A company director isn't a worker unless they're employed by the company under a contract of employment, and at least one other person is employed. In other words, one-person companies are not included in the legislation.

### **How are contributions collected?**

You must deduct the employee's contributions from their pay and you no longer need explicit authorisation from them to do so. The deductions must be made from the first pay date after the employee's auto-enrolment date and then both employee and employer contributions must be paid to the scheme/provider per the contribution schedule which the scheme/provider will issue.

### **Can salary sacrifice be used as part of the auto-enrolment?**

Yes, currently salary sacrifice can be used as part of the minimum employer contribution, however this may be subject to change in the future.

### **What is opting out?**

An employee who is enrolled (whether this is through automatic enrolment, automatic re-enrolment or exercising the right to opt in) has the right to opt out within the opt-out period. In this event, the employee is treated as if the enrolment that had just taken place hadn't happened and any contributions they may have made during the opt-out period are refunded to them.

### **If an employee opts out, do I still have to pay the contribution?**

No. If an employee chooses to opt out of the pension scheme, then you don't have to pay a contribution on their behalf.

### **What do I have to do if people choose to opt out?**

You must notify the scheme that an employee wishes to opt out and you will need to stop deducting pension contributions from the employee's salary. You must refund their contributions and you don't have to make any further contributions on their behalf. However, the employee will be auto re-enrolled again every three years to give them an opportunity to rejoin the scheme at a later date.

### **How should an employee tell us they want to opt out?**

The employee has one month after they've been automatically enrolled during which they may choose to opt out but before they can do so, they must be given certain information about the scheme they've been enrolled into. This is to make sure they fully understand the effect and benefits of automatic enrolment before deciding to leave the scheme. If the employee chooses to opt out within the opt-out period, the employer must refund them any contributions made.

### **What is automatic re-enrolment?**

If an eligible employee opted out at the last enrolment date or has chosen to stop making contributions or otherwise stopped being an active member of the scheme, or any other scheme, you have a duty to automatically re-enrol them every three years (unless the date they opted out is within the previous 12 months of the re-enrolment date).

### **I'm registered abroad – what does that mean for me?**

Cross-border schemes are complex and you should take advice about how the law applies to you.

### **Are charges the same for private pension schemes and the National Employment Savings Trust (NEST)?**

A Private Pension scheme can be arranged with similar overall charges to the employee but with the added benefits of:

- Advice to members at the outset
- Ongoing support and advice to members and employer
- More flexibility and choice regarding contribution levels and investment choice

NEST on the other hand charges 1.8% on each contribution and a 0.3% annual management charge on the individual's entire pension pot each year. There will be no advice provided to members and the options will therefore be restricted.

### **How does the Pensions Regulator know if I have a qualifying scheme in place?**

You must register online with the Pensions Regulator and inform them of your arrangements for complying with your employer duties no later than 4 months after your staging date. You must then re-register approximately every 3 years at the time of your re-enrolment date.

### **How are employers informed of their new responsibilities?**

The Pensions Regulator will make sure that you're aware of your duties and how to comply with them.

### **What happens if I fail to carry out my responsibilities?**

The Pensions Regulator will monitor employers to make sure they comply with the legislation and measures can be taken against employers or third parties where there has been a breach. These include the issue of a compliance notice or unpaid contributions notice, which, if not complied with, may be followed by the issue of a fixed or escalating penalty notice.

### **What is inducement?**

It is illegal for employers to encourage employees to opt out or give up active membership of the pension scheme – known as inducement – for example by offering them cash or any other benefit.

### **How will working individuals be affected?**

Working individuals, if they're eligible, will automatically be enrolled into a qualifying scheme, be it their employer's pension scheme or the National Employment Savings Trust (NEST).

The working individual doesn't need to do anything to become an active member of the scheme – their employer must make all the arrangements. If the individual doesn't opt out, a total of 8% of the employee's qualifying earnings must be contributed with at least 3% coming from the employer.

### **How will employees know about these new requirements?**

The Pensions Regulator is responsible for ensuring employees are informed about the new pension regulations and how this will affect them. The Department of Work & Pensions will provide employers with communications to help inform their employees but you can also get support and communications tools from your adviser and scheme provider. Also, as part of your duties under the legislation you must give your employees information on how automatic enrolment will affect them.

### **How are self-employed individuals affected?**

If you are self-employed you can still opt into the National Employment Savings Trust (NEST) if you wish but, by definition, you'll receive no employer contribution.

## **The Regulators**

### **What is the Department for Work and Pensions' role?**

The Department for Work and Pensions (DWP) is the government department responsible for the development of UK pension policy and the law governing UK pension schemes. The DWP sponsors a wide range of public bodies to achieve its objectives, including the Pensions Regulator.

### What is the Pensions Regulator's role?

The Pensions Regulator is the UK regulator of work-based pensions. The Pensions Act 2004 gives it three main statutory objectives:

- to protect the benefits of members of work-based pension schemes
- to promote good administration of work-based pension schemes, and
- to reduce the risk of situations arising that may lead to claims for compensation from the Pension Protection Fund

The Pensions Act 2008 gives the Pensions Regulator a new objective to maximise compliance with the new employer duties, as well as the safeguards to protect employees who want to save in a pension.