

2012 Update

Draft regulations outlining the automatic enrolment process have been issued for consultation.

Summary

Under the Pensions Act 2008 (the "2008 Act") all employers will be required to:-

- automatically enrol eligible jobholders (not just employees) into either the national Personal Accounts scheme or an alternative workplace pension scheme which meets certain quality criteria, and
- pay an employer pension contribution of at least 3% of qualifying earnings to a defined contribution arrangement, or provide minimum defined benefits.

We outlined the new regime in our March 2009 update "Compulsory Workplace Pensions". A number of draft regulations have since been issued for consultation, notably regulations outlining the automatic enrolment process. More are expected in the autumn.

Until these consultations are complete and the full legal framework is finalised, it is difficult for employers to make firm plans in relation to their own pension arrangements from 2012. However, the draft regulations do throw up a number of issues for employers to begin to consider in preparation for the new regime. Given the potential cost implications of 2012, the more time employers have to consider their options the better.

Automatic Enrolment

When?

The draft **Pensions (Automatic Enrolment) Regulations 2009** set out the current thinking.

Employers will need to introduce a system to ensure automatic enrolment from the date on which the jobholder becomes eligible, either from when the new regime comes into force (for eligible existing employees) or from day one of employment (for eligible

new recruits), or upon reaching age 22 or having qualifying earnings (i.e. earnings between £5,035 and £33,540 per annum (to be re-valued annually)), whichever is the later.

Postponement of automatic enrolment, for example until after the successful completion of a probationary period, will only be permitted if:

- automatic enrolment is postponed for no longer than 90 calendar days, and
- the pension scheme is either a defined benefit scheme, or a defined contribution or personal pension plan to which the employer pays at least 6% of qualifying earnings (from a total of 11% of qualifying earnings), or a hybrid scheme (conditions to be specified).

How?

A scheme joining window of 14 days is proposed, during which time employers will be required to give eligible jobholders specified information about the pension arrangement and the contribution requirements.

For employers with group personal pension plans or stakeholder schemes, a two stage joining process is proposed. First, a 7 day period for the employer to provide the jobholder with the information and contract terms, followed by a further 7 days for the jobholder to consider those terms before he or she is deemed to be bound by them.

Once he or she is deemed to have accepted the terms, the employer is required to deduct contributions from the jobholder's wages with effect from the automatic enrolment date (i.e. the date on which the jobholder became eligible for automatic enrolment).

Employers with occupational pension schemes will be able to achieve automatic enrolment more quickly through procedures agreed with the scheme's trustees.

Full briefing includes:

Summary

Automatic Enrolment

Opt Out

Forward Planning

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The articles in this briefing are not intended to be definitive statements of the law but instead provide general guidance.

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Opt out

Once the jobholder is a member of the pension arrangement, the jobholder will have 30 days in which to opt out of it. The jobholder will not be able to opt out simply by telling, emailing, or writing informally to the employer. If the jobholder does this, the employer will have 5 calendar days to inform the jobholder of the proper opt out process. The process requires the jobholder to obtain a formal opt out form from the pension scheme itself, which he/she must then submit to the employer, who must in turn submit the form to the scheme within 7 days.

If the jobholder opts out properly within the 30 day period, a full refund will be given. The employer will be required to refund contributions to the individual within a specified period, whether or not by that stage the employer has received a refund from the scheme. To assist small employers, schemes will be required to refund contributions within 21 days of receiving the opt out notice.

There is also the question of whether refunds will be permitted from stakeholder pensions and group personal pension plans in such circumstances. This is not currently the case, so the law would need to be altered to permit this. Occupational pension schemes can already provide such refunds and some employers are revisiting whether an occupational pension scheme might better suit their requirements from 2012.

Forward planning

Employers will need to consider:

- **to what extent their current arrangements (if any) meet the expected 2012 requirements.**

In terms of contributions, the minimum requirement will be 8% of qualifying earnings (3% employer, 4% jobholder and 1% tax relief), and the enhanced requirement will be 11% of qualifying earnings (6% employer, 4% jobholder and 1% tax relief). To complicate matters, most employers currently contribute to defined contribution pensions as a percentage of the individual's basic salary, whereas the 2008 Act requires contributions based on qualifying earnings, which encompass wages, overtime, commission, bonus and statutory payments etc, which fall between the lower

and upper qualifying earnings limits (see above). A reconciliation will therefore be necessary to determine whether a contribution based on a percentage of basic salary is sufficient to achieve either standard;

- **whether their current arrangements will remain affordable from 2012 given the additional take up likely to arise from automatic enrolment.**

Employers may wish to review the make up of their workforce (age, length of service, status etc) to try and determine with more accuracy the likely opt out rates for various categories of jobholders. Some consultancies offer computer modelling to assist with this;

- **whether cost saving measures such as salary sacrifice may help to mitigate the additional costs.**

- **whether their current arrangements will need to be changed in order to comply with the new regime.** Examples of potential changes include:

- requiring increased contributions (employer and/or member) to a defined contribution arrangement, where the total of employer and member contributions falls short of the required 8% of qualifying earnings;
- removing any basic non-contributory employer contribution (for example a basic 3% employer contribution which is not dependent on any further contribution by the member), unless this basic contribution comprises 8% of qualifying earnings, or the jobholder agrees to make up the shortfall. It is thought likely that retaining a basic contribution otherwise would comprise an incentive to low earners to opt out of the regime and thereby fall foul of the 2008 Act which prohibits employers from inducing jobholders to opt out;
- perhaps altering the maximum employer contribution payable (for example the maximum matching contribution to a defined contribution arrangement) to help offset the additional costs of automatic enrolment. In this regard, employers would need to check their contracts of

employment and current take up rates to assess the risks of altering existing arrangements. A minimum 60 days of consultation with affected employees would also be required as the law stands.

- **whether to offer new arrangements to new joiners and the employee relations and retention implications of such a step.**
- **how to manage the automatic enrolment of existing staff (if they are not already in a scheme which complies with the 2008 Act), new joiners and also those who become eligible upon reaching age 22 or receiving qualifying earnings.** Employers will need to consider whether to automatically enrol all existing staff en masse when the regime comes into force, or encourage staff to join sooner to alleviate the administrative burden. Employers with temporary and casual staff will need to identify the point when they are in receipt of qualifying earnings, which will trigger automatic enrolment. HR systems will also need to be updated to ensure that the relevant pensions information is provided and the automatic enrolment process is triggered for all eligible new joiners.

*This Law Bite is a general briefing and is not a substitute for legal advice. If you have any questions or would like advice on any matter mentioned, please contact **Claire Rankin**.*

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