

Auto-enrolment: Easements

A. OVERVIEW

1. Regulations¹ making a number of "technical" changes to simplify the auto-enrolment requirements on employers take effect on 1st April, 2015.
2. The changes:
 - create exceptions to the employer duty in certain circumstances, including for those who have tax protected status for existing pension savings
 - introduce an alternative quality requirement for DB schemes, and
 - simplify the information requirements on employers.

B. EXCEPTIONS TO THE EMPLOYER DUTY

1. The new exceptions cover individuals
 - with tax protected status for existing pension savings,
 - who are leaving employment,
 - who cancel membership of a pension scheme before automatic enrolment, or
 - who are paid a winding-up lump sum under an agreement that prevents employees receiving further pension accrual.

2. **Individuals with tax protected status:** There will no longer be a duty to auto enrol employees who have HMRC-certificated tax protection. The exception covers all current forms of tax protection including those that allow future pension accrual.
3. Employers are still required to inform such workers about opting-in/joining. And employers will still have power to enrol all eligible workers regardless of whether they have tax protected status, if it is easier and more cost effective for them to do so.
4. The employer must have "reasonable grounds" to believe the employee has tax protected status. It is for the employee to make that fact known to the employer. HMRC guidance will be amended to make employees aware of the exceptions and the need to notify their employer of their tax status. The Pensions Regulator will also update its detailed guidance to reflect the new exception.

Comment: Schemes that have removed Slaughter and May tax protective provisions to deal with the requirement to auto-enrol all eligible jobholders, including those with tax protection, may now wish to reinstate those provisions.

5. **Jobholders leaving employment:** There will no longer be a duty to auto-enrol someone in a notice period or in respect of whom notice has been given at any time up to 6 weeks after the duty has arisen. The employer can choose
 - whether to enrol the employee, and
 - to stop the automatic enrolment process where notice is given after the duty has arisen, but before the arrangements are complete.

¹ The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015.

Note: The regulations apply equally to resignation, dismissal or retirement but will **not** apply to those on fixed term contracts.

6. During a notice period, the jobholder will not be able to opt in to a qualifying scheme or join a pension scheme. If notice is withdrawn, the automatic enrolment duty will effectively be turned back on, and will apply from the date of the withdrawal.
7. **Cancellation of membership prior to auto-enrolment:** Where a person who has been contractually joined subsequently cancels membership, the employer will have no further automatic enrolment obligation until the next re-enrolment date. This exception will apply only to those who left a qualifying scheme within 12 months prior to the automatic enrolment, or re-enrolment, date.

C. PROPOSED CHANGES TO THE INFORMATION REQUIREMENTS

1. Currently there are 5 different pieces of information that an employer must give to different categories of employee about automatic enrolment.
2. From 1st April, 2015 the regulations are amended so that the same piece of information may be sent to all workers and jobholders at the same time as automatic enrolment duties arise for an employer, in most cases removing the need for the employer to assess his employees on a continuous basis. But individuals who are not pension scheme members will still need to be assessed in each pay reference period to check whether they have become eligible for automatic enrolment.
3. The information to be given to employees where employers decide to postpone automatic enrolment is also simplified.

4. Additionally, all information obligations in relation to employees who are already active members of qualifying schemes, and who will not therefore be automatically enrolled or re-enrolled, are removed.
5. The changes reduce communications to 3 pieces of information:
 - to **all** employees at the employer's staging date or individually when a new employee joins,
 - to **all** employees if the employer decides to postpone, and
 - to **each** employee when that employee is automatically enrolled, re-enrolled or enrolled following opting in or joining.
6. The DWP is working with the Pensions Regulator to develop standard form communications.
7. Employers will be able to continue with the existing information requirements if they wish (for example if this is embedded in their systems and change would cause additional costs).

D. ALTERNATIVE QUALITY REQUIREMENT

1. Under the alternative requirement (the "**costs of accruals**" test) a DB scheme will be a "qualifying scheme" if, broadly, total contributions equal to 10% of "qualifying earnings"² (or 9% if the scheme does not provide dependant pension benefits) are required. The intention is that this will deliver broad equivalence with the existing "test scheme standard", the test for non-contracted out DB schemes.
2. There are 4 variations on this basic test.

² "Qualifying earnings" are earnings between £5,772 and £41,865 (2014/2015 figures).

3. The standard cost of accruals test and the variations are set out in the following table:

	Test	Condition	Total Contributions	Pay Reference
1.	Standard test	N/A	10% (or 9% where no dependant benefits)	Qualifying earnings
2.	Variation 1	Pensionable earnings at least equal to basic pay	11%	Pensionable earnings
3.	Variation 2	Pensionable earnings at least equal to <ul style="list-style-type: none"> • basic pay, and • 85% of total earnings 	10%	Pensionable earnings
4.	Variation 3	All earnings are pensionable	9%	Total earnings
5.	Variation 4	Scheme offsets LEL or basic state pension	13%	Basic pay above LEL or basic state pension

4. "Qualifying earnings" include commission, bonuses and overtime. "Pensionable earnings" are earnings on which contributions are payable to the pension scheme.

5. Schemes can measure the costs of accrual over either (i) a period of 12 months or (ii) a period determined by reference to the most recent scheme valuation. There is no requirement in a multi-employer scheme to apply the test to each individual employer.

6. The alternative test will apply at a benefit level rather than a scheme level so the cost of providing benefits to active members of sections of schemes that provide different benefits will be tested separately. But the DWP has agreed to consider whether to allow schemes that satisfy the contracting-out reference scheme test as at 5th April, 2016 to test on a scheme-wide basis.

The DWP consultation response, published on 9th March, 2015, is on the [GOV.UK website](#).

Comment: These are welcome changes, although they come too late to help employers who have already reached their staging date and completed auto enrolment.

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