

# Detailed guidance for employers

Opting in, joining and contractual enrolment:  
How to process pension scheme membership  
outside of the automatic enrolment process

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## **Please note: This guidance is linked to the following appendices**

**Appendix A:** Example process for employers on receipt of an opt-in or joining notice

Available at: [www.tpr.gov.uk/docs/dg-6-appendix-a.pdf](http://www.tpr.gov.uk/docs/dg-6-appendix-a.pdf)

# About this guidance

This guidance is aimed at professional advisers and employers with in-house pensions professionals. Trustees, managers and scheme providers may also find it useful.

This guidance explains the process an employer must follow when they receive a request from a member of staff to join a pension scheme outside the automatic enrolment process.

To understand the content in this guidance, employers should have already read the following guidance in this series:

- **Detailed guidance no. 1 – Employer duties and defining the workforce**
- **Detailed guidance no. 2 – Getting ready**
- **Detailed guidance no. 3 – Assessing the workforce.**

**Detailed guidance no. 3** is of particular importance as it explains the process an employer must carry out to identify a worker's rights in respect of pension scheme membership. It will also be helpful for employers to be familiar with the content in **Detailed guidance no. 4 – Pension schemes** that is relevant to them.

For opting in, an employer should read **Detailed guidance no. 5 – Automatic enrolment** in conjunction with this guidance.

'Month' means 'calendar month' throughout this guidance.

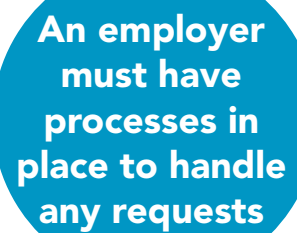
In this guidance, we use 'jobholder' to describe both eligible jobholders (who have to be automatically enrolled) and non-eligible jobholders (who have a right to opt in).

Where the content in this guidance is applicable to both jobholders and entitled workers (those who have the right to join a pension scheme), we use the term 'worker' in its wider context.

We recognise that many employers will already have pension provision for their workers, and that this will often match or exceed the minimum requirements contained in the duties. In these cases, such employers may just need to check that the minimum requirements are covered in their existing processes.

It will be helpful to employers to be familiar with the different categories of workers. These are explained in detail in **Detailed guidance no. 1 – Employer duties and defining the workforce** or a quick reminder is available in the Key terms.

This guidance forms part of the latest version of the detailed guidance for employers (published April 2015). The Department for Work and Pensions (DWP) recently introduced some technical changes to the legislation which came into effect on 1 April 2015 to add four new exceptions from some of the employer duties and simplify the information requirements for employers. This guidance has been updated with those legislative changes. The section 'Changes from last version' provides details of significant alterations made to this guidance.



**An employer  
must have  
processes in  
place to handle  
any requests**

# Introduction

1. There are four employer duties that cover establishing active membership of a pension scheme ('the enrolment duties'):
  - Automatic enrolment: The employer must make arrangements by which an eligible jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date. The arrangements are set out in the law and described in **Detailed guidance no. 5 – Automatic enrolment**
  - Automatic re-enrolment: The employer must make arrangements by which an eligible jobholder who has opted out or ceased active membership becomes an active member of an automatic enrolment scheme with effect from the automatic re-enrolment date. More information on automatic re-enrolment can be found in **Detailed guidance no. 11 – Automatic re-enrolment**
  - Opting in: A jobholder can require the employer to arrange for them to become an active member of an automatic enrolment scheme, with effect from the enrolment date. They do this by giving the employer an 'opt-in notice'
  - Joining: An entitled worker can require the employer to arrange for them to become an active member of a pension scheme. They do this by giving the employer a 'joining notice'.
2. A non-eligible jobholder has the right to opt in. By giving a notice to the employer, they can require the employer to arrange active membership of an automatic enrolment scheme.
3. An eligible jobholder who has been automatically enrolled but subsequently opted out or ceased membership, also has the right to opt back in to an automatic enrolment pension scheme.
4. An eligible jobholder who was not automatically enrolled because they were a member of a qualifying scheme on their automatic enrolment date, but subsequently ceased membership of that scheme, can also opt in to an automatic enrolment scheme.
5. For this reason, in this guidance we use 'jobholder' to describe both eligible jobholders and non-eligible jobholders who may opt in.
6. An 'entitled worker' has the right to join a pension scheme. By giving a notice to the employer, they can require the employer to arrange active membership of a pension scheme. The scheme the employer chooses does not have to be an automatic enrolment scheme or even a qualifying scheme.

