Original Article

Auto-enrolment administration versus pensions administration

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ABSTRACT With the advent of auto-enrolment (AE), a new type of administration is required to assist employers in fulfilling their duties under the Pensions Act 2008 and subsequent updates. Pensions administration requires administrators to look after the records of members of pension schemes, and AE administration extends this requirement to look after not only members of the scheme but also employees. Extensive reporting will be required to ensure that Employers are complying with their duties, and assistance is required to ensure that they can identify the different statuses of their workers. We are moving into a new world where employers and their payroll teams will need as much assistance from pensions administrators as they can provide to get to grips with the legislation.

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When auto-enrolment (AE) was first mentioned, it was probably not envisaged that it would spawn a new type of administration – that of AE administration. Think of the responsibilities – who is responsible for AE? The employer of course, and they have a number of duties. However, who is responsible once the employee becomes a member? The trustee. In addition, who is responsible for the administration of AE? The employer

Who is responsible for ensuring compliance with the pensions legislation? This is also the employer. But who do you think will actually have to provide the proof, and what is it they need?

WHAT ARE THE EMPLOYER'S DUTIES AND WHAT DO THEY NEED TO DO?

The employer must auto-enrol employees into a qualifying pension scheme, which could be Defined Contribution (DC) or Defined Benefit (DB) – both have to meet minimum criteria.

Who has to be auto-enrolled?

- Anyone not already in a qualifying scheme;
- Anyone aged 22 years and over but below state pension age;
- Anyone earning more than £7475 per annum;
- Anyone ordinarily working in the United Kingdom.

But even if the employee does not qualify to be automatically enrolled, they still have the right to join the scheme.

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Table 1: Categories of worker relevant to age and earnings

Earnings	Age (inclusive)		
	16–21	22–SPA	SPA–74
Under lower earnings threshold (35 035)		Entitled worker	
Between £5035 and £7745		Non-eligible jobholder	
Over earnings trigger for AE (£7475)	Non-eligible jobholder	Eligible jobholder	Non-eligible jobholder

Thus, the employer first needs to identify who is eligible, but even before that they have to understand what a worker is.

- Someone who works under a contract of employment; or
- Has a contract to perform services or work personally.

But note that the contract does not even have to be a written one; it can also be a verbal one. Agency workers can also be considered workers, even if a contract does not exist between the agency worker and the agent or the third party (to whom they are providing services). Also note that it includes anyone working in UK territorial waters. Does this mean the Falklands are included?

But it does not include an individual director of a company if they are the sole employees. However, as soon as they take on a second worker, both are workers.

Thus, the employer, after ascertaining whether or not they have workers, must then categorise them as follows (see Table 1):

Jobholders:

- Eligible jobholders (those who meet the criteria above);
- Non-eligible jobholders who do not qualify for AE but can opt to join the scheme are those who meet the criteria below:
 - Aged between 16 and 74;
 - Work in the United Kingdom under contract;
 - Have qualifying earnings over 5035 but below 7475; or
 - Aged between 16 and 74 years, work in the United Kingdom but have earnings over the 7475 trigger;
- Entitled worker because they are entitled to join a scheme

- Workers aged between 16 and 74;
- Are working in the United Kingdom;
- Do not have qualifying earnings payable by the employer in the relevant pay period.

The employer must prove that they have assessed the workforce.

For eligible jobholders, the employer must

- Also register with the Pensions Regulator;
- Adhere to safeguards;
 - Not take any action make any omission that encourages/discourages employees from participating in the pension scheme;
 - Not take any action or by omission prevent the scheme from being a qualifying scheme;
 - Not induce a jobholder to opt out of the scheme;
 - Not, during recruitment, make any hints or suggestions that the employment of the candidate is dependent upon them opting out.
- Provide the employee with
 - Information explaining they have been or will be auto-enrolled into the scheme and what that actually means for them;
 - Information on opting out and how to do so.
- Provide the scheme with the relevant details of the eligible jobholder.
- Pay contributions into the scheme for that employee.

