



# STAY ON TRACK

A guide to auto enrolment  
and the employer duties

# INTRODUCTION

The government introduced auto enrolment to help more people save for their future. As a result, employers must automatically enrol some workers into a workplace pension plan and give other workers the option to join.

This presents a big challenge for employers and they're likely to look to you for help.

This guide summarises the employer duties and what they mean for employers and their workers.

All of the information included in this guide is based on our current understanding of the relevant legislation and regulations and may be subject to change.

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# AUTO ENROLMENT AND THE EMPLOYER DUTIES AT A GLANCE

## When is my auto enrolment start date?

When a new company is created, their employer duties begin on their 'automatic enrolment start date'. This is the date your first employee joins the company. This also sets the date for automatic re-enrolment.

## The effect on pension schemes

Most employers will have to set up and contribute to a pension scheme suitable for auto enrolment. Auto enrolment schemes must meet three sets of criteria.

## The effect on the workforce

Employers must assess their workforce to determine which types of worker they employ. Workers can be categorised as eligible jobholders, non-eligible jobholders or entitled workers.

## Employer duties

Employers will have different duties depending on the types of worker they employ. They'll need to automatically enrol some workers into an auto enrolment scheme and arrange membership of a pension scheme for others. They're also responsible for the ongoing maintenance of the scheme and have an obligation to keep certain records.

## The Pensions Regulator (TPR)

The employer duties are not optional. TPR will ensure that employers comply with their duties. Although TPR's approach will be to educate and encourage compliance, employers will face substantial fines or even imprisonment if they don't comply.



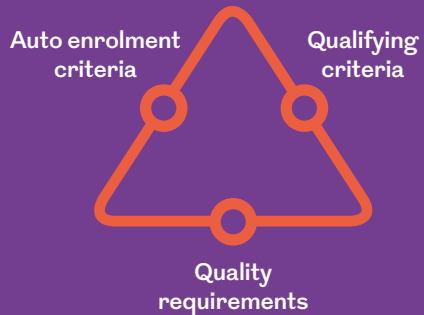
# THE EFFECT ON PENSION SCHEMES

**Most employers will have to set up and contribute to a pension scheme suitable for auto enrolment.**

Auto enrolment schemes must meet three sets of criteria:

- Auto enrolment criteria
- Qualifying criteria
- Quality requirements

Employers must complete a declaration of compliance to show that they have an auto enrolment scheme in place by at least five months after their automatic enrolment start date then re-declare compliance roughly every three years.



### Auto enrolment criteria

To meet the auto enrolment criteria, a UK scheme must:

- meet the qualifying criteria
- not prevent the employer from automatically enrolling, opting in or re-enrolling a worker and
- not require a worker to provide information or make a choice in order to remain a member of the scheme.

### Qualifying criteria

To meet the qualifying criteria, the scheme must:

- meet the quality requirements
- be an occupational, personal or stakeholder pension scheme and
- be tax registered.

### Quality requirements

The quality requirements for personal/ stakeholder pension schemes are:

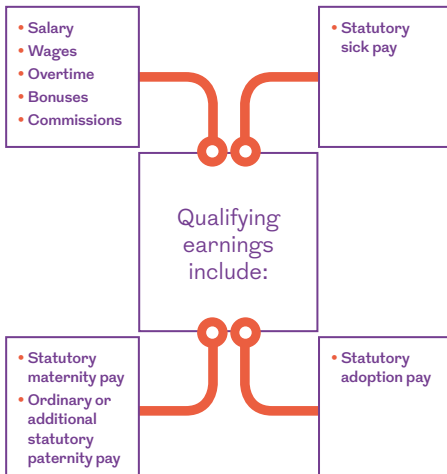
- there must be an agreement between the scheme provider and the employer that the employer must make contributions on behalf of the jobholder of at least 3% of qualifying earnings
- there must be an agreement between the scheme provider and the jobholder where the jobholder must make up any difference to 8% of qualifying earnings
- all the benefits payable must be 'money purchase' benefits and
- the employer must be able to deduct any jobholder contributions from pay.



## Qualifying earnings

The minimum contribution level to meet the contribution quality requirement is based on qualifying earnings and can be phased in until April 2019. This is shown in the table below.

