

# THE 2012 PENSIONS REVOLUTION

## AUTO-ENROLMENT: AUTOMATIC ENROLMENT PROCESS

So how does an employer “automatically enrol” a jobholder?

“To automatically enrol” is horrible jargon but it is a transitive verb. Employees cannot do it themselves. The process must ensure nothing is required of them.

Previous 2012 Pensions Revolution briefings have covered:

- ◆ an overview of the new pensions obligations;
- ◆ the categories of jobholders and workers;
- ◆ compliance; and
- ◆ how to choose an auto-enrolment scheme.

Assuming an auto-enrolment scheme has been chosen and eligible and non-eligible jobholders have been identified, this briefing explains the process of auto-enrolment.

### HOW TO AUTOMATICALLY ENROL A JOBHOLDER

The key tasks are to:

- ◆ **Make arrangements for active membership** for the jobholder with effect from the auto-enrolment date. This must be done within one month of the auto-enrolment date and must take effect retrospectively from that date.
- ◆ **Pay employer contributions and deduct any employee contributions** from the jobholder’s pay and pay such employee contributions to the trustees or managers of the auto-enrolment scheme.
- ◆ Provide required **information to the jobholder**.
- ◆ Provide required **information to the trustees or managers** of the auto-enrolment scheme.

Nothing should be required of the jobholder.

Making arrangements for active membership in the chosen auto-enrolment scheme may require some preparation. An **occupational pension scheme** may require amendment to provide for admission and commencement of pensionable service from the auto-enrolment date. It must also have a default investment option.

With a **personal pension scheme**, terms must be agreed between the provider and the employer in advance. The legislation then deems an agreement between the provider and the jobholder from the date the jobholder is provided with both the provider’s terms and conditions for the personal pension scheme and the enrolment information from the employer. Active membership is therefore effectively arranged by the employer having an agreement with the provider and the relevant information being provided to the jobholder.

### CHECKLIST:

#### Occupational pension schemes

- ◆ Prepare by agreeing amendments to joining provisions with the trustees as necessary
- ◆ Provide information about jobholder to trustees
- ◆ Provide information to jobholder
- ◆ Deduct and pay contributions

#### Personal pension schemes

- ◆ Agree terms and conditions with provider
- ◆ Provide information about jobholder to provider
- ◆ Provide information and provider’s terms and conditions to jobholder
- ◆ Deduct and pay contributions

Remember to register with the Pensions Regulator

### WHEN?

Active membership needs to be established **within one month of the auto-enrolment date** but retrospectively with effect from that date. The **auto-enrolment date** is the employer’s staging date or, if later, the date the worker first qualifies as an eligible jobholder.

To ease matters slightly, an employer can **postpone** auto-enrolment for up to three months. This may enable harmonisation with a payroll cycle, allow time for the worker to agree options such as salary sacrifice and scheme choices or allow workers on fixed term contracts of less than three months to be disregarded.

A postponement notice must be served on the worker on the auto-enrolment date if postponement is used.

### INFORMATION FOR THE TRUSTEES OR PENSION PROVIDER

For each eligible jobholder who is being automatically enrolled, the trustees or providers must be given at least the jobholder’s name, sex, date of birth, automatic enrolment date, postal residential address and National Insurance number and, if required, his postal work address, email address, gross earnings in any pay reference period and the value of contributions payable as a fixed amount or percentage.

All information must be obtained on recruitment or before the staging date as no action from the jobholder can be required for the auto-enrolment process.

### INFORMATION FOR THE JOBHOLDER

The jobholder must be given at least:

- ♦ a statement that he will or has been automatically enrolled and the automatic enrolment date;
- ♦ details of the trustees or provider;
- ♦ the contributions payable; and
- ♦ statements about deductions from pay, tax relief, employer duties not to terminate membership without re-enrolment, and the right to opt-out and opt back in.

The jobholder may also be given an opt-out notice (which must be in the prescribed form) but this should not be provided by the employer.

This information is in addition to the terms and conditions of any personal pension scheme.

Information must be given individually and in writing but can be given by email. Records must be kept.

### PAYING AND DEDUCTING CONTRIBUTIONS

The employer must pay all contributions to the trustees or provider. There is a new duty (and right) to deduct applicable contributions from the jobholder's pay. This however only applies to eligible jobholders. For non-eligible jobholders and entitled workers who wish to join the scheme, consent to the deduction of contributions is still required.

Contributions must be paid across by the 19th of the month after deduction if paid by cash or cheque or the 22nd if paid electronically.

### OPT-OUTS, OPT-INS AND RE-ENROLMENT

Eligible jobholders who have been automatically enrolled may opt-out. They can only do so by using a specified form and only after having been enrolled. If they opt-out within the month after being enrolled, their contributions must be refunded by the employer (less tax and national insurance) and they are deemed never to have joined. They then have the right to opt back in.

Non-eligible jobholders can opt-in by serving an opt-in notice. They are then treated like eligible jobholders except that they cannot opt-out and be deemed not to have been members.

Members of existing schemes who cease participating in that scheme must be automatically enrolled into an auto-enrolment scheme and may then opt-out.

All eligible jobholders who have opted out must be re-enrolled every three years, within a month of the anniversary of the staging date. They can then opt-out again.

### REGISTRATION WITH THE PENSIONS REGULATOR

Having enrolled the jobholders, the employer is required to register with the Pensions Regulator and provide information about the arrangements within four months from the auto-enrolment date.

### CONTACT DETAILS

If you would like further information or specific advice please contact:

#### CAMILLA BARRY

DD: +44 (0)20 7849 2238  
camilla.barry@macfarlanes.com

#### JANE MARSHALL

DD: +44 (0)20 7849 2059  
jane.marshall@macfarlanes.com

#### HAYLEY ROBINSON

DD: +44 (0)20 7849 2969  
hayley.robinson@macfarlanes.com

### JULY 2012

#### MACFARLANES LLP

20 CURSITOR STREET LONDON EC4A 1LT

T: +44 (0)20 7831 9222 F: +44 (0)20 7831 9607 DX 138 Chancery Lane www.macfarlanes.com

This note is intended to provide general information about some recent and anticipated developments which may be of interest. It is not intended to be comprehensive nor to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to the specific situation should always be obtained.

Macfarlanes LLP is a limited liability partnership registered in England with number OC334406. Its registered office and principal place of business are at 20 Cursitor Street, London EC4A 1LT. The firm is not authorised under the Financial Services and Markets Act 2000, but is able in certain circumstances to offer a limited range of investment services to clients because it is authorised and regulated by the Solicitors Regulation Authority. It can provide these investment services if they are an incidental part of the professional services it has been engaged to provide. © Macfarlanes July 2012