With regard to an employee opting out, this does not end the employer's duties. Opting out in this instance means undoing the membership so that it is as if the employee had never participated in the scheme. The employer must automatically re-enrol the member every 3 years if they are an eligible jobholder.

For *non-eligible jobholders*, the employer does not have to auto-enrol the employee, but they do have the right to opt in to an automatic

enrolment scheme. The duties are therefore very similar to those for eligible jobholders:

- They must provide information within 1 month of the date on which they became a non-eligible jobholder, for example, the staging date or the first date of employment;
- However, this is not a requirement if the non-eligible jobholder has previously opted out;
- They must receive an opt-in notice and on receipt must enrol the non-eligible member into the AE scheme;
- The employer must pay contributions on behalf of the employee.

For *entitled workers*, the employer does not have to auto-enrol them, but they do have the right to join a pension scheme; however, it can be different to the scheme being used for AE. Thus, they have certain duties very similar to the above, but they:

- Must receive a joining notice from the employee and then arrange the membership to the scheme for them;
- Must deduct contributions on behalf of the entitled worker and pay them across into the scheme; but
- Do not have to contribute on behalf of the entitled worker.

The implications for the employer and how they go about ensuring that they comply with their duties is still only just beginning to sink in. A major issue has always been that the legislation was created under pensions law as opposed to employment law, and therefore many employers and their payroll providers are in denial about the implication of administering AE. If it comes under pensions law then it must be the pensions providers' issue.

Some further administrative issues or nightmares for employers are as follows:

Keeping track of earnings and age. A change in age or earnings could affect the workers category; for example, an employee who joins a company at 21 years of age who earns more than the trigger is a non-eligible jobholder. They can choose to

opt in to the AE scheme but if they choose not to, on reaching 22 years of age, they must be auto-enrolled into the scheme. Employers must therefore track the age of the employees. Another example is that of a part-time worker who earns less than the lower level of earnings, is over 27 years of age, and is an entitled worker who only has the right to join a scheme that is not the AE scheme and does not require the employer to contribute. However, should their earnings increase as they increase their hours, and should their earnings go over the trigger, the employer must auto-enrol the employee.

It can be seen that the administration of AE is quite onerous for the employer; they have two issues: their staging date and business as usual. These should be treated differently.

POSTPONEMENT

In order to try to alleviate the burden on employers, the regulations allow for a period of postponement. This effectively delays the assessment process and therefore their requirement to carry out their duties. It does not change the duties or steps that have to be carried out, but rather only temporarily suspends the need for them. The assessment can be delayed until a date of the employer's choosing, known as the deferral date. Postponement can only be for up to 3 months.

However, they can only choose to use postponement on certain dates:

- Their staging date and only for respect of any workers employed on their staging date;
- The first date of employment in new workers after the staging date;
- The date a worker employed by them meets the criteria to be an eligible jobholder after the employer's staging date.

The advantages of using postponement in aiding administration of AE are as follows:

- It allows employers to align AE administration with their payroll processing timeline;
 - For example, it allows them to avoid having to calculate contribution on part-period earnings; or

Table 2: Four types of postponement notice

Postponement notice	Information	When can it be used
General notice A	<ul style="list-style-type: none"> • Postponement information to include fact AE is delayed and the deferral date • Requirement to tell a non-eligible jobholder about their right to opt in to an AS scheme • Requirement to tell an entitled worker about their right to join a pension scheme • Requirement to tell a jobholder who is an active member of a qualifying scheme about the scheme 	Can be used at: <ul style="list-style-type: none"> • Employer's staging date • The worker's first day of employment
General notice B	<ul style="list-style-type: none"> • Postponement information to include fact AE is delayed and the deferral date • Requirement to tell a non-eligible jobholder about their right to opt in to an AS scheme • Requirement to tell an entitled worker about their right to join a pension scheme 	
Tailored notice for a jobholder	<ul style="list-style-type: none"> • Postponement information to include fact AE is delayed and the deferral date • Requirement to tell a non-eligible jobholder about their right to opt in to an AS scheme 	Must be used on the date the eligible jobholder criteria are met. Can be used at: <ul style="list-style-type: none"> • Employer's staging date • The worker's first day of employment
Tailored notice for an entitled worker	<ul style="list-style-type: none"> • Postponement information to include fact AE is delayed and the deferral date • Requirement to tell an entitled worker about their right to join a pension scheme 	Can be used at: <ul style="list-style-type: none"> • Employer's staging date • The worker's first day of employment

- Maximise the amount of opt-out periods that falls before the payroll is run.
- It smoothes the process of the AE duty in respect of workers who have spikes in earnings;
- Employers can choose to use postponement for one worker, or different sections of the workforce, for example, contractors.