Contribution levels required to meet the contribution quality requirement as a percentage of qualifying earnings			
Date	Total must be at least	Employer must contribute	Agreement must be in place for jobholder to make up at least any difference between the total and the employer amount.
Employer's automatic enrolment start date to 5 April 2018	2%	1%	
6 April 2018 to 5 April 2019	5%	2%	
6 April 2019 onwards	8%	3%	



Qualifying earnings are a band of earnings of more than £6,032 and £46,350 or less. These are the figures for 2018/19 and are expected to change each year.

## Certification

Employers can certify that their scheme meets the contribution quality requirement.

A certificate can cover all workers or groups of workers. For example, employers can use one certification basis for one group of workers and a different certification basis for other workers.

The contribution levels for certification can be phased in until 6 April 2019.

There are three certification options available, as shown in the table below.

<b>9% of pensionable salary</b>	<ul style="list-style-type: none"><li>• Employers can use a scheme definition of pensionable salary.</li><li>• Contributions must be calculated from the first pound of pensionable salary.</li><li>• Pensionable salary must be at least basic pay<sup>1</sup>.</li></ul>
<b>8% of pensionable salary, provided at least 85% of total payroll is pensionable</b>	<ul style="list-style-type: none"><li>• Employers can use a scheme definition of pensionable salary.</li><li>• Contributions must be calculated from the first pound of pensionable salary.</li><li>• Pensionable salary must be at least basic pay<sup>1</sup>.</li></ul>
<b>7% of all earnings<sup>2</sup></b>	<ul style="list-style-type: none"><li>• All earnings must be pensionable.</li><li>• Contributions must be calculated from the first pound of earnings.</li></ul>

<sup>1</sup> Basic pay must include earnings before deductions such as tax and National Insurance, holiday pay and some statutory benefits but doesn't have to include variable pay such as bonuses, overtime and commission.

<sup>2</sup> Earnings must include everything that's included in the definition of qualifying earnings.

## Certification options

The tables below show the three certification options and how they can be phased in.

9% of pensionable salary			
Date	Total must be at least	Employer must contribute	Agreement must be in place for jobholder to make up at least any difference between the total and the employer amount.
Employer's automatic enrolment start date to 5 April 2018	3%	2%	
6 April 2018 to 5 April 2019	6%	3%	
6 April 2019 onwards	9%	4%	

8% of pensionable salary, provided at least 85% of total payroll is pensionable			
Date	Total must be at least	Employer must contribute	Agreement must be in place for jobholder to make up at least any difference between the total and the employer amount.
Employer's automatic enrolment start date to 5 April 2018	2%	1%	
6 April 2018 to 5 April 2019	5%	2%	
6 April 2019 onwards	8%	3%	

7% of all earnings <sup>3</sup>			
Date	Total must be at least	Employer must contribute	Agreement must be in place for jobholder to make up at least any difference between the total and the employer amount.
Employer's automatic enrolment start date to 5 April 2018	2%	1%	
6 April 2018 to 5 April 2019	5%	2%	
6 April 2019 onwards	7%	3%	

<sup>3</sup> Earnings must include everything that's included in the definition of qualifying earnings.

## Certifying in advance

Employers can certify for up to 18 months in advance.

They must re-certify at least every 18 months, or sooner if there is a 'significant change' such as:

- changes to the scheme contribution level or
- company takeovers/mergers.



# THE EFFECT ON THE WORKFORCE

Employers must assess their workforce to determine whether they're treated as a 'worker'.

## Assessment of workers

The assessment of workers is first required:

- on the automatic enrolment start date
- whenever a new worker joins
- on a worker's 16th birthday
- on a worker's 22nd birthday

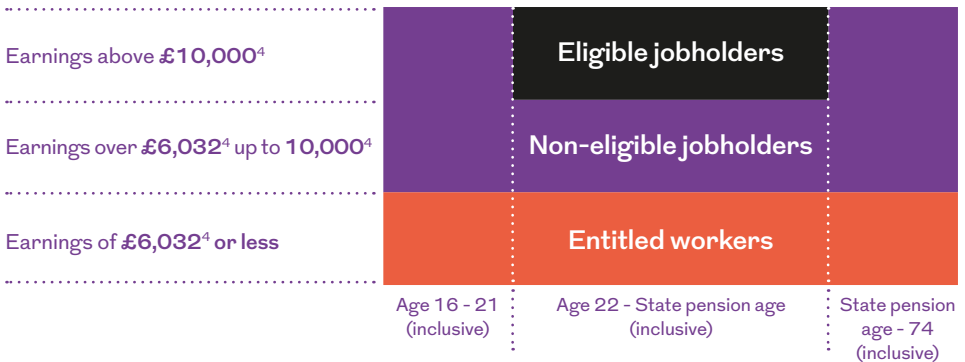
The assessment of workers is also required:

- on the date the employer receives an opt-in or joining notice and
- on a regular basis for non-eligible jobholders and entitled workers.

## The different types of worker

There are three different categories of worker, determined by their age and how much they earn:

- eligible jobholders
- non-eligible jobholders and
- entitled workers.



### Eligible jobholders are people who:

- are aged between 22 and state pension age
- work or ordinarily work in the UK and
- earn above £10,000.

### Non-eligible jobholders are people who:

- are aged at least 16 and under 75
  - work or ordinarily work in the UK and
  - earn over £6,032 up to £10,000.
- or**
- earn above £10,000 and are under 22 or
  - earn above £10,000 and are over state pension age.

### Entitled workers are people who:

- are aged at least 16 and under 75
- work or ordinarily work in the UK and
- earn £6,032 or less.

<sup>4</sup> These figures are for the 2018/19 tax year.

## Exclusions and exceptions from the employer duties

### People who are treated as workers

The following people are treated as workers but are not covered by the employer duties:

- those who do not work or ordinarily work in the UK
- those under age 16 and
- those aged 75 and over.

### People who are not treated as workers

The following people are not treated as workers so the employer duties don't apply to them:

- the self-employed and
- members of the armed forces.

### Workers who meet certain exceptions

If a worker meets any of the following conditions, the employer duties may vary and/or may not apply to them:

- the worker has opted out or is no longer an active member of a qualifying scheme
- the worker has given notice or been given notice of the end of their employment

- the employer has reasonable grounds to believe that the worker is protected from tax charges on their retirement savings under HMRC's primary, enhanced or fixed protection
- the worker has been paid a winding up lump sum whilst working for the employer, and
  - left employment after the payment has been made, and
  - subsequently been re-employed by the same employer
- the worker meets the definition of a 'qualifying person' for the purposes of separate UK legislation on occupational pension schemes and cross-border activities within the European Union
- the worker is a director of a company. If an employer chooses not to auto enrol a director, they must still be given the option to opt in.

The employer duties for the worker can vary depending on which exception applies to them. In some circumstances, employers are given the choice whether to comply with a duty or not, while in others, the duty can be removed altogether. It's also possible for a worker to meet the conditions for more than one exception at the same time.

## **Postponement**

Employers can use postponement to defer the assessment of workers and their employer duties. The postponement period can't be more than three months.

The end of the postponement period is known as the deferral date and employers must assess workers on this date.

### **What the employer must do if postponement is used**

Employers who use postponement must provide workers with a postponement notice. This must be issued within six weeks and a day of:

- the automatic enrolment start date
- the worker's first day of employment
- the day that a worker becomes an eligible jobholder (for example, the day a worker reaches age 22).

# EMPLOYER DUTIES

**Employers will have different duties depending on the types of worker they employ.**

The tables below summarise the employer duties for eligible and non-eligible jobholders.

## Eligible jobholders

- Provide certain information to the pension scheme and eligible jobholder.
- Automatically enrol them into an auto enrolment scheme.
- Deduct contributions from their salary and make contributions on their behalf.
- Process any opt-out notices and refund any contributions paid.
- Roughly every three years re-enrol those who have previously opted out, stopped making contributions or ceased membership more than 12 months before each re-enrolment date.
- Keep records of the auto enrolment and opting out processes and provide them to TPR if requested.
- If the eligible jobholder is already in a qualifying pension scheme, the employer must provide certain information within two months.

## Non-eligible jobholders

- Provide certain information to the non-eligible jobholder, including their right to opt in to an auto enrolment scheme.
- Arrange pension scheme membership.
- Deduct contributions from their salary and make contributions on their behalf.
- Process any opt-out notices and refund any contributions paid.
- Continue to assess the non-eligible jobholder in case they change category depending on age and earnings.
- Keep records of the enrolment, opting in and opting out processes and provide them to TPR if requested.
- If the non-eligible jobholder is already in a qualifying pension scheme, the employer must provide certain information within two months.

