January 2018

Automatic enrolment: minimum DC contribution rates

On 6 April 2018, the minimum contributions required to be paid to a DC pension scheme used for automatic enrolment (including contractual enrolment) will increase.

This applies to all employers but it is most likely to require action by employers who:

- pay only the minimum required contributions;
- have a contribution matching structure that starts at a low level; or
- have an age-related contribution structure that starts at a low level.

There will be a further increase to the minimum required contributions from 6 April 2019. The increase dates were originally 1 October 2017 and 1 October 2018 but the government put them back by a little over six months in October 2016.

What are the minimum required contribution rates?

Minimum contribution rates

Except where an alternative measure of earnings is used (see below), contributions to a DC pension scheme must be paid of at least the percentages of "qualifying earnings" indicated in the table below. "Qualifying earnings" are the employee's gross earnings (including, for example, commission, bonuses, overtime and statutory payments) between £5,876 and £45,000 pa (2017/18 figures).

The table shows (1) the minimum contribution, as a percentage of "qualifying earnings", that an employer must make and (2) the minimum total contribution that the scheme must receive. Employees' own contributions and any tax relief on them that is claimed by the scheme count towards that total. Employer contributions also count towards the total and the total contribution obligation can be satisfied entirely by the employer.

		From enrolment until 5 April 2018	From 6 April 2018 to 5 April 2019	From 6 April 2019
1.	Minimum employer contribution	1%	2%	3%
2.	Total minimum contributions from the employer and the employee (including any tax relief)*	2%	5%	8%

* If basic rate tax relief at source is given (mainly for personal pension contributions) then the 20% tax relief claimed by the scheme administrator counts towards this contribution.

Alternative scheme quality standards

Recognising that many schemes only treat employees' basic pay as pensionable but do not limit pensionable pay to earnings above and below specified figures, employers with schemes under which at least all basic pay is pensionable may, as an alternative, annually certify compliance if their DC contribution arrangements meet one (or more) of the following alternative quality standards:

- at least 9% of the employee's pensionable earnings (which must include all **basic pay**) is contributed (including at least a 4% employer contribution);
- at least 8% of the employee's pensionable earnings (as defined by the scheme rules but which must include all basic pay but not necessarily bonuses, overtime pay and similar payments) is contributed (including at least a 3% employer contribution) provided that the total pensionable earnings of all relevant employees to whom this contribution rate applies **in aggregate constitute at least 85% of those employees' total earnings**; and/or
- at least 7% of the employee's **total earnings** is contributed (including at least a 3% employer contribution).

These percentage rates apply from 6 April 2019. Before then, the minimum required contribution rates are being phased in, in a similar way to the contributions based on qualifying earnings, as follows:

	All basic pay is pensionable	From enrolment until 5 April 2018	From 6 April 2018 to 5 April 2019	From 6 April 2019
1.	Minimum employer contribution	2%	3%	4%
2.	Total minimum contributions from the employer and the employee (including any tax relief)	3%	6%	9%

	Pensionable earnings are in aggregate at least 85% of total pay	From enrolment until 5 April 2018	From 6 April 2018 to 5 April 2019	From 6 April 2019
1.	Minimum employer contribution	1%	2%	3%
2.	Total minimum contributions from the employer and the employee (including any tax relief)	2%	5%	8%

	All earnings are pensionable	From enrolment until 5 April 2018	From 6 April 2018 to 5 April 2019	From 6 April 2019
1.	Minimum employer contribution	1%	2%	3%
2.	Total minimum contributions from the employer and the employee (including any tax relief)	2%	5%	7%

Action required

Employers who have not already done so should check their DC pension contribution rates against the minimum rates that are required to be paid from 6 April 2018 and 6 April 2019.

Many employers will take the step-ups in their stride because their DC contribution rates are already above the minimum required rates.

Some employers will need to increase their contributions (and/or may wish to increase employees' contributions) from 6 April 2018 (and perhaps again from 6 April 2019) in order to meet the new requirements. This will be the case for employers who currently pay only the minimum required contributions. It will also be the case for employers who match employee contributions at a level that can be below the new minimum requirements, or, where an age-related contribution structure starts below the new minimum level.

An employer wishing to increase employee contribution rates should take legal advice on the position under their employment contracts.

Consultation

The increases may give employers some additional steps to consider, due to the pension consultation requirements of the Pensions Act 2004. Note that these do not apply to employers with fewer than 50 employees (meaning total employees, averaged over the last 12 months, not just affected employees).

Consultation for 60 days is required before (among other things) making an increase of an employee contribution rate. There is an exception where the change is being made "for the purposes of complying with a statutory provision". Any consultation must be conducted "in a spirit of co-operation, taking into account the interests of both sides".

In many cases, it will be clear that the change is being made for the purpose of complying with the statutory requirement for contributions to be paid at a minimum level. In some cases, however, it will be less clear. For example, the employer may wish to increase employee contribution rates to above the statutory minimum or from a different date. In this context, the Pensions Regulator's guidance ('Detailed guidance for employers - 4') says that consultation will be required where "the proposed increase does not explicitly match the statutory increases… . For example, the increase in contribution rates may be different, or the date the increase takes effect may be different …". Whilst the Pensions Regulator cannot definitively determine what the legislation means (and there are alternative arguments), it can initiate proceedings to fine employers who breach the consultation requirements.

The statute says that failure to consult in accordance with the regulations does not invalidate a change. Employees may, however, be able to claim damages for breach of the employer's duty of trust and confidence in some circumstances where there has been a failure to consult or if a consultation was not genuine.

Many employers may therefore in practice wish to consult on any employee contribution increases in order to reduce any potential risk of regulatory action and the likelihood of employee complaints.

Further information

We have briefing notes on **automatic enrolment** and also on the requirement, every three years to arrange **automatic re-enrolment** of certain members who have opted out of the scheme.

If you wish to discuss any points arising from this note, please speak to your usual contact in the Travers Smith Pensions team or to one of the Pensions partners: Susie Daykin, Daniel Gerring, David James, Dan Naylor, Paul Stannard and Philip Stear.

If you do not already subscribe to our pensions mailings and would like to do so, please email **pensions@traverssmith.com**.

Travers Smith LLP
10 Snow Hill
London EC1A 2AL
T: +44 (0)20 7297 3000
F: +44 (0)20 7295 3500

www.traverssmith.com