However, if an employer chooses to make use of postponement, they have certain obligations they must fulfil such as issuing notice, of which there are four types (see Table 2).

WHY CHOOSE ONE FORM OF NOTICE OVER ANOTHER?

Using general notice A, the employer is getting all the necessary information out to all categories in one hit.

General notice B can be used where employers want to exclude employees who are already members of a qualifying scheme. They may wish to carry this out separately.

Tailored notice for a jobholder or an entitled worker allows the employer to provide specific information to defined categories of workers, but this requires the employer to assess the category of

the worker at the start of the postponement date and at the deferral date, which may not appeal.

To keep the cost of administration and postage down, the employer may wish to include the AE information with the postponement period (see Table 3).

The notice itself must be in writing, although it can be an email, but it must be more than mere signposting to a Website. This is where employers may look to their pensions providers to assist, as the information can be sent by them on the employer's behalf. This does not detract from the onus on the employer to retain responsibility for sending the information on time and for ensuring that it is correct and complete.

Opting out – again this is not as straightforward as one would like to think. Earlier we stated that in the AE world, opting out means that the membership is unravelled as opposed to ceasing. A worker who is either an eligible or non-eligible jobholder can opt out, but only after they have been enroled into an AE scheme. Once enroled, they have a certain timeframe known as the opt-out period, in which to make an informed decision to opt out.

Table 3: Information requirements that can be included in the different types of postponement notice

Information an employer must provide to a worker	When	Can be included in postponement notice			
		General notice A	General notice B	Tailored notice (jobholder)	Tailored notice (entitled worker)
Enrolment information to an eligible jobholder who is being automatically enrolled	No later than 1 month after the AE date or deferral date	✓	×	×	×
Information to a non-eligible jobholder about their right to opt in to auto-enrolment scheme	No later than 1 month after the date the criteria to be a non-eligible jobholder are first met	✓	✓	✓	×
Information to an entitled worker about their right to join a pension scheme	No later than 1 month after the date the criteria to be an entitled worker are first met	✓	✓	×	✓
Information to a jobholder who is an active member of a qualifying scheme	No later than 2 months after the date the criteria to be a jobholder are first met while an active member of a qualifying scheme	✓	×	×	×
Information to an eligible jobholder for whom the employer has chosen to use the transitional period for defined benefit and hybrid schemes	No later than 1 month after the first enrolment date	×	×	×	×

An informed decision means that the employer has to provide sufficient information about the effects of being auto-enrolled to enable an informed decision to take place. To opt out, the jobholder must complete an opt-out notice, which is usually provided by the pension schemes. On receipt of the opt-out notice, their membership is unravelled and the contributions returned to the employer and jobholder.

The opt-out period differs between trust AE schemes and contract-based arrangements (see Table 4).

The latest the opt-out period must start is 1 month from the AE date, and the latest date by which the member must have opted out is 1 month after achieving active membership. If they miss this, then they can opt out using the traditional opt-out methods of the scheme.

The Pensions Regulator suggests that in the majority of cases, the opt-out notice should be provided by the pension scheme into which the jobholder has been auto-enrolled. This is to ensure that the jobholder does not feel coerced or pressured by the employer into opting out. If they did, this would be seen as a breach of the inducement legislation.

The opt-out form has to comply with certain requirements to ensure that it is valid. These details can be found on the Pensions Regulator's Website. If an employer receives a form and it is considered to be invalid, the jobholder has a further 2 weeks over and above the 1-month notice to complete and return a valid form.

