

Making sense of workplace pension reforms

Part 1

An overview of the new employer duties and how to assess your workforce

Step-by-step

guide series for employers



Jelf | Employee Benefits

Your business. Our focus.

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1.1 A brief background to workplace pension reforms



In July 2012, new workplace pensions legislation will start to take effect. This applies to all employers with UK workers – regardless of size or industry sector. The introduction of this legislation will be the most significant change in workplace pensions to occur in the UK.

For the first time ever, employers will be **legally required to automatically enrol their ‘eligible jobholders’** into a qualifying workplace pension scheme and make employer pension contributions on their behalf. Alongside these headline requirements will be a number of other compulsory employer duties.

Every employer has been allocated a ‘staging date’; the time by which they are obliged to comply with the new rules. The staging date is based on the number of employees on an employer’s PAYE scheme or, for new employers, the date their business was formed. For the UK’s largest businesses, the new rules apply in full from October 2012; the legislation will then be rolled out to all employers over the following five years. In order to **ensure all employers can offer an appropriate pension scheme**, regardless of their size or the profile of their workforce, the **National Employment Savings Trust (NEST)** has been created and introduced alongside the new rules.

This all started back in 2002 when the government appointed the Pensions Commission (headed by Lord Turner) to review the adequacy of private pension saving in the UK. The good news is, on average, we are all living longer, with the trend for increased life expectancy showing no sign of slowing down. The bad news is we are not saving anywhere near enough to pay for retirements that now often stretch to 30 years or more.

The Commission made various recommendations for future policy that, over subsequent years, have been developed, refined and clarified until **much of the detail has been finally agreed and written into law.**

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we are all living longer, with the trend
for increased life expectancy
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Jelf has created this step-by-step guide series to help employers understand what they are required to do and how to go about preparing for this new world in workplace pensions.



The new employer duties – an overview:

- Under workplace pension reforms, **an employer is defined as anyone who has a contract with a ‘worker’**. This can vary from the typical definition of an ‘employee’, so employers must be diligent to analyse all the different contracts they have with people who work for them very carefully (see section 2 – Identifying whether someone is a worker).

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- Workers are then split into a number of categories: ‘eligible jobholders’, ‘non-eligible jobholders’ and ‘entitled workers’ (see section 3 – The different categories of worker). It is vital for employers to understand the different categories of worker and their duties in respect of each category.

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- Employers then have a number of duties and safeguards to which they must adhere in relation to enrolling workers into a pension scheme (see section 4 – Employer duties and safeguards).
 - Employers must identify whether they have any ‘workers’ and, as highlighted above, this may not always be clear – **employers may need to consider a number of factors**.
 - An employer with **one or more ‘workers’** will need to register a pension scheme with The Pensions Regulator (TPR) **no later than four months after their staging date**.
 - The new employer duties include:

- **Automatic enrolment**

- Enrolling workers into a pension scheme without the need for any action by the worker

- **Opting in, joining and contractual enrolment**

- For workers that fall outside of the auto enrolment requirements, employers must still arrange membership of a pension scheme for anyone who chooses to opt in or join a scheme

- **Managing opt-outs**

- Employers must administer the opt-out process for workers who decide they do not want to be a member of a pension scheme into which they have been automatically enrolled

The new employer duties include:

- Auto enrolment
- Arranging membership
- Making contributions
- Managing opt-outs
- Providing information

1.1 A brief background to workplace pension reforms

– Providing information

Employers are required to provide specific information to the different categories of workers.

- Once a worker has been automatically enrolled, the employer has a duty to **make pension contributions on their behalf**, and **facilitate the payment of employee contributions to the scheme**.
- Employers are also required to keep accurate records about their workers and the pension scheme used for auto enrolment.
- An employer must keep track of the **age** and **earnings** of everyone who works for them at all times.



Employers must administer the **opt-out process** for **workers** who decide they **do not want to be a member** of a pension scheme into which they have been **automatically enrolled**.

1.2 Identifying whether someone is a worker

The first step for every employer is to understand their contractual relationships and to identify if they employ anyone classed as a worker.

