

# Automatic Enrolment & NEST

The measures introduced in the Pensions Act 2008 and the Pensions Act 2011 radically reform workplace pension provision, starting from October 2012. The three key components of these reforms are:

- A new legal requirement for employers to automatically enrol their eligible jobholders into a qualifying pension scheme AND to make minimum pension contributions for them.
- A new national workplace pension scheme called NEST (the National Employment Savings Trust). NEST will be a qualifying pension scheme (as will be suitably designed private pension schemes) and will be open to any employer who wants to use it, either for some or of all of their employees.
- A compliance regime enforced by The Pensions Regulator.

In this Briefing Paper we state the current key facts about automatic enrolment, eligibility, minimum contributions, the Certification of pension schemes, Compliance and NEST.

## Employer Duties

Employers must:

1. Automatically enrol all eligible jobholders into a qualifying pension scheme

An eligible jobholder is a worker who is:

- aged between 22 and state pension age;
- working, or ordinarily working, in the UK; and
- has qualifying earnings payable by the employer in the relevant pay reference period that are above the earnings trigger for automatic enrolment (£7,475 pa in 2011/12 earnings terms)

**NB:** Automatic enrolment does not apply if the jobholder is an existing active member of a qualifying scheme with the employer.

2. Pay pension contributions

Minimum contribution levels will be phased in to help employers and individuals become accustomed to the pension costs, as shown in the table below:

	Minimum total contribution*	Minimum contribution* from Employer	Gross contribution* from employee (if Employer only pays minimum)
1 October 2012 to 30 Sept 2016	2%	1%	1% (0.8% net**)
1 Oct 2016 to 30 Sept 2017	5%	2%	3% (2.4% net**)
1 Oct 2017 onwards	8%	3%	5% (4% net**)

\* contributions are calculated on 'qualifying earnings' (see below)

\*\* allowing for basic rate tax relief, on current rates.

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Qualifying earnings are a band of earnings between the minimum threshold of £5,715 and an upper limit of £38,185 (in 2010/11 terms). It should be noted that all pay such as commission, bonus, overtime, shift allowance, Statutory Maternity Pay etc are included in qualifying earnings.

**Please note:** The Pensions Regulator is due to issue revised guidance on the effective dates for phased minimum contributions in early 2012.

### 3. Certify pension schemes (where applicable)

- Many employers already operate, or plan to implement, good quality pension schemes which they will want to use to discharge their legal obligations for some or all of their eligible jobholders. However, most schemes calculate contributions on pay from the first pound (£1) and do not have a contributions threshold, therefore making it difficult for employers to readily check that the scheme meets the minimum contribution requirements.
- Therefore, to assist those employers who choose not to use the definition of qualifying earnings when calculating scheme contributions, it is proposed that they should be able to certify that their scheme (or a membership category within a scheme) meets the minimum contribution requirements if it satisfies the contribution 'test' in one or more of the following tiers\* in respect of the relevant jobholders:
  - o **Tier 1** – at least a 9% contribution of the jobholder's pensionable earnings (inclusive of a 4% employer contribution);
  - o **Tier 2** – at least an 8% contribution of the jobholder's pensionable earnings (inclusive of a 3% employer contribution) provided that the total pensionable earnings of all relevant jobholders to whom this tier applies in aggregate constitutes at least 85% of their total earnings; and / or
  - o **Tier 3** – at least a 7% contribution of the jobholder's total earnings (inclusive of a 3% employer contribution). That is, all earnings must be pensionable.
- "Pensionable earnings" must be at least basic pay, from pound one (£1). Basic pay excludes variable items of pay such as bonuses, commission and overtime.
- Different tiers may apply for different groups of jobholders.
- If the scheme (or a membership category) does not satisfy any of the contribution tests then the employer would need to improve the contributions if they still wish to use Certification to comply with their automatic enrolment and related duties.
- If a scheme does not use the Certification process OR provide for minimum contributions based on qualifying earnings, it will be necessary for the employer to carry out individual checking of members' contributions to ensure that they always meet the minimum amounts required by law.
- Employers offering relevant defined contribution schemes will be able to gradually phase in their certified contributions over a transitional period, if they wish. Please refer to the DWP website or EFG Independent Financial Advisers Limited for details of the minimum contribution rates applicable to each tier.
- Whilst the employer is responsible for certifying a scheme, the actual calculations can be delegated to another party, such as the payroll department / provider or accountant. The employer or someone authorised by the employer must sign the certificate. A certificate can be in force for a maximum period of 12 months.
- The employer does not have to send a copy of any signed certificate to The Pensions Regulator but

