



June 2014

Detailed guidance for employers

Resource: Employer duties and safeguards



The Pensions
Regulator

1. There are a number of employer duties set out in the new legislation. There are also a number of safeguards in place to protect the rights of individuals to have access to pension saving under the reforms. In addition to the employer duties and safeguards, an employer must keep certain records about how they have met the duties.

Employer duties

2. The new employer duties mean that an employer of a worker will have to:
 - automatically enrol any eligible jobholder into an automatic enrolment scheme, following a prescribed process
 - make arrangements to establish active membership of an automatic enrolment scheme if a jobholder chooses to opt in to a pension scheme
 - make arrangements to establish active membership of a pension scheme if an entitled worker chooses to join
 - give information to their workers about how the different duties affect them
 - complete a declaration of compliance (registration) with The Pensions Regulator to state what they have done to comply with their new duties
 - process any opt outs from the pension scheme, including refunds of contributions
 - ensure they do not take any action or make any omission by which the eligible jobholder ceases to be an active member of the qualifying scheme, without putting them into an alternative qualifying scheme
 - ensure they do not take any action or make any omission by which the scheme ceases to be a qualifying scheme without providing an alternative qualifying scheme
 - re-enrol any eligible jobholders who opted out or ceased active membership, after a certain amount of time (approximately every three years).
3. In addition, an employer of a worker will be able to choose to use postponement to delay automatic enrolment by a period of up to three months.

Safeguards

4. The new safeguards are in place to protect the rights of individuals. The safeguards mean employers must ensure:
 - they do not take any action for the sole or main purpose of inducing a jobholder to opt out of a qualifying scheme, or a worker to give up membership of a pension scheme (this is known as 'inducement')
 - that during recruitment, they or their representative do not ask any questions or make any statements that either states or implies that an applicant's success will depend on whether they intend to opt out of the pension scheme (this is known as 'prohibited recruitment conduct')
 - they do not breach new employment rights for individuals not to be unfairly dismissed or suffer detriment on grounds related to the new employer duties.

Interaction with pensions legislation on cross-border pension schemes

5. An employer is exempt from a number of the employer duties and safeguards if they are a 'European Employer' in respect of a particular individual. A 'European Employer' is someone who employs an individual who meets the definition of 'qualifying person' (and where other conditions are met (see paragraph 8)). 'Qualifying person' is relevant for the purposes of separate UK legislation on occupational pension schemes and cross-border activities within the European Union. In a minority of cases, a worker whom the employer has assessed as an eligible jobholder, non-eligible jobholder or entitled worker for the purposes of pensions reform, may also meet the definition of a 'qualifying person'.
6. A 'qualifying person' is an individual employed under a contract of service (see **Detailed guidance no. 1 – Employer duties and defining the workforce**) and whose place of work under that contract is sufficiently located in an EEA state other than the UK (the host EEA state) so that the relationship with the employer is subject to the social and labour law (relevant to the field of occupational pension schemes) of that EEA state.
7. As a general rule, people who are required by their employment contract to work habitually in another state for an indefinite period, are likely to be subject to any relevant social and labour laws in that state. Therefore, they are likely to be a 'qualifying person' if they have a contract of service. However, please note that workers on secondment fall outside the definition of 'qualifying person'. More information on seconded workers for the purposes of the cross-border requirements is available on our website: www.tpr.gov.uk/guidance/guidance-cross-border-schemes.

8. Where an employer assesses a worker as:

- working or ordinarily working in the UK (see **Detailed guidance no. 3 – Assessing the workforce**)
- aged between 16 and 74
- meeting the definition of a qualifying person, and
- the employer proposes to, or is making contributions in respect of that worker to an occupational pension scheme

then the employer is exempted from a number of the employer duties and safeguards for that worker.

9. These duties and safeguards that the employer is exempted from in respect of a worker that meets the criteria in paragraph 8 are:

- automatic enrolment of any eligible jobholder who is also a qualifying person
- automatic re-enrolment of any eligible jobholder who is also a qualifying person

- making arrangements for active membership of an automatic enrolment scheme following an opt-in notice from any jobholder who is also a qualifying person
- making arrangements for active membership of a pension scheme following a joining notice from any entitled worker who is also a qualifying person
- ensuring that they do not take any action or make any omission by which a jobholder who is also a qualifying person ceases to be an active member of the qualifying scheme, without putting them into an alternative qualifying scheme
- ensuring they do not take any action or make any omission by which the scheme ceases to be a qualifying scheme without providing an alternative qualifying scheme
- ensuring they do not take any action for the sole or main purpose of inducing a jobholder to opt out of a qualifying scheme, or a worker to give up membership of a pension scheme.

10. An employer should note that the exemption from these duties only applies if the employer proposes to or is making contributions in respect of that worker to an occupational pension scheme. If the pension scheme the employer is using to fulfill their duties is a contract based scheme (also known as a 'personal pension') the duties continue to apply in full, irrespective of whether the worker meets the 'qualifying person' definition.

Duties and safeguards

11. The following table lists the employer duties and safeguards by categories of worker and highlights the guidance where the duties or safeguards are covered.