7. Outside the enrolment duties, some employers may choose to:
  - immediately enrol all workers into a pension scheme when they first start work with the employer
  - annually re-enrol workers back into the pension scheme if they have ceased membership in the year.
8. To do this, employers must obtain the worker's consent to deduct pension contributions. Employers often use contractual agreements with their staff (for example the contracts of employment) to obtain this consent. We describe this as contractual enrolment.
9. In these cases, enrolment is in accordance with the agreement into which the worker has entered, and not under one of the enrolment duties set out in paragraph 1.
10. There is nothing that prevents an employer from continuing with agreements of this type, nor from putting new agreements in place. However, the employer must understand how the employer duties impact on these arrangements.
11. Paragraphs 79-90 outline the considerations for employers who are using contractual enrolment to enrol their workers into a pension scheme outside the automatic enrolment process.



# An overview of opting in and joining – the other enrolment duties

12. A jobholder has the right to opt in to an automatic enrolment scheme, unless they are:
  - an active member of a qualifying scheme with that employer
  - an eligible jobholder for whom the employer has an automatic enrolment duty and is in the process of arranging active membership or
  - an eligible jobholder for whom the employer has an automatic re-enrolment duty and is in the process of arranging active membership
  - a jobholder who has been paid a winding-up lump sum payment<sup>1</sup> in the last 12 months whilst in employment with the employer, ceased employment and been re-employed by the same employer.
13. If a jobholder chooses to exercise their right to opt in, they do so by giving the employer an 'opt-in' notice. Upon receipt, the employer is required to make arrangements for the jobholder to become an active member of an automatic enrolment scheme from the enrolment date. The employer must follow the same process as for the automatic enrolment of eligible jobholders to enrol the jobholder.
14. There are two exceptions to the requirements on the employer. If the jobholder has given the employer notice to leave their employment (resignation or retirement), or the employer has given them notice of dismissal, then the employer is not required to make arrangements.
15. Secondly, if the notice is given within 12 months of a previous opt-in notice and the worker has subsequently stopped membership of the automatic enrolment scheme into which they were enrolled, the employer is not required to make the arrangements, although they can choose to if they wish.
16. An entitled worker has a right to join a pension scheme, unless they:
  - are an active member of a pension scheme with that employer, or
  - have been paid a winding-up lump sum payment in the last 12 months whilst in employment with the employer, ceased employment and been re-employed by the same employer.

<sup>1</sup> Under HMRC provisions, occupational pension schemes in wind-up are allowed to commute sums of under £18,000 provided certain conditions are met. For more information on this exception from the employer duties see **Detailed guidance no. 1 – Employer duties and defining the workforce.**

17. If an entitled worker chooses to exercise their right to join, they do so by giving the employer a 'joining' notice. Upon receipt, the employer is required to make arrangements for that worker to become an active member of a pension scheme. The scheme the employer uses for these purposes does not have to be an automatic enrolment scheme, or even a qualifying scheme. It does, however, have to be a UK tax-registered scheme. The employer is not required to make employer contributions to the scheme, although they can if they wish by choosing a scheme that requires employer contributions.
18. Again, there are two exceptions to the requirements on the employer. If the entitled worker has given the employer notice to leave their employment (resignation or retirement), or the employer has given them notice of dismissal, then the employer is not required to make arrangements.
19. Secondly, if the notice is given within 12 months of a previous notice and the worker has subsequently stopped membership of the scheme of which the employer arranged active membership, the employer is not required to make the arrangements, although they can choose to if they wish.
20. An employer must notify a jobholder or an entitled worker of their right to opt in to or join a pension scheme by providing them with specified information. The provision of this information is covered in **Detailed guidance no. 10 – Information to workers.**
21. The notice given by the jobholder or entitled worker must be in writing but does not have to be a formal document. It can be a letter or an email.
22. It could be that an employer is only given the occasional notice, and this may be some time after the individual starts working for them. Employers should, therefore, be aware of what they need to do in relation to any opt-in or joining notices they may receive from their workers, and be ready to deal with such notices. Having processes in place to manage this will help the employer deal with it quickly and efficiently.
23. This does not mean employers must already have a pension scheme set up waiting purely in case anyone opts in or asks to join. Practically though, an employer may already have an automatic enrolment scheme in place and may decide to use it.