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The Pensions Regulator may ask to see a certificate at any time.

- If a scheme calculates the pension contributions on qualifying earnings then Certification does not apply.

'Source: 'Guidance on certifying money purchase pension schemes and the money purchase element of certain hybrid pension schemes' - July 2011 - Department for Work and Pensions

## Automatic enrolment – key rules

- All employers, regardless of size are to be included in automatic enrolment. The timescales for employers to be staged in to the new requirements are outlined later in this Briefing Paper.
- An employer may designate more than one qualifying pension scheme.
- Qualifying schemes used for automatic enrolment must have a suitable default investment option in place.
- Employers must register with The Pensions Regulator to show that they have a qualifying scheme(s) in place within four months of their staging date, then re-register every three years. Certain information must be provided to The Pensions Regulator as part of the registration process, including details of the scheme(s) being used to comply with the employer duties. Employers will be able to register online and by telephone.
- The employer must arrange for the eligible jobholder to be given enrolment information and made an active member of the scheme within a 1 month 'joining window' starting from their automatic enrolment date (or postponed automatic enrolment date – see below).
- Regardless of at what point in the joining window active membership is achieved for the eligible jobholder, it must take effect from the automatic enrolment date. Contributions are due and must be calculated from the automatic enrolment date.
- The employer may choose to postpone automatic enrolment by operating a waiting period of up to 3 months before automatically enrolling an eligible jobholder. However, it is proposed that an employer will be required to provide information to the jobholder about their new automatic enrolment date (and the fact that they have a right to opt in to the pension scheme and receive pension contributions during the waiting period) no later than 1 week after the start date of the waiting period.
- 'Non-eligible jobholders' and 'entitled workers' (see below) must also be provided with prescribed information within certain timescales.
- Jobholders who are existing active members of a qualifying scheme must be provided with information about that scheme before the end of a period of two months beginning with the automatic enrolment date.
- Eligible jobholders may opt-out of pension membership but they cannot choose in advance of being automatically enrolled not to join. The jobholder has 1 month to opt out from the later of a) becoming an active member of the scheme and b) the date on which they received the enrolment information.
- If a jobholder opts out, the employer will not be permitted to reimburse the jobholder for the benefit being waived, since employers will be prohibited from incentivising jobholders to opt-out. However, special arrangements may apply to Flexible Benefits (Flex) schemes where the jobholder may request a non-pension option in lieu of all or part of the minimum pension contributions. The position of Flex schemes is still under discussion with The Pensions Regulator.

