

UPDATE ON PENSION PERSONAL ACCOUNTS - EMPLOYER DUTIES AND FINES

The 2008 Pensions Act is now in force which will have implications for all employers and their employees. The current Stakeholder legislation is being replaced in 2012 with the new National Pensions Savings Scheme (NPSS). All employers in the UK, whether they have one member of staff or 10,000, will need to take action to comply with their new responsibilities under this new pension reform.

Please note there could be some further amendments before the regulations are issued. Even then, the regulations will be in draft format, so further change is possible. However, these changes reflect the Government's current views so are likely to be taken forward largely in this format.

1. Staging the implementation of employer duties

As previously suggested the Government intends to stage the introduction of the employer responsibilities - the need to auto-enrol relevant employees into a qualifying pension scheme - over a period of time. This means there is less likelihood of the personal accounts administration running into serious problems than if they used a big bang approach. This staging period has now been significantly lengthened to 3 years (18 months was the previous suggestion). Large employers, defined as those employing more than 250 employees, will take on the responsibilities first, sometime between October 2012 and April 2013. Medium size employers (50-250 employees) will then need to ensure relevant employees are enrolled by October 2013. Finally, small employers need to fulfil their duties sometime between October 2013 and October 2015. Employers will be split into 25 or 30 tranches to ensure volumes are manageable - the exact details of how this will operate has yet to be confirmed.

2. Phasing the minimum contribution levels

Employers offering a defined contribution pension scheme will be able to phase in contributions over a period of time, if they wish to do so. The time-periods for this phasing have altered slightly. Employers will need to pay at least 1% between October 2012 and October 2015, with the overall contribution being at least 2%. From October 2015, the minimum will rise to 5% with the employer paying at least 2% and, from October 2016, increase to the full 8%, with the employer paying at least 3%. All of these figures are a percentage of a band of earnings (between £5,035 and £33,540 in 2006/07 earnings terms).

The staging and phasing processes work in exactly the same way whether an employer decides to use a good quality private pension scheme, the personal accounts scheme, or a combination of the two. Although an employer can, of course, choose to pay a higher contribution level from an earlier date.

3. Automatic enrolment processes from 2012

The Government conducted a consultation on the actual process which will have to be followed to auto-enrol staff, which closed on 3 June. Due to the quantity of feedback the Government received, this process is being revised.

An employer will need to give new employees basic information about the pension scheme, and enrol them into a qualifying scheme within 30 days. The individual will then have a further 30 day period to opt-out. Employers may be able to operate a 90 day waiting (or postponement) period before this process has to start, if total contributions are 11% of band earnings, with the employer paying at least 6%.

If the employee opts-out within the 30 day period, then they are treated as if they were never a member. This means all contributions deducted from pay will be refunded. Employers will also receive a refund of any contributions they have made. People will still have the ability to opt-out at a later date, but in those circumstances they will be entitled to pension benefits within the scheme rather than a refund.

This process gives employers more time to enrol staff than the original proposal. However, there are still a number of difficulties which we will continue to discuss with Government -

- Pension payments will be deducted from salary until the employee physically opts out. If an employee opts-out it is likely at least one pay date, sometimes two, will have passed when contributions were deducted from salary. Opting out shortly before a pay date may mean contributions are still deducted as the 'salary run' has already been processed.
- Refunding these payments will take time. Some employers may not refund until the next pay date (or later) meaning the employee has to live off lower earnings for those month(s).
- The contributions may have been passed onto the pension provider. If these are invested and fall in value, the individual has to receive a full refund of the contribution they made - so the market risk will likely need to be borne by providers (in contract-based schemes).
- Contributions may never be re-united with employees who leave employment quickly (for example, casual workers) as the employer may have no contact details.
- It will increase administration and cost for employers and providers.

The Government is considering amending the rules which require employers to pass contributions to the pension scheme within a certain timescale. This would allow the employer to 'hold' the contributions for a longer period in case the employee opts-out.

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EMPLOYER FINES

Fixed penalty notice

Gives the Pensions Regulator power to issue a fixed penalty notice for failing to comply with:

- a previously issued compliance notice
- a previously issued unpaid contribution notice
- a previously issued provision of information notice
- the requirements under any of the automatic enrolment Regulations.

The amount of the penalty will be determined by Regulations and must not exceed £50,000. The general idea as we understand it is that the amount of the fine will largely be determined by the size of the employer. Note that the draft auto-enrolment Regulations include various things which the employer must do (e.g. provide specific information, make refunds) within specific timescales so a breach of any of those requirements may result in a fine under this section.

Escalating penalty notice

Gives the Pensions Regulator the power to issue escalating penalty notices in the same circumstances as above, with the exception of the last bullet point (auto-enrolment/re enrolment).

The amount will increase at a daily rate to be prescribed and must not exceed £10,000 per day. Again, the amount may differ by size of employer.

Offences for failing to comply

Where an employer wilfully fails to comply with the auto-enrolment/re enrolment or jobholder right to opt-in requirements, it's a criminal offence. In this case the penalties are:

- on conviction on indictment (Crown Court/High Court), they can be imprisoned for up to 2 years and/or face an unlimited fine

- on summary conviction (Magistrates Court/Sheriff Court) they can be fined up to £5,000 (level 5, Statutory scale).

Penalty notice

Allows the Pensions Regulator to issue a penalty notice where an employer has failed to comply with 'prohibited recruitment conduct'. This basically means that employers cannot in any way, shape or form, expressly or implicitly, frame any question or statement to the effect employment is dependent on whether or not the prospective employee will opt-out of automatic enrolment. The amount will be determined by Regulations and cannot exceed £50,000. Again, larger employers are likely to face higher fines than smaller ones.

Inducements

Gives the Pensions Regulator the power to fine employers who 'induce' employees to opt-out of a qualifying scheme or 'induce' employees to opt-out during the opt-out period.

Requirement to keep records

Allows the Secretary Of State to make Regulations about record keeping in respect of auto-enrolment etc. requiring 'any person' to:

- keep prescribed records in prescribed forms
- preserve those records for a prescribed period, not exceeding 6 years
- provide the records to the Regulator on request.

Failure to comply results in penalties under section 10, Pensions Act 1995 – a fine up to £5,000 for individuals and £50,000 for corporate bodies.

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The Southampton & Fareham Chamber of Commerce in association with Radcliffe & Co will be holding a seminar on **24 November 2009** on the new Personal Accounts being brought in under the 2008 Pensions Act. Please see further details at www.soton-chamber.co.uk

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