# Dealing with opt-in or joining requests

24. Since an employer may be given an opt-in or joining notice many months or even years after giving the information to the worker about their appropriate right, a key task for the employer on being given the notice is to assess the category of the worker giving it.
25. This is to identify whether the worker is a jobholder with a right to opt in to an automatic enrolment scheme, or an entitled worker with a right to join a pension scheme, at the time the worker gives the notice.
26. This is important because it determines which process the employer must follow in arranging for active membership, and may determine the choice of pension scheme the employer uses.
27. The employer will need to make an assessment of the worker. The process of the assessment is described in **Detailed guidance no. 3 – Assessing the workforce**. However, all the employer needs to assess on the date they receive the notice is whether, on the assessment date, the worker earns above or below the lower level of qualifying earnings<sup>2</sup> and is therefore either a jobholder or an entitled worker. The assessment date is the date that the employer received the notice.

## Checking the notice is valid

28. Once the employer has established whether the notice was given by a jobholder or an entitled worker, they must next check that the notice is valid. To be valid, the notice must be:
  - in writing (this can include being sent by email)
  - signed by the worker submitting it or, if it was sent by email, it must include a statement from the worker confirming that they personally submitted the notice.
29. When the employer is satisfied that the opt-in or joining notice is valid, they must make arrangements so that the worker becomes an active member of a pension scheme unless the worker has given or been given notice to end their employment.
30. The employer may also wish to check if they have been given a notice to become a member of a pension scheme from the same worker within the past 12 months. Where such a notice has been given, the employer will have a choice as to whether to make the arrangements to establish active membership for that worker.

<sup>2</sup>  
This figure can change from time to time, subject to announcements from the Department for Work and Pensions. The amount for the current tax year is available on our website: [www.tpr.gov.uk/worker](http://www.tpr.gov.uk/worker).

31. The process the employer must follow to arrange active membership differs depending on who submitted it. The different processes are explained in:
- paragraphs 32 to 61 if the notice is a valid opt-in notice from a jobholder
  - paragraphs 62 to 78 if the notice is a valid joining notice from an entitled worker.

## Jobholders opting in

32. When the employer is satisfied that they have received a valid opt-in notice from a jobholder, they must make arrangements for that jobholder to become an active member of an automatic enrolment scheme from the enrolment date, unless the worker has given or been given notice to end their employment.
33. Broadly, the employer is required to follow the automatic enrolment process for that jobholder. The scheme they use must be an automatic enrolment scheme. This means they are required to make an employer contribution. Once the jobholder becomes an active member of an automatic enrolment scheme, the jobholder has the right to opt out of the scheme, once enrolled.
34. If the employer is not required to make such arrangements (because the notice is given within 12 months of a previous opt-in notice, and the jobholder subsequently ceased active membership), but has chosen to do so, they are still required to follow the automatic enrolment process.
35. When an employer receives an opt-in notice, they will need to:
- identify the enrolment date
  - put an automatic enrolment scheme in place, if one is not already in place
  - enrol the jobholder within six weeks of the enrolment date, by following the automatic enrolment process.
36. There is an exception to this, in that the employer is not required to make the arrangements if the jobholder withdraws the notice in writing before the enrolment date, though an employer should note that encouraging a jobholder to withdraw an opt-in notice may be considered as inducement. **Detailed guidance no. 8 – Safeguarding individuals** has more information about inducements.
37. The employer is also required to keep certain records of the enrolment process, including the opt-in notice. **Detailed guidance no. 9 – Keeping records** has more details.

