MACFARLANES

THE 2012 PENSIONS REVOLUTION

AUTO-ENROLMENT: EXISTING SCHEMES AND AUTO-ENROLMENT

Many employers have some form of pension provision for at least a proportion of their workforce. With the advent of auto-enrolment, decisions are required as to whether to extend the scheme and use it for auto-enrolment, close it for all employees, or maintain a multi-track system.

USING AN EXISTING SCHEME FOR AUTO-ENROLMENT

It is possible to use an existing scheme for auto-enrolment. However, many schemes will need modifying.

If the existing scheme is a **group personal pension plan** (GPPP), key tasks are to:

- check that the contribution basis is adequate to meet the minimum auto-enrolment standards, either by reference to band earnings or by reference to basic salary or total earnings (see previous pensions briefing);
- ensure there is a default investment in place and that no information is required from the jobholder for joining; and
- agree administrative and legal arrangements with the provider for auto-enrolment to operate from the staging date, or date of hire, or a postponement date if used (see previous pensions briefing).

If the scheme is an **occupational pension scheme**, it is likely to be necessary to agree and document amendments with the trustees to ensure:

- the benefit design or contribution rates meet minimum standards for auto-enrolment, whether on a defined benefit or defined contribution or hybrid basis, for all categories of jobholders;
- eligibility and admission of jobholders from the staging date, or date of hire, or a postponement date if used;
- processes are in place for auto-enrolment and opting in and opting out; and
- a default investment option is available for defined contribution arrangements and no information is required from the jobholder.

For DB and hybrid schemes, auto-enrolment may be deferred during a transitional period (until 30 September 2017) for employees who are already employed and eligible to join the DB or hybrid scheme before the staging date. Various information obligations apply.

CHECKLIST:

Options for an existing scheme

- Use existing scheme for auto-enrolment
  - Modify scheme and admission processes as necessary with trustees or provider
  - Consider costs
  - Consider casual and fixed term workers and flexible retirees
- Maintain existing scheme together with auto-enrolment scheme
- Close existing scheme
  - Consult and consider impact on current members
  - Check amendment and termination powers in scheme rules and employment contracts

RUNNING AN AUTO-ENROLMENT SCHEME ALONGSIDE AN EXISTING SCHEME

New benefit tiers and different contribution bases can be added to an existing scheme. However, some employers may prefer to leave the existing arrangements unchanged for current members and those categories of employees currently eligible to join, and introduce a new scheme to meet the new auto-enrolment duties.

An auto-enrolment scheme may also be used as a default scheme for jobholders who are not otherwise eligible to join a main scheme either because they have not opted to join it or have opted-out or because they do not meet age or length of service criteria.

CLOSING AN EXISTING SCHEME

Auto-enrolment may trigger a re-examination of the pension provision across the workforce. This may lead to a decision to close an existing scheme to new members or even to terminate accrual for all members.

Employers considering terminating or modifying the terms for future accrual, including increasing employee contributions or reducing employer contributions or benefit terms, will need to consult with affected employees and any trade union or representatives for at least 60 days. They will also need to consider any pension provisions in employment contracts and applicable rules on termination or change of accrual in the scheme's governing documentation.

CONSIDERATIONS

Common concerns faced by employers in considering whether to maintain, extend or close an existing scheme include the following:

Cost and affordability

Auto-enrolment is likely to lead to an increase in overall payroll costs since, by October 2018, an employer will need to pay 3 per cent of qualifying earnings (between £5,564 and £42,475 annualised earnings currently (previously £5,035 and £33,540)), as a minimum, into an auto-enrolment scheme for any eligible jobholder who does not opt-out and possibly non-eligible jobholders who opt-in.

Given the many other things affecting pension costs and payroll, this may not seem an unmanageable increase in cost over 6 years but such things are always to be seen in context. It is certainly a matter to be borne in mind although it may not be a key reason to close an existing pension arrangement.

The cost of accrual under an existing scheme may be far higher and extending that level of benefit to all jobholders may be far more significant.

Two-tier workforce issues

If an existing scheme is maintained for current members on current terms and other employees are offered a less generous auto-enrolment scheme, two-tier workforce issues may emerge. In reality, these will not generally be new issues since they will largely arise from the fact that the employer does not currently offer all workers access to the existing scheme. However, there may be increased awareness of pension provision. Provided the current structure is not unlawfully discriminatory, the enrolment of the currently non-pensioned workforce into an auto-enrolment scheme should not create any breach of law.

Administrative issues

Many aspects of an existing scheme may not fit well with the demands of auto-enrolment. There may be a real concern about 'small pots' particularly for employers with high staff turnover rates or casual workers. The government is currently working on finding a solution to the 'small pots' issue which may enable compulsory transfers in some circumstances. Salary sacrifice and member options cannot be used for auto-enrolment although they can be made available alongside a default auto-enrolment process.

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