REFUNDING CONTRIBUTIONS TO OPTERS OUT

The employer must deduct contributions from the first pay cycle after the member has been enrolled. If they choose to opt out, then the employer must refund any contributions that have been deducted, and as one would expect there are rules for when and how.

On receipt of a valid opt-out form, the employer must provide a refund of the employee's contribution less tax by the refund date. The refund date is either:

- Within 1 month of receiving the valid opt-out form; or
- If the payroll cut-off before the notice was received, by the last day of the next applicable pay reference period following the date on which the valid opt-out notice was received.

Table 4: Opt-out periods for trust and contract-based schemes

<i>Trust</i>	<i>Contract</i>
Once the jobholder becomes an active member with effect from the AE date (that is, the date that the administrative steps for achieving active membership are completed, or	The jobholder is sent the terms and conditions of the agreement to become an active member
The jobholder is provided with written enrolment information	The jobholder is provided with written enrolment information

Likewise, if any money has been paid over to the scheme, it must be refunded to the employer. The employer is responsible for alerting the scheme administrators to the refund date. For the employer refund, the regulations allow the practice of refunded contributions to be kept to pay scheme expenses.

HOW ARE EMPLOYERS DEALING WITH THIS IN PRACTICE?

The administration of AE is not fully understood by all parties, including pensions experts. In some cases, there are still grey areas to be considered, such as high earners with protect pots who have to opt out to protect them. Then there are seconded workers who may have retained membership of a scheme in their own country who all need to be auto-enrolled, and for some it is not in their interests to be in the scheme.

A QUALIFYING SCHEME

Most employers will shy away from using any DB arrangement, and as the increasing numbers of DB schemes are closed to new entrants, we can safely say that many employers will look to DC arrangements for their AE vehicle.

For a DC scheme to meet the qualifying criteria, it needs to have in place a contribution structure that is over 8 per cent of qualifying earnings (between £5035 and £33 540): 3 per cent from the employer, 4 per cent from the member and 1 per cent from the tax relief. For many DC arrangements this is not as straightforward as it may first appear, mainly because the definition of pensionable pay used by DC schemes tends to be less generous than the qualifying earnings definition, which includes overtime, commission, bonuses and so on.

In recognition of this, the regulations offer 3 further qualifying criteria against which schemes can be certified:

Tier 1 – A total minimum contribution of at least 9 per cent of pensionable pay (at least 4 per cent of which must be the employer's contribution).

Tier 2 – A total minimum contribution of at least 8 per cent of pensionable pay (at least 3 per cent of which must be the employer's contribution), provided that pensionable pay constitutes 85 per cent of earnings (the ratio of pensionable pay to earnings to be calculated as an average at scheme level).

Tier 3 – A total minimum contribution of at least 7 per cent of all earnings (at least 3 per cent of which must be the employer's contribution).

For Tiers 1 and 2, pensionable pay must be at least equivalent to basic pay, which in turn is defined as gross earning of the jobholder and can disregard commission, bonuses and so on.

Many schemes are reviewing their contribution structures in order to make their DC arrangement compliant. This could increase their costs not only in terms of increased membership numbers, but also in terms of existing members where they need to uplift any low contribution rates.

ASSESSING THE WORKFORCE

Deciding what to do about assessing the workforce? Some organisations have decided not to differentiate between offering membership to non-eligible and entitled workers as the numbers involved are too small to make a difference in the cost to the employers, while others who have low-paid high turnover of staff will only auto-enrol eligible and non-eligible jobholders. There will no doubt be a large take-up of AE consulting as employers attempt to decide what is the best way forward for their workforce.

With regard to auto-enrolling and opting out, many schemes are struggling with the identification of what type of jobholder their workers are. Few of the payroll providers are able to provide the systems enhancement and upgrades that are required for this identification/assessment process. This has led to employers looking to the pensions providers to help out, and the industry is buzzing with talk of the middleware/black box solutions that will be the panacea for all issues to do with eligibility. The concept revolves around the pensions providers running a system across the payroll data and based on the AE rules and any overarching scheme rules, deciding which employees should be auto-enrolled. The system should also have a record of the opters out who need to be re-enrolled.