## Identifying the enrolment date

38. The enrolment date is the start date of active membership for the jobholder. As such, it is a key piece of information for the employer. Not only is it the start date of active membership, but it is also:
- the start date of the joining window (the six week period during which enrolment must be completed)
  - the start date for the calculation of contributions due to the pension scheme.
39. On the first day of the next pay reference period after the employer receives the opt-in notice, the employer must assess the worker to identify whether they are a jobholder on that date. If they are, then the first day of the pay reference period after receipt of the opt-in notice is the enrolment date. (Pay reference periods are explained in **Detailed guidance no. 3 – Assessing the workforce.**)
40. If the employer has already closed the payroll for that next pay reference period when they receive the opt-in notice, then the employer must assess the worker to identify whether they are a jobholder on the first day of the second pay reference period, after the date of receipt. If they are a jobholder, this is the enrolment date.
41. If this assessment of the worker's category on the first day of the next or second pay reference period after receipt (whichever is appropriate) identifies that the worker is not a jobholder on that date, the employer must continue to make an assessment of the worker on the first day of each pay reference period. In these circumstances, the enrolment date is the first day of the pay reference period in which the employer identifies that the jobholder criteria are met.
42. There is a final consideration for an employer if the worker is opting in during the postponement period. If this is the case, the employer should check when the deferral date is, to see whether it is before or after the enrolment date has occurred.

## Deferral date is before the enrolment date has occurred

43. If the deferral date is before the enrolment date has occurred, ie because it is before the assessment on the first day of the pay reference period after receipt (or second pay reference period after receipt, where appropriate), and the worker is aged at least 22 but under state pension age, the employer must assess the worker on the deferral date, as usual.

44. If on the deferral date, the employer identifies that the worker is an eligible jobholder, they must automatically enrol the eligible jobholder with effect from the deferral date. In effect, the enrolment date falls away. If on the deferral date, they are a non-eligible jobholder, then the employer must continue to identify the enrolment date, as usual.

## Deferral date is after the enrolment date has occurred

45. If the deferral date is after the enrolment date has occurred, then the employer must continue to enrol the jobholder with effect from their enrolment date. In effect, postponement for that jobholder falls away.

### Some examples of enrolment dates

Julia's pay reference period is monthly, from the 1st to the end of the month. She gave her employer a letter on 4 February saying she wanted to join a pension scheme. She is 19 years old.

Her employer assessed whether qualifying earnings were payable above the lower level of qualifying earnings in the period 1-28 February, and identified that they were. Her employer knows therefore that they have been given an 'opt-in notice'. Her employer also checked that the letter was signed and so was a valid opt-in notice.

Her employer knows that they must enrol Julia into an automatic enrolment scheme from her enrolment date. The opt-in notice was given before the payroll arrangements closed on 20 February. This means that the starting point for identifying the enrolment date is the first day of the next pay reference period (1 March). Her employer assessed whether qualifying earnings were payable above the lower level of qualifying earnings in the period 1-31 March and identified that they were. Julia's enrolment date is 1 March.

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William is paid in arrears on a Saturday, in respect of the work he does from a Saturday to Friday 2 weeks prior. Eg the work done from Sat 1 June to Fri 7 June is paid on Sat 15 June. His employer runs payroll each Thursday for payment on the Saturday. William is 36 years old.

continued...

William sends his employer an email on Friday 7 June asking to join a pension scheme. His employer assesses that qualifying earnings were payable in the period Saturday 1 June to Friday 7 June, between the lower level of qualifying earnings and the earnings trigger for automatic enrolment. His employer knows therefore that they have been given an 'opt-in notice'. The employer also checks that the email contains the statement confirming that William has personally submitted it and so is a valid opt-in notice.

His employer knows that he is a jobholder and that they must enrol William into an automatic enrolment scheme from his enrolment date. The next pay reference period starts on Sat 8 June and finishes Friday 14 June. The qualifying earnings that are payable in this pay reference period are payable on Sat 8 June. Because payroll closed on Thursday 6 June (the day before William submitted the opt-in notice) for the qualifying earnings payable in this next pay reference period, his employer identifies the starting point for identifying the enrolment date as Saturday 15 June (the first day of the second pay reference period after 6 June).

The employer assesses whether qualifying earnings were payable in the period 15-21 June and identifies that qualifying earnings were below the lower level of qualifying earnings. On 15 June therefore William is an entitled worker and so this is not the enrolment date. In the next pay reference period his employer assesses William again. The assessment date is day one of the pay reference period ie 22 June. His employer identifies that in the period 22-28 June qualifying earnings were payable above the lower level of qualifying earnings but below the earnings trigger for automatic enrolment. As William is a jobholder on 22 June this is his enrolment date and active membership of an automatic enrolment scheme must start from this date.