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- Employers will be required to process opt-outs and make refunds of contributions within prescribed timescales. Refunds must be made to jobholders even if the refund has not been received from the scheme / pension provider.
- It is reported that The Pensions Regulator has confirmed that if the employer receives a signed valid opt-out notice before the relevant payroll is run, then no deductions need to be made from pay, avoiding the need for a subsequent refund.
- When a jobholder first becomes an active scheme member as a result of automatic enrolment, the employer may delay paying over contributions deducted during the joining window and opt out period until the last day of the second month following the date of automatic enrolment. This extension of the normal '19th of the following month' rule for payment of such contributions is intended purely as a backstop and it remains the case that contributions should be paid over to the scheme promptly following deduction.
- Employers must not breach the 'prohibited recruitment conduct' measures, eg an employer cannot suggest that a job applicant's success could depend on whether or not they opt out of a pension scheme.
- Employers will be required to keep specific records about their workers and their pension scheme(s). Most of these records must be kept for 6 years; those that relate to opting out must be kept for 4 years. The records must be made available to The Pensions Regulator, if requested.
- On the 3rd anniversary of their staging date (see below) employers must automatically re-enrol eligible jobholders who have opted-out or left the scheme (but eligible jobholders who opted-out within the previous 12 months need not be re-enrolled). It is proposed to provide employers with greater flexibility so that re-enrolment date can be up to three months before or after the 3rd anniversary of the staging date or later re-enrolment date.
- Non-eligible jobholders (see Appendix) have a right to opt in to an automatic enrolment pension scheme, and pay the relevant contributions. The employer is also required to pay contributions.
- Entitled workers (see Appendix) do not need to be automatically enrolled. However, they do have a right to join a pension scheme. This can be a different scheme to the one their employer may be using for automatic enrolment. The employer will have to deduct contributions on behalf of the entitled worker and pay these into the relevant scheme. However, the employer does not have to pay into the scheme themselves, unless they choose to do so, or have chosen a scheme that requires an employer contribution.
- Defined Benefit Schemes (eg final salary schemes) are not required to operate automatic enrolment until the staging period for defined contribution schemes is finished.

## Effective dates of new employer duties (Staging dates)

- Employers will be allocated a staging date (ie the date when they must start to fulfil their new duties) in descending order of PAYE scheme size starting from October 2012. Only businesses with 120,000 or more employees will have to comply with the new requirements from the start date. Originally it was intended that staging would take place over a 4 year period, ending on 1 September 2016. However, on 28 November 2011 the Government announced changes to the way that the employer duties are being introduced. Employers with fewer than 50 persons in their largest PAYE scheme will now have staging dates starting from May 2015, a year later than previously planned.

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- Employers with 3000 or more persons in their PAYE scheme, ie those with likely staging dates between 1 October 2012 and 1 July 2013, will be unaffected and their staging date will be unchanged.
- The Pensions Regulator will update their guidance on staging and the phasing of minimum contributions as soon as the Government publishes the revised staging schedule, which is expected to be in early 2012.
- The Pensions Regulator will notify employers of their staging date. Large employers will be contacted 18 months before this date, with a reminder 6 months later. All other employers will be contacted 12 months before their staging date, reminding them of their duties.
- All employers have the option to bring forward their staging date. This may be advantageous for operational reasons, eg to avoid a particularly busy time of the trading year or perhaps to align the staging date with the start of the financial year.
- Employers with staging dates of October or November 2012 may elect to bring forward their staging date up to July 2012 at the earliest. Employers with staging dates of January 2013 or later may elect to bring forward their staging date up to October 2012 at the earliest. An employer wishing to bring forward their staging date must inform The Pensions Regulator of their intention to do so and be able to demonstrate that they are ready to comply with the requirements.

## Compliance with the new requirements

The Pensions Regulator will rigorously enforce compliance with the new requirements. It has the power to impose fixed and / or escalating penalties on non-compliant employers, and can institute criminal proceedings in the case of persistent or serious non-compliance.

## NEST

NEST is the Government's qualifying pension scheme to support the successful implementation of automatic enrolment. Particular points to note are:

- NEST is designed to be a low cost scheme to cater for jobholders on low to moderate incomes that do not have access to a private scheme operated by their employer. NEST will levy a charge of 0.3 per cent on members' funds under management, with an additional charge of 1.8% of contributions being levied until the set-up costs of the scheme have been met.
- There will be a limited choice of focused investment funds and a Default Fund for those who do not make a choice. Large numbers of jobholders are expected to go into the Default Fund, which will consist of 45 Retirement Date Funds.
- Transfers in / out of NEST are prohibited. The independent review recommended however that this ban should be lifted as part of the scheduled review of NEST in 2017.
- There is a ceiling on contributions to NEST of approximately £4,200 per year (in 2010/11 terms). Again, there is a recommendation that the limit should be removed in 2017.
- NEST will accept any contributions, be these on calculated on the qualifying earnings basis or on basic pay. If basic pay is used then the employer must certify the contributions by reference to the 3 tiers shown on page 2 of this Briefing Paper.