This facility would run across the payroll data every time the payroll is run, and would alert the employer/payroll to join the member and deduct the contributions. It also needs to recognise whether there have been any opted-out workers who have left the employer.

INFORMATION FOR MEMBERS

The fulfilment part of the AE process would ordinarily be seen as part of the employer's role, but with the volumes that employers expect on their staging date, they are looking to offload this function to the pension scheme. This may not be a bad thing, as most providers have the fulfilment processes in place and are geared up for mass mailing/email campaigns.

OPTING OUT AND REFUND OF CONTRIBUTIONS

Where a DC scheme is being utilised, the increased automation of the opting-out/leaver process will be key to the employer being able to contain the costs of running a scheme. A number of employers have decided to invoke the postponement period where possible. Others have decided to look at the enrolment process from a slightly different angle.

For example, one large retailer has decided to auto-enrol all their employees irrespective of their category. The employees will be provided

with the opting-out form on joining the company, and where they choose to opt out their details/forms will be held in escrow until the opting-out period is completed. Another employer is auto-enrolling all of their eligible and non-eligible jobholders, but not entitled workers in one area of their organisation that has a very high turnover and high proportion of entitled workers, and for another part they are auto-enrolling everyone as the entitled proportion is very small.

Where workers are auto-enrolled, many employers are looking to pass the details to the pensions provider but holding back the contributions. They will hold the contributions in a corporate bank account separate from the company and trustee bank account. Where they are notified of a member opting out, the contributions will go back to the employer and worker, without having been invested. If the member does not opt out, their contributions are passed across and invested as per normal.

EMPLOYERS PROVING COMPLIANCE

At the beginning of the article, we stated that the employer must evidence their compliance with their duties. As expected, this involves maintaining accurate records and imposing this requirement on any service provider. The employer/service provider must be able to produce their records if requested by the Pensions Regulator in a timely manner.

From the staging date, the employer is required to keep two different types of records:

- Records about jobholders and workers, for example, name, National Insurance number, opt-in notice and joining notice (see Table 5);
- Records about the pension scheme, for example, employer pension scheme reference and scheme name and address (see Table 6).

Most of these records must be kept for 6 years.

The compliance aspects are just a minor part of the whole AE legislation, but it is the one that the employers appear to be most put out about.

Table 5: Records an employer must keep about jobholders and workers

<i>Who record relates to</i>	<i>What record must be kept</i>	<i>For how long</i>
Jobholders and workers who become members	<ul style="list-style-type: none"> • Name • National insurance number • Date of birth • Gross earnings in each relevant pay reference period • Contributions payable in each relevant pay reference period by employer to the schemes and the amount payable. This includes contributions made on the employer's behalf and deductions from earnings • The date contributions were paid to the scheme 	6 years
Additional information for jobholders only	<ul style="list-style-type: none"> • Auto-enrolment date • Opt-in notice (original format) • The contributions to which the jobholder is entitled under the scheme rules (this demonstrates that the scheme used is a qualifying scheme) • Opt-out notice (original format) 	4 years
Additional information for workers only	<ul style="list-style-type: none"> • Date with effect from which the worker became an active member • Joining notice (original format) 	6 years
All workers for whom the employer has used postponement	<ul style="list-style-type: none"> • Name • National insurance number • Date the notice was sent to the worker 	

Table 6: Records an employer must keep about the pension scheme

<i>Type of pension scheme used</i>	<i>What record must be kept</i>	<i>How long it must be kept</i>
DC, DB or hybrid schemes	<ul style="list-style-type: none"> • Employer pension scheme reference number • Scheme name and address • Scheme contracting out certificate • Any evidence showing that a scheme meets the test scheme standard (applies to non-contracted out DB only) • Non-UK administered schemes must keep: <ul style="list-style-type: none"> • The address of the scheme • The name of the authority that carries out functions that corresponds to the Pensions Regulator 	6 years
Personal pension schemes	<ul style="list-style-type: none"> • Employer pension scheme reference • Name and address of the pension provider • Non-UK administered schemes must keep: <ul style="list-style-type: none"> • The address of the scheme • The name of the authority that carries out functions corresponding to the regulator 	