Category of worker	Employer duties	Related guidance	Safeguards	Related guidance
All workers	<ul style="list-style-type: none"> Employer must complete a declaration of compliance with The Pensions Regulator shortly after their staging date to tell us what they have done to comply with the new duties If using postponement the employer must give a notification to workers 	<ul style="list-style-type: none"> See our content on our website: www.tpr.gov.uk/dec-checklist Postponement: www.tpr.gov.uk/docs/detailed-guidance-3a.pdf 	<ul style="list-style-type: none"> Inducement Prohibited recruitment conduct Employment rights for individuals not to be unfairly dismissed or suffer detriment on grounds related to the new employer duties 	<ul style="list-style-type: none"> Safeguarding individuals: www.tpr.gov.uk/docs/detailed-guidance-8.pdf
Eligible jobholder	<ul style="list-style-type: none"> Employer must automatically enrol Employer must process any opt-out notice Employer must automatically re-enrol 	<ul style="list-style-type: none"> Automatic enrolment: www.tpr.gov.uk/docs/detailed-guidance-11.pdf Opting out: www.tpr.gov.uk/docs/detailed-guidance-7.pdf Automatic re-enrolment: www.tpr.gov.uk/docs/detailed-guidance-11.pdf 	<ul style="list-style-type: none"> Inducement Prohibited recruitment conduct Employment rights for individuals not to be unfairly dismissed or suffer detriment on grounds related to the new employer duties 	<ul style="list-style-type: none"> Safeguarding individuals: www.tpr.gov.uk/docs/detailed-guidance-8.pdf <p style="text-align: right;">continued...</p>

Category of worker	Employer duties	Related guidance	Safeguards	Related guidance
	<ul style="list-style-type: none"> • Ensure they do not take any action or make any omission by which the eligible jobholder ceases to be an active member of the qualifying scheme, without putting them into alternative qualifying scheme • Ensure they do not take any action or make any omission by which the scheme ceases to be a qualifying scheme without providing an alternative qualifying scheme • Has the right to opt in and the employer must arrange pension scheme membership if the eligible jobholder decides to do so • If using the transitional period for schemes with defined benefits (DB), the employer must give a notice to the eligible jobholder 	<ul style="list-style-type: none"> • Safeguarding individuals: www.tpr.gov.uk/docs/detailed-guidance-8.pdf • Safeguarding individuals: www.tpr.gov.uk/docs/detailed-guidance-8.pdf • Opting in and joining: www.tpr.gov.uk/docs/detailed-guidance-6.pdf • Transitional period for defined benefit and hybrid pension schemes: www.tpr.gov.uk/docs/detailed-guidance-3b.pdf 		<p style="text-align: right;">continued...</p>

Category of worker	Employer duties	Related guidance	Safeguards	Related guidance
Non-eligible jobholder	<ul style="list-style-type: none"> • Have the right to opt in and the employer must arrange pension scheme membership if the non-eligible jobholder does decide to opt in • Employer must give information about the right to opt in • Employer must automatically re-enrol if certain events cause active membership of a qualifying scheme to cease • Employer must process any opt-out notice • Ensure they do not take any action or make any omission by which the non-eligible jobholder ceases to be an active member of the qualifying scheme, without putting them into an alternative qualifying scheme 	<ul style="list-style-type: none"> • Opting in and joining: www.tpr.gov.uk/docs/detailed-guidance-6.pdf • Having completed the assessment: www.tpr.gov.uk/docs/detailed-guidance-6.pdf • Automatic re-enrolment: www.tpr.gov.uk/docs/detailed-guidance-11.pdf • Opting out: www.tpr.gov.uk/docs/detailed-guidance-7.pdf • Safeguarding individuals: www.tpr.gov.uk/docs/detailed-guidance-8.pdf 	<ul style="list-style-type: none"> • Inducement • Prohibited recruitment conduct • Employment rights for individuals not to be unfairly dismissed or suffer detriment on grounds related to the new employer duties 	<ul style="list-style-type: none"> • Safeguarding individuals: www.tpr.gov.uk/docs/detailed-guidance-8.pdf <p style="text-align: right;">continued...</p>

Category of worker	Employer duties	Related guidance	Safeguards	Related guidance
	<ul style="list-style-type: none"> Ensure they do not take any action or make any omission by which the scheme ceases to be a qualifying scheme without providing an alternative qualifying scheme 	<ul style="list-style-type: none"> Safeguarding individuals: www.tpr.gov.uk/docs/detailed-guidance-8.pdf 		
Entitled worker	<ul style="list-style-type: none"> Have the right to join and the employer must arrange pension scheme membership if the entitled worker does decide to join Employer must give information about the right to join 	<ul style="list-style-type: none"> Opting in and joining: www.tpr.gov.uk/docs/detailed-guidance-6.pdf Having completed the assessment: www.tpr.gov.uk/docs/detailed-guidance-6.pdf 	<ul style="list-style-type: none"> Inducement Prohibited recruitment conduct Employment rights for individuals not to be unfairly dismissed or suffer detriment on grounds related to the new employer duties 	<ul style="list-style-type: none"> Safeguarding individuals: www.tpr.gov.uk/docs/detailed-guidance-8.pdf

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