The table below summarises the employer duties for entitled workers.

### Entitled workers

- Provide certain information about their right to join a pension scheme.
- Arrange pension scheme membership. The scheme doesn't have to be an auto enrolment scheme.
- Deduct contributions from their salary and pay these into the scheme. Employers are not required to make contributions although they can choose to do so.
- Continue to assess the entitled worker in case they change category depending on age and earnings.
- Keep records of the joining process and provide them to TPR if requested.
- If the entitled worker is already in a pension scheme run by the employer, the employer doesn't have to provide them with any information.

### Opting out

Workers who are enrolled into an auto enrolment scheme have the right to opt out. They have one month from their auto enrolment date or enrolment date to opt out.

They must contact the pension provider for the opt-out notice and return the completed notice to the employer.

Once the employer receives a valid opt-out notice, they must:

- notify the pension provider of the opt out
- stop deducting contributions from the worker's salary and
- refund any contributions that have already been taken.

If a worker decides to leave the scheme after the opt-out period, they normally won't receive a refund of contributions. Instead, they'll have the option to leave their retirement savings invested or transfer them elsewhere.

# THE PENSIONS REGULATOR (TPR)

TPR will provide guidance and information about the employer duties.

## Imposing penalties

TPR will impose penalties on employers who fail to comply with their employer duties, as shown in the table below.

<b>Compliance/unpaid contributions notice</b>	<ul style="list-style-type: none"> <li>• Employers are given specific timescale to put things right.</li> <li>• They may also need to make backdated contributions with interest added.</li> </ul>	
<b>Penalty notices</b>	<p><b>Fixed penalty notice – £400</b></p> <ul style="list-style-type: none"> <li>• Employers need to correct breach identified.</li> <li>• They'll be given at least four weeks from the date of the fixed penalty notice to put things right.</li> </ul> <p><b>Escalating penalty notice</b></p> <ul style="list-style-type: none"> <li>• Employers could face daily escalating penalties in addition to any fixed penalty if they fail to comply.</li> </ul>	
	<p><b>Number of people<sup>5</sup></b></p> <p>1-4</p> <p>5-49</p> <p>50-249</p> <p>250-499</p> <p>500 or more</p>	<p><b>Daily rate</b></p> <p>£50</p> <p>£500</p> <p>£2,500</p> <p>£5,000</p> <p>£10,000</p>

<sup>5</sup> The daily rate is generally determined by the number of people in the employer's PAYE scheme or the number of people affected by unpaid contributions.

## Other penalties

TPR can impose three other types of penalties. These are shown in the table below.

<b>Wilful failure to comply</b>	Employers who wilfully fail to comply with their employer duties face fines and/or up to two years' imprisonment.										
<b>Inducement</b>	Employers who induce workers not to join or to opt out of a pension scheme may have fixed and/or escalating penalties imposed.										
<b>Prohibited recruitment conduct</b>	<p>Employers are not allowed to make any statement or ask any question during the recruitment process which indicates (either explicitly or implicitly) that the worker may not join or may opt out of a pension scheme. Separate penalties apply to employers using prohibited recruitment conduct.</p> <table><thead><tr><th><b>Number of people<sup>6</sup></b></th><th><b>Fixed penalty</b></th></tr></thead><tbody><tr><td>1-4</td><td>£1,000</td></tr><tr><td>5-49</td><td>£1,500</td></tr><tr><td>50-249</td><td>£2,500</td></tr><tr><td>250 or more</td><td>£5,000</td></tr></tbody></table>	<b>Number of people<sup>6</sup></b>	<b>Fixed penalty</b>	1-4	£1,000	5-49	£1,500	50-249	£2,500	250 or more	£5,000
<b>Number of people<sup>6</sup></b>	<b>Fixed penalty</b>										
1-4	£1,000										
5-49	£1,500										
50-249	£2,500										
250 or more	£5,000										

<sup>6</sup> This is generally the number of people affected by the breach identified.

## Appealing against a penalty

Employers have the right to appeal against any penalties imposed by TPR. They can do this by writing to TPR.



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