## Selecting an automatic enrolment scheme

46. An employer may already have an automatic enrolment scheme in place which they use for their eligible jobholders. However, if an employer does not have any eligible jobholders working for them, there is no requirement to select a scheme in advance of the staging date. So, if the employer does not already have an automatic enrolment scheme in place, they will have to select one for the jobholder opting in.
47. Whether they have a new scheme or an existing scheme, the employer must be satisfied that it meets the criteria to be an automatic enrolment scheme before it can be used. **Detailed guidance no. 4 – Pension schemes** provides more information on the criteria for a pension scheme to be an automatic enrolment scheme.
48. The scheme will need to be in place so that enrolment can be completed within six weeks of the jobholder's enrolment date.
49. The employer must then enrol the jobholder into the automatic enrolment scheme with effect from their enrolment date, by following the automatic enrolment process.

## Enrolling a jobholder into an automatic enrolment scheme

50. The employer must follow the same steps set out in law as for automatic enrolment, so that the jobholder becomes an active member with effect from their enrolment date. The only exception to this is if the jobholder who is opting in is already a member (deferred) of a personal pension scheme with that employer and the employer wants to use that scheme to fulfil their enrolment duty. In this case, the process is modified (see paragraphs 52-61).
51. The process of automatic enrolment is described in **Detailed guidance no. 5 – Automatic enrolment**. When reading this guidance and applying it to opting in, the following terms apply:
  - for 'eligible jobholder' read 'jobholder'
  - for 'automatic enrolment' read 'enrolment'
  - for 'automatically enrolled' read 'enrolled', and
  - for 'automatic enrolment date' read 'enrolment date'.



## Modified enrolment process

52. If the jobholder who is opting in is already a deferred member of a personal pension scheme with that employer, and the employer wants to use that scheme to fulfil their enrolment duty, they may choose to use a modified automatic enrolment process.
53. Under the modified process, before the end of what is known as the 'joining window' (the six weeks from the enrolment date) the employer must make arrangements to achieve active membership for the jobholder, effective from their enrolment date, by making arrangements with the provider of a personal pension scheme, so that:
  - the scheme is an automatic enrolment scheme, and
  - the jobholder is an active member of that scheme.
54. As part of ensuring that the scheme can be used for enrolment, there will need to be agreements in place to pay contributions that meet the minimum requirements. There may not be any need to put new agreements in place, just simply to reactivate the existing agreements or the parts of the agreements that will relate to the minimum contribution entitlement. This will depend on:
  - what agreements were in place between the pension scheme provider, the jobholder and the employer when the jobholder was first an active member
  - the pension scheme provider's processes for administering the policy.
55. However, if reactivating previous agreements or parts of these agreements, the jobholder cannot be required to give consent or provide any information as this would mean the scheme does not meet the automatic enrolment criteria.
56. The minimum contribution entitlement for DC schemes (part of the qualifying criteria) will increase on 1 October 2017 and again on 1 October 2018 (this is known as 'phasing'). In addition to the increases due to phasing the qualifying earnings thresholds are reviewed every year and may change. This may also result in an increase in the minimum contribution entitlement. If the enrolment date falls after one of the phasing dates or after an increase in qualifying earnings then the minimum contribution rates at the time of enrolment may be different from those under the agreements that applied when active membership of the qualifying scheme was created.

57. Where those previous agreements or parts of the agreements required contributions of only the minimum amount and this has increased as a result of phasing, then unless the original documents gave the provider or the employer the ability to change contribution rates without consent, the provider will not be able to re-activate these agreements or parts of these agreements. Unless they can be re-activated at the level of the minimum contribution entitlement that applies at the automatic re-enrolment date (without requiring consent), the pension scheme cannot be made an automatic enrolment scheme in relation to the jobholder. In this case the employer and the provider cannot therefore practically use the modified automatic re-enrolment process.
58. The employer should also be mindful that they may be required to consult with members if they are making a change to the scheme that increases member contributions.
59. These arrangements must be completed within the enrolment joining window.
60. The employer must follow the full automatic enrolment process described in **Detailed guidance no. 5 – Automatic enrolment** if:
  - they want to use a different personal pension scheme than the one of which the jobholder is a member or
  - the jobholder was previously automatically enrolled or enrolled and opted out during the opt-out period (this is because the effect of opt-out is that the worker is treated as never having been a member), or
  - they are unable to use the modified process.
61. Appendix A has a flowchart that shows the process an employer must follow when they receive a request from a worker to join a pension scheme.