As mentioned previously, 'worker' has a specific meaning within pension reforms legislation and is defined as any individual who:

- works under a contract of employment (an employee); or
- has a contract to perform work or services personally (i.e. they cannot send a substitute or sub-contract the work) and is not undertaking the work as part of their own business.

Anyone who has **entered into a contract of this type** (often referred to as a 'contract of service') **with an individual is an employer and therefore subject to the new duties.** The physical location of the employer is not taken into account when considering an individual's status as a worker – the employer may be based outside of the UK and still be required to comply with the new duties in relation to any UK workers.

As with general employment law, a contract does not have to be in writing and the terms of the contract may be implied rather than explicitly stated.

Where employees change employer under a Transfer of Undertakings (Protection of Employment) (TUPE) arrangement, the transferred-in workers should be treated as being under a new contract and the new employer should therefore assess each individual's status as at the date of transfer.

In the majority of cases, it will be clear whether an individual is a worker – for example, anyone on a PAYE scheme. However, there will be cases where it is not that simple; it is in these 'special' cases that an employer will have to carefully check the exact basis of their relationship with the individual. TPR highlights a number of specific examples where an individual's status under pension reforms may not be clear. These are as follows:

Personal service workers

If **an individual is paid a fee as a self-employed contractor**, they will **not** normally be classed as a worker. The distinction between a 'contract for services' and a 'contract of service' is regularly debated in employment law and employers will be used to making this assessment in relation to employment rights and for tax purposes.



In the majority of cases it will be clear whether an individual is a worker – for example, anyone on a PAYE scheme.

1.2 Identifying whether someone is a worker

However, it is important to stress that employers should not rely solely on an individual's tax status when making their assessment. An individual considered self-employed by HMRC may still be a 'worker' under the new employer duties if they are, in fact, working under a personal contract of services.

There is no single factor that is conclusive in determining whether a contract is 'for services' or 'of service'. TPR's guidance states that individuals are likely to be considered personal service workers (under a contract of service) if most, or all, of the following statements are true (this list is not exhaustive):

- The employer relies on the individual's expertise and expects them to perform the work themselves.
- There is an element of subordination between the employer and individual.
- The contractual provisions state that the contract is not a contract for services between the employer and the individual's own business.
- The contract provides for employee benefits such as holiday pay, sick pay, notice, fees, expenses etc.
- There is a mutual obligation set down in the contract to provide or do the work.
- The individual does not incur any financial risk in carrying out the work.

Agency workers

Generally speaking, agency workers are individuals who are supplied by an agent to work for a third party ('the principal') under an arrangement between the agent and principal, and who are **not undertaking the work as part of their own business**. A common example would be an individual employed by a recruitment agency who is taken on to perform temporary work for other businesses.

Even where there is **no employment contract between an agency worker and the agent or principal**, the agency worker is **treated as a worker for the purposes of the new duties**.



It is important to stress that employers **should not rely solely** on an individual's **tax status** when **assessing** whether someone is a **worker**.

1.2 Identifying whether someone is a worker

Whether it is the agent or principal that is the worker's employer for the purposes of this legislation depends on who is responsible for paying the worker. Whoever is responsible for paying the worker, will also be subject to the new employer duties in relation to that worker.

Seconded

Where an individual is seconded from one business to work for another, **they will usually remain a worker for the original business**. However, to ensure the correct party carries out the employer duties, employers should carefully check their contractual and remuneration arrangements for secondees.

Seafarers

Any individual employed or engaged in any capacity on board a ship or hovercraft is classed as a worker.

Offshore workers

Offshore workers should be **assessed in the same way as other individuals** and will be classed as a worker if they meet the definition outlined at the beginning of this section.

Exemptions

There are a few exemptions, where the new employer duties do not apply. These are as follows:

One person companies

Where an individual is a **director of a company** and that company **does not** have any other employees, that individual is **not** classed as a worker. However, if the company then takes on a second individual, and both the original director and new employee work under a contract of employment, then both individuals will be workers for the purposes of the employer duties and the company will have legal responsibilities in relation to both of them.