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## Appendix

### Definitions\*

#### Non-eligible jobholders

They are called this because they are not eligible for automatic enrolment but can choose to opt in to a pension scheme. These include workers who are either:

- aged at least 16 and under 75;
- working, or ordinarily working, in the UK; and
- have qualifying earnings payable by the employer in the relevant pay reference period that are above the lower earnings level for qualifying earnings (£5,715 in 2010/11 terms) but below the earnings trigger for automatic enrolment (£7,475 in 2011/12 earnings terms)

OR

- are aged at least 16 and under 22 or between state pension age and under 75;
- are working, or ordinarily working, in the UK; and
- have qualifying earnings payable by the employer in the relevant pay reference period that are above the earnings trigger for automatic enrolment

#### Entitled workers

They are called this because they are 'entitled' to join a pension scheme. These are workers who:

- are aged at least 16 and under 75;
- are working, or ordinarily working, in the UK; and
- have qualifying earnings payable by the employer in the relevant pay reference period that are below the lower earnings level for qualifying earnings

\*Source - 'Employer duties and defining the workforce - An introduction to the new employer duties'. The Pensions Regulator May 2011

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## Suggested Outline Action Checklist for HR Managers

- 1. Identify your staging date** for complying with automatic enrolment and associated duties:
  - Refer to The Pensions Regulator website for a list of staging dates.
  - If you operate more than 1 PAYE scheme and / or your company is part of a complex corporate group structure please refer to the detailed guidance available from The Pensions Regulator at <http://www.thepensionsregulator.gov.uk/detailed-guidance.aspx#s4222>.
- 2. Audit your workforce** to broadly establish numbers of eligible jobholders, non - eligible jobholders and entitled workers.
  - Review the contractual relationships you have with the people working for you to correctly identify those who are considered workers for the purpose of the new regulations.
- 3. Seek appropriate professional advice** – this could take place at any point during the planning process.
- 4. Determine the potential new / additional pension costs** arising as a result of automatic enrolment and voluntary opt-ins. Assumptions may be made as to likely numbers of opt-outs.
  - Brief colleagues in Finance
  - Consider appropriate ways of funding any additional costs.
- 5. Review any existing pension schemes** for potential suitability as an automatic enrolment qualifying pension scheme(s).
  - Consider and decide upon the company's strategic options with regard to the wider benefits' package, including the pension contribution structure for existing pension members and future new joiners.
  - Depending on your company's specific circumstances and requirements, you may wish to use private pension provision, NEST or both to fulfil your legal obligations
  - Consider the implications for any associated group insurance schemes.
- 6. Set a timetable / action plan to:**
  - Arrange for relevant personnel to be trained on the new requirements and agree document in-house procedures to ensure initial and ongoing compliance.
  - Implement / adapt payroll , HR etc systems and procedures to facilitate automatic enrolment and associated legislative requirements from your staging date.
  - Make any necessary changes to contracts of employment, staff handbooks etc.
  - Consider / implement communication with employees.

The above information is provided for general assistances purposes only, is not intended to be exhaustive and should not be relied upon as advice or guidance to apply in individual situations. Independent professional advice should be sought as necessary.

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## Notes:

1. This Briefing Paper is provided for general summary information purposes only and is not intended to be exhaustive. It should not be relied upon as advice in individual situations. The information is based on our understanding of the relevant legislation and draft regulations and is subject to alteration once final regulations are issued, or as a result of changes in legislation or practice. The information is also based on our understanding of the Pensions Act 2007, the Pensions Act 2008, the Pensions Act 2011 and the 'Making Automatic Enrolment Work – A review for the Department for Work and Pensions' and the 'Workplace Pension Reform – Completing the Legislative Framework for Automatic Enrolment' – Consultation on draft regulations – DWP – July 2011.
2. The Pensions Regulator has published detailed guidance on employers' duties: <http://www.thepensionsregulator.gov.uk/pensions-reform/detailed-guidance.aspx>

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