**The employer must follow the same steps as set out in law**

## Entitled workers joining

62. When the employer is satisfied they have received a valid joining notice from an entitled worker, they must make arrangements under the scheme rules or policy terms to create active membership of a pension scheme for the entitled worker, unless the worker has given or been given notice to end their employment. The scheme they use does not have to be an automatic enrolment scheme or even a qualifying scheme.
63. Broadly, to establish membership, the employer must provide certain information to the scheme they have chosen, and follow any requirements for joining.

64. If the employer is not required to make such arrangements because the notice is given within 12 months of a previous notice and the entitled worker subsequently ceased active membership, but has chosen to make the arrangements, they are then still required to follow the process in paragraphs 69-74.
65. When an employer receives a joining notice, they will need to:
  - identify a pension scheme to take the entitled worker
  - make arrangements for the entitled worker to join a pension scheme.
66. The employer is also required to keep certain records of the process, including the joining notice. **Detailed guidance no. 9 – Keeping records** has further details.

## The pension scheme for the entitled worker

67. The pension scheme the employer must use must be a UK tax-registered scheme. It is not required to meet the qualifying or automatic enrolment criteria and, as such, the employer may choose whether to make a contribution themselves in respect of the entitled worker.
68. If the scheme the employer wants to use is a personal pension scheme, then direct payment arrangements must be in place. Broadly, this means that the employer must deduct the entitled worker's contributions to the scheme from their remuneration and pay it across to the pension scheme on the worker's behalf. More details on the time limits for paying contributions can be found in **Detailed guidance no. 5 – Automatic enrolment**.

## Making arrangements for an entitled worker to join a pension scheme

69. To create active membership under the scheme rules or policy terms, the employer must enter into arrangements with either:
  - the trustees or managers of an occupational pension scheme, or the provider of a personal pension scheme, or
  - give information about the entitled worker to the trustees, managers or provider of the pension scheme.
70. The employer should liaise with the trustees, managers or the provider of the pension scheme to establish whether there are any requirements in the scheme rules or policy that need to be satisfied, in order to create active membership for the entitled worker.

## Checklist of entitled worker information for joining a pension scheme

71. On receipt of a valid joining notice from an entitled worker, the employer must give the following information to the trustees, or managers of the scheme they have chosen.

### Information to the scheme about the entitled worker who is joining

#### Mandatory information

The employer must give the trustees, managers or providers of the pension scheme the entitled worker's:

- name
- sex
- date of birth
- postal residential address
- National Insurance number (NINO) – if the NINO is not available to the employer, the employer must provide it to the scheme within six weeks of receiving it.

The employer must also provide the following information, unless the scheme does not require it. The entitled worker's:

- postal work address
- work email address (if there is one)
- personal email address (if the employer holds this information)
- gross earnings in any pay reference period (if the employer holds this information)
- the value of any contributions payable to the scheme by the employer and the entitled worker in any pay reference period (where this information is available to the employer. The value can be shown as a fixed amount or a percentage rate of any qualifying earnings or pensionable pay due to the entitled worker).


72. The information must be given to the trustees, managers or the provider of the pension scheme.
73. The information must be given in writing. Someone acting on the employer's behalf, such as an independent financial adviser or benefit consultant, accountant or bookkeeper can send the information, but it remains the employer's responsibility to make sure it is provided, on time, and is correct and complete.
74. Appendix A has a flowchart that shows the process an employer should follow when they receive a request from a worker to join a pension scheme.

## After completing the joining process

75. Once the joining process has been completed, the employer will have ongoing responsibilities:
  - with the scheme, as long as the entitled worker remains a member of the scheme and in employment with that employer
  - to keep records (see **Detailed guidance no. 9 – Keeping records**).
76. If the entitled worker is an active member of a scheme that would not meet the qualifying criteria if it were to be used for automatic enrolment, the employer must continue to assess the worker in each pay reference period to track when the worker changes category. This is necessary to identify if automatic enrolment is triggered.
77. If the entitled worker is an active member of a scheme that would meet the qualifying criteria, then in practice, there is no need to assess the worker in each pay reference period. However, if the entitled worker subsequently ceases active membership of this scheme at any time and has never been an eligible jobholder, the employer will have to assess the worker in each pay reference period to track when the worker changes category. This is necessary to identify the first time that the criteria to be an eligible jobholder are met after active membership has ceased, and therefore automatic enrolment is triggered.
78. **Detailed guidance no. 5 – Automatic enrolment** contains further information about the action an employer may need to take in the event that active membership ceases after enrolment.