There are a few exemptions, where the new employer duties **do not apply**, including:

- One person companies
- Armed forces
- Office-holders
- Volunteers



1.2 Identifying whether someone is a worker

Armed forces

Any **serving** member of the naval, military or air forces of the Crown is **not** classified as a worker.

Office-holders

This includes non-executive directors, company secretaries, board members of statutory bodies and trustees. **An office-holder is not normally a worker.** However, it is very important to consider the specific circumstances of the individual. Sometimes an office-holder may also have a contract of service for part of their duties, in which case they will be a worker in respect of those duties.

Volunteers

Volunteers do not normally have a contract of service and are therefore not workers. However, should the volunteer's **position change** to one where they receive any payment or non-financial benefit in exchange for their services, **they will become workers.**

If you are in doubt about the contractual relationships you have in place, take legal advice.



Any questions?

Email us on
autoenrolment@jelfgroup.com

1.3 The different categories of worker



Under the new legislation, workers are split into three categories: 'eligible jobholders', 'non-eligible jobholders' and 'entitled workers'.

Earnings	Age (inclusive)		
	16-21	22-State Pension Age	State Pension Age-74
Under lower earnings threshold (£5,564)	Entitled worker		
Between £5,564 and £8,105	Non-eligible jobholder		
Over £8,105	Non-eligible jobholder	Eligible jobholder	Non-eligible jobholder

The category into which a worker falls is determined by their age and earnings (as shown in the table above), and the employer duties are different for each category.

Eligible jobholders

These are individuals who are eligible for automatic enrolment and are workers who:

- are aged between 22 and state pension age;
- are working or ordinarily work in the UK under their contract; and
- have qualifying earnings that are above the earnings trigger for auto enrolment (currently £8,105).

Non-eligible jobholders

These are individuals who are not eligible for automatic enrolment but can choose to opt in to a pension scheme. This includes workers who either:

- a) – are aged between 16 and 74;
- are working or ordinarily work in the UK under their contract; and
 - earn between £5,564 and £8,105.

OR

- b) – are aged between 16 and 21, or state pension age and 74;
- are working or ordinarily work in the UK under their contract; and
 - have earnings over £8,105.

Entitled workers

These individuals are entitled to join a pension scheme and are workers who:

- are aged between 16 and 74;
- are working or ordinarily work in the UK under their contract; and
- earn less than £5,564.

The **category** into which a worker falls is **determined** by **their age** and **earnings** and the **employer duties** are **different for each category**.

1.4 Employer duties and safeguards

Every employer with at least one worker must register with TPR within four months of their staging date, and adhere to a number of safeguards (covered in more detail in this section).

The employer duties for each worker vary depending on which category they fall into. Changes in age or earnings may see a worker move between the different categories, employers therefore need to put in place processes to:

- continually track age and earnings information;
- monitor any movements between categories; and
- ensure their employer duties are maintained correctly for all workers.

Eligible jobholder

An employer must automatically enrol an eligible jobholder into an automatic enrolment scheme and make employer contributions on their behalf. Part of this process also requires the employer to provide the eligible jobholder with information that:

- tells the eligible jobholder that they have been (or will be) auto enrolled and what this means for them;
- explains their right to opt out, and their right to opt back in; and
- provides information about the pension scheme into which the eligible jobholder has been automatically enrolled.

As with many of the other terms, 'opting out' has a specific meaning in the pension reforms. It is a legal provision that has the effect of undoing active membership, as if the worker had never been a member of the scheme on that occasion. This can only happen within a specific period of time known as the 'opt-out period'. [Part 7](#) of this guide series covers opting out in more detail.

Even where an individual opts out of the scheme, their employer continues to have responsibilities towards them. One of these is the **requirement to automatically re-enrol the opted-out eligible jobholder every three years.**



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1.4 Employer duties and safeguards



If an eligible jobholder is already a member of a qualifying scheme on their automatic enrolment date, the only action their employer needs to take is to provide them with information about the pension scheme of which they are a member. **Part 4** of this guide series covers the types of pension scheme that can be used as an employer's auto enrolment scheme.

