

Auto-enrolment revisited



In a nutshell

- every three years, employers have to re-enrol eligible workers who have chosen to leave their auto-enrolment scheme
- the first such exercise has to be performed in a six month period around the third anniversary of the employer's staging date
- there have been some useful exceptions introduced since many employers conducted their initial auto-enrolment exercise.

Employers are obliged to carry out a re-enrolment exercise every three years. Daniel Gerring and Nick White, Travers Smith, detail what is required

Doesn't time pass quickly? It does not seem long ago at all that many employers "ticked the box" on auto-enrolment. But now, before we know it, re-enrolment rears its head...

The basic obligation is that once every three years, employers must re-enrol workers who have chosen to leave their auto-enrolment pension scheme. The worker must then opt out again if they still do not want to be a member.

This article outlines the requirements and some useful exceptions (for example, workers with lifetime allowance protections) that have been introduced since many employers conducted their initial auto-enrolment exercise.

Background

The auto-enrolment requirement was introduced from 1 October 2012, with the largest employers affected first. Much smaller employers are now subject to the requirement.

Once employers have automatically enrolled existing eligible workers, they have an ongoing duty to assess new workers and workers who were not initially required to be enrolled, but who now qualify (for example, because they previously had very low earnings which have now increased), and must comply with the applicable enrolment duties as and when they apply to these workers.

Re-enrolment sits on top of this ongoing duty and consists of an obligation to carry out

a "cyclical" automatic re-enrolment exercise every three years. This is carried out on a date selected by the employer that falls within a six month window period set out in the legislation. The first such period begins three months before the third anniversary of the employer's original *staging date* (see **Box**) and ends three months after the third anniversary.

Who to re-enrol?

The automatic re-enrolment requirement applies only in respect of an "eligible jobholder" (see below) who has:

- had an *auto-enrolment date* with his or her employer and who was then either automatically enrolled in, or already an active member of, a *qualifying scheme*
- opted out, or otherwise voluntarily ceased active membership, of a

qualifying scheme (unless this was in the 12 months before the employer's selected automatic re-enrolment date) and

- not rejoined the scheme or any other *qualifying scheme* of the employer.

In the same way as for auto-enrolment, an "eligible jobholder" is a worker who:

- works, or ordinarily works, in the UK
- has attained age 22, but not state pension age and
- has earnings in a relevant pay period above the equivalent of (currently) £10,000 per year.

Employers only need automatically re-enrol the workers described above. No action is needed for other workers, except to monitor whether those who are not eligible jobholders later become entitled to auto-enrolment or to an opt in right (for example, due to a pay rise or reaching age 22).

Auto-enrolment definitions

In this article:

Staging date means the date on which an employer first became subject to the auto-enrolment requirement and associated employer duties. An employer's staging date is fixed: it is not affected by whether or not the employer exercised the right to **postpone** the application of the auto-enrolment duties.

Auto-enrolment date means the date from which a worker was originally required to be auto-enrolled (if not then already in a **qualifying scheme**). Workers who have never had earnings above the trigger level in any pay period (currently equivalent to £10,000 per year) since the employer's staging date (or who only did so during a **postponement period**) will not have had an auto-enrolment date.

Qualifying scheme means a scheme, meeting certain defined contribution, defined benefit or hybrid quality criteria, which an employer uses to satisfy its auto-enrolment duties and/or its duties in respect of existing scheme members.

Postponement refers to the ability of an employer to delay assessing and enrolling a worker or workers by up to three months.

There are some recently introduced exceptions to the employer auto-enrolment and re-enrolment duties in respect of certain categories of worker. Employers have a discretion, rather than a duty, to enrol or re-enrol such workers. So the following categories of worker can be left out of the automatic re-enrolment process, if the employer wishes:

- **Directors** It is no longer necessary to enrol or re-enrol any company director.
- **LLP members** Salaried LLP members who are not employees for income tax purposes no longer have to be enrolled or re-enrolled.
- **Those with lifetime allowance tax protections** This category includes workers who the employer has reasonable grounds to believe benefit from primary protection, enhanced protection, fixed protection 2012, fixed protection 2014 or individual protection. (Some, though not all, of these protections are lost if the member has further accrual.) Fixed protection 2016 and individual protection 2016 are expected to be added to this list, but only after the current Finance Bill becomes law and not with retrospective effect. Until the law is changed, individuals with a 2016 protection therefore have to be re-enrolled.
- **Those who will shortly be leaving employment** This category includes workers who are in a notice period following resignation or dismissal or who have given notice of retirement. There remains no exception for workers who are nearing the end of a fixed term contract.
- **Those who have been paid a winding up lump sum** This rarely applicable category includes workers who have been paid a winding up lump sum within the previous 12 months while in the employer's employment and who later left employment but were subsequently re-employed by the same employer.

If an employer decides to re-enrol any person who is within one of these categories, then the legal obligations apply as if the employer had been under a duty to re-enrol that person.






Re-enrolled individuals must be given the same information as an individual being enrolled for the first time.

Daniel Gerring and Nick White

What is the procedure?

For those workers who have to be re-enrolled, the procedure is in many ways the same as for the original auto-enrolment exercise, but on a much smaller scale. For example:

- The re-enrolments must be processed within six weeks of the employer's selected automatic re-enrolment date, with membership effective from that date.
 - Re-enrolled workers have a one month statutory opt-out period.
- There are, however, some important differences:
- Rather than having an allocated *staging date*, the employer must choose an automatic re-enrolment date that is in the six month window period beginning three months before the third anniversary of its *staging date* (even if *postponement* was used to delay initial *auto-enrolment dates*).
 - All of the re-enrolments must take effect from that single date.
 - There is no option to *postpone* automatic re-enrolment (except in the sense of choosing a re-enrolment date late in the window period).
 - The employer does not have to use the same *qualifying scheme* that it used for auto-enrolment.

As for auto-enrolment, an employer may "contractually enrol" workers before its chosen automatic re-enrolment date. This removes the requirement to follow the statutory procedure for automatic re-enrolment.

An employer wishing to follow this route should take advice on whether workers' employment terms allow it.

Information requirements

Re-enrolled individuals must be given the same information about their re-enrolment as for an individual being auto-enrolled for the first time. This must be done within six weeks from the employer's selected automatic re-enrolment date.

There is no requirement to give any notice to workers who are not required to be re-enrolled. So, those workers who only have a right to opt in to a *qualifying scheme*, or a right to join an employer-nominated

scheme and have employee contributions deducted, do not have to be reminded of those rights.

Compliance

The Pensions Regulator is writing to employers to remind them of their re-enrolment duties seven months before the third anniversary of their original *staging date*. Employers should not, of course, rely upon receiving such a letter before acting.

As for initial auto-enrolment, employers must declare to the Regulator that they have complied with their re-enrolment duties. This must be done within five months after the third anniversary of the employer's *staging date*.

Subsequent re-enrolments

However, that is not all. Automatic re-enrolment is a periodic requirement, so there are also dates for future years' diaries.

After the first re-enrolment exercise, subsequent triennial automatic re-enrolment dates are determined by reference to the previous automatic re-enrolment date chosen by the employer (rather than the relevant triennial anniversary of the employer's staging date). The subsequent six month window periods for the employer to choose an automatic re-enrolment date therefore begin two years and nine months after the employer's previously selected automatic re-enrolment date.

Compliance must be declared to the Pensions Regulator within five months after the third anniversary of the employer's previous automatic re-enrolment date.

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