# Contractual enrolment into a pension scheme

79. Instead of automatically enrolling only eligible jobholders, some employers may choose to:
- immediately enrol all workers into a pension scheme when they first start work with the employer
  - annually re-enrol workers back into the pension scheme if they have ceased membership in the year.
80. To do this, employers must obtain the worker's consent to deduct pension contributions. They often use contractual agreements with their staff (for example the contracts of employment) to obtain this consent. We describe this as contractual enrolment.
81. At the moment, many employers refer to contractual enrolment as automatic enrolment. However, the process that employers must follow for automatic enrolment is different to that which they will follow for contractual enrolment. The key difference being that under contractual enrolment the employer must get the worker's consent to put them into the pension scheme and make deductions from their salary for the worker contributions. Automatic enrolment does not require the worker's consent, put them into the pension scheme and the regulations require the employer to deduct from salary any contributions payable by the jobholder to the pension scheme.
82. Employers using contractual enrolment must understand the interaction with the employer duties and the action they may still need to take. As a minimum, they will still be required to complete a declaration of compliance with The Pensions Regulator to tell us how they have complied with their duties. The safeguards also continue to apply to the employer. For more information on the safeguards see **Detailed guidance no. 1 – Employer duties and defining the workforce**.
83. The main consideration for an employer using contractual enrolment is the pension scheme that they choose to use for contractual enrolment. This is because the enrolment duties (described in paragraph 1) and the information requirements do not apply if the worker is an active member of a qualifying scheme. If the pension scheme chosen for contractual enrolment would not meet the criteria to be a qualifying scheme, were it to be used for automatic enrolment, the employer duties will continue to apply in full.



**The employer will have ongoing responsibilities**

84. Table 1 summarises the duties that will apply depending on whether the pension scheme the employer is using for contractual enrolment would meet the criteria to be a qualifying scheme.

**Table 1**  
**Employer duties that will apply for employers using contractual enrolment**

Scheme would not meet the qualifying criteria	Scheme would meet the qualifying criteria
<ul style="list-style-type: none"> <li>• Automatically enrol</li> <li>• If using postponement, give a notification to the worker</li> <li>• Give the information about the right to opt in to an automatic enrolment scheme for jobholders and the right to join a pension scheme for entitled workers if not using postponement</li> <li>• If a jobholder decides to opt in, arrange pension scheme membership</li> <li>• If an entitled worker decides to join, arrange pension scheme membership</li> <li>• Process any opt-outs</li> <li>• Complete a declaration of compliance with The Pensions Regulator.</li> </ul>	<ul style="list-style-type: none"> <li>• Complete a declaration of compliance with The Pensions Regulator</li> <li>• If using postponement, give a notification to the worker.</li> </ul>

85. If the employer has chosen a pension scheme that would meet the qualifying criteria as their scheme for contractual enrolment, and the worker ceases active membership of that scheme, they should be aware that the enrolment and information duties will now apply to that worker.
86. This means that if the worker ceases membership, the employer will need to assess the worker in each pay reference period to ensure they fulfil the duties relevant to the category of worker into which they fall.
87. An employer should note that if this assessment identifies the worker to be an eligible jobholder, they will have either an automatic enrolment or re-enrolment duty. Which one applies will depend on whether the worker ever met the criteria to be an eligible jobholder whilst an active member of the scheme that would have met the qualifying criteria.
88. If they did, and they meet the eligible jobholder criteria again after they have ceased active membership, the employer will have a re-enrolment duty. This means that in practice, they do not need to assess the worker to identify their worker category until the re-enrolment date, because the employer will not have to re-enrol that worker until their three-yearly re-enrolment date. However, the employer may still need to assess the worker on an ongoing basis to identify when information requirements are triggered.

89. If the worker never met the criteria to be an eligible jobholder whilst an active member of the scheme, then the first time that they do meet the criteria after membership has ceased, the employer will have an automatic enrolment duty. The employer can choose to use postponement to postpone that duty for a period of up to three months. If the worker meets the conditions of any of the five exceptions from the automatic enrolment duty, then depending upon the circumstances the automatic enrolment duty may not apply or the employer may exercise their discretion not to automatically enrol the worker. For more information on these exceptions see **Detailed guidance no. 1 – Employer duties and defining the workforce**.
90. An employer may therefore, still wish to keep track of a worker's category whilst an active member of a scheme that would meet the qualifying criteria – even where they have achieved this membership through contractual enrolment – in case membership ceases and they need to identify the correct duty.