Non-eligible jobholders

These workers do not need to be automatically enrolled. However, they do have **a right to opt in to an auto enrolment scheme if they choose to do so**, in which case the employer has a duty to make pension contributions on their behalf.

Employers must provide non-eligible jobholders with information about opting in to an automatic enrolment scheme and what this means to them. This information must be provided within one month of the worker becoming a non-eligible jobholder. Employers are exempt from this requirement if they have previously provided the individual with this information because, for example:

- the non-eligible jobholder has previously opted out of an automatic enrolment scheme with that employer; or
- the employer chose to use postponement (see **part 3** of this guide series for more detail) and included the information in the postponement notice the non-eligible jobholder received.

Employers must provide non-eligible jobholders with information about opting in to an auto enrolment scheme and **what this means to them**.

To join the scheme, non-eligible jobholders must give their employer an 'opt-in notice'. The employer must then follow the automatic enrolment process to enrol the non-eligible jobholder into the scheme.

Entitled workers

Entitled workers do not need to be automatically enrolled. However, they do have a right to join a pension scheme through their employer. In this instance, the employer can choose to use a different scheme to the one used for auto enrolment and has no duty to make employer pension contributions on behalf of the worker.

1.4 Employer duties and safeguards

Employers must provide entitled workers with information about joining a pension scheme and what this means for them. This information must be provided **within one month of the date on which they became an entitled worker**. As with non-eligible jobholders, employers are **exempt** from this requirement if they have **previously** provided the entitled worker with this information.

To join a pension scheme, entitled workers must give their employer a 'joining notice'. The employer must then arrange membership of a scheme for them, deduct the entitled worker's pension contributions from their earnings and pay these into the scheme. As mentioned above, there is no requirement for the employer to make pension contributions on behalf of entitled workers, although the employer may choose to do so.

Safeguards

To protect the rights of individuals there are a number of safeguards to which all employers must adhere. As with the employer duties, different safeguards apply to each category of worker. In summary, employers must ensure the following:

- they do not take any action or make any omission that causes an eligible jobholder to cease being an active member of a qualifying pension scheme;
- they do not take any action or make any omission that causes their scheme to cease being a qualifying scheme;
- they do not take any action for the sole or main purpose of inducing a jobholder to opt out of a qualifying scheme, or a worker to give up membership of a pension scheme;
- when recruiting, they do not ask any questions or make any statement that states or implies that a candidate's success will depend on whether they intend to opt out of the pension scheme; and
- they do not breach employment rights for individuals not to be unfairly dismissed or suffer detriment on the grounds of the new employer duties.

Part 8 of this guide series covers the safeguards in more detail.

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The Pensions Regulator (TPR) has produced a series of detailed guidance aimed at pensions professionals. The guidance is split into nine main parts, and covers every aspect of the new employer duties.

To help employers, Jelf has followed the same format and produced our own nine part guide series, to help you make sense of pension reforms. This summarises the guidance from TPR and highlights the key points you must be aware of.

In addition to this [Part 1: An overview of the employer duties and how to assess your workforce](#), this series covers:

Part 2: Getting ready

- the first steps in preparing for the new duties

Part 3: Assessing your workforce

- understanding how your workers fit into the different categories
- postponement – what it means and how it works
- the next steps once your assessment is complete

Part 4: Pension schemes

- what will count as a 'qualifying scheme' under the new rules

Part 5: Automatic enrolment

- how the auto-enrolment process will work and what you need to do

Part 6: Opting in, joining and contractual entitlement

- how to process pension scheme membership outside of auto enrolment

Part 7: Opting out

- how to process opt-outs from workers who want to leave a scheme

Part 8: Safeguarding individuals

- the new protections for individuals

Part 9: Keeping records

- the information you must keep by law under the new employer duties

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future sections of
**Jelf's step-by-step
guide series,**
email us on
autoenrolment@jelfgroup.com

If you have **any questions** about the information in this document, or on wider automatic enrolment or pensions issues, please contact us.

Email: autoenrolment@jelfgroup.com

Telephone: 0333 321 0370 (local rate*)

www.jelfgroup.com

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