# What next?

Employers can read about the enrolment process for opt-ins in **Detailed guidance no. 5 – Automatic enrolment**.

Employers must also be aware of the legal safeguards that have been put in place to protect the rights of individuals under the pensions reform. These safeguards apply to all employers from the date the law commenced in July 2012.

For many employers, this will be some time ahead of their staging date, so it is important that they gain familiarity with these safeguards to ensure compliance. **Detailed guidance no. 8 – Safeguarding individuals** has further details.

In addition to the record-keeping requirements surrounding opting in or joining, there are other records an employer must keep in relation to the new duties. These are detailed in **Detailed guidance no. 9 – Keeping records**.



**Employers  
must be aware  
of the legal  
safeguards**

# Changes from last version

This version has been updated as a result of the changes in legislation from 2015 which introduce four exceptions from some of the employer duties and make changes to the information requirements. The information about the right of a jobholder to opt in to an automatic enrolment scheme and the right of an entitled worker to join a pension scheme is now combined into one notice. The requirement to give information to a jobholder who is already an active member of a qualifying scheme is also removed, which impacts the considerations for an employer using contractual enrolment.

Updating this guidance to reflect these changes has resulted in the deletion of some content:

- Paragraph 15 of the last version has been removed and combined with the entitled worker information at paragraph 18
- Paragraphs 27-29 of the last version have been removed, and
- Paragraphs 87-98 including Table 1 have also been removed.

Paragraph numbers have consequently changed since the last version.

The table below lists the other changes since the last version. This list is not exhaustive. It does not include minor editorial changes.

Location	Change
About this guidance	Paragraph updated with reasons for update
Paragraph 12	Reference added to two new exceptions which mean that section 7 of the Pensions Act 2008 does not apply in certain circumstances
Paragraph 14	Reference added to one new exception which means the employer is not required to take any action with an opt-in notice
Paragraph 16	Reference added to one of the new exceptions which mean that section 9 of the Pensions Act 2008 does not apply in certain circumstances.
Paragraph 18	Reference added to one new exception which means the employer is not required to take any action with a joining notice
Paragraph 27	Reference added to assessment process
Paragraphs 29-30 and 32	Reference added to one new exception which means the employer is not required to take any action with an opt-in notice

Location	Change
Paragraph 62	Reference added to one new exception which means the employer is not required to take any action with a joining notice
Paragraph 76	Reference added to the new exceptions which mean that if conditions are met, an employer may automatically enrol or re-enrol the jobholder, but is not required to do so
Paragraph 82	Reference to the requirement to give information to a jobholder who is also an active member of a qualifying scheme removed
Table 1	Updated with the changes in the legislative requirements
Paragraph 89	Reference to the new exceptions added

# Key terms

## Summary of the different categories of worker

Category of worker	Description of worker
Worker	An employee or someone who has a contract to perform work or services personally, that is not undertaking the work as part of their own business.
Jobholder	A worker who: <ul style="list-style-type: none"><li>• is aged between 16 and 74</li><li>• is working or ordinarily works in the UK under their contract</li><li>• has qualifying earnings.</li></ul>
Eligible jobholder	A jobholder who: <ul style="list-style-type: none"><li>• is aged between 22 and state pension age</li><li>• has qualifying earnings above the earnings trigger for automatic enrolment.</li></ul>
Non-eligible jobholder	A jobholder who: <ul style="list-style-type: none"><li>• is aged between 16 and 21 or state pension age and 74</li><li>• has qualifying earnings above the earnings trigger for automatic enrolment</li></ul> or <ul style="list-style-type: none"><li>• is aged between 16 and 74</li><li>• has qualifying earnings equal to or below the earnings trigger for automatic enrolment.</li></ul>
Entitled worker	A worker who: <ul style="list-style-type: none"><li>• is aged between 16 and 74</li><li>• is working or ordinarily works in the UK under their contract</li><li>• does not have qualifying earnings.</li></ul>

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### **Detailed guidance for employers no. 6**

Opting in, joining and contractual enrolment

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