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4

Detailed guidance for employers

Pension schemes: Pension schemes under the new employer duties

automatic enrolment

The Pensions Regulator

Publications in the series

1 Employer duties and defining the workforce
An introduction to the new employer duties

2 Getting ready
First steps to prepare for the new employer duties

3 Assessing the workforce
How to identify the different categories of worker

3a Postponement

3b Transitional period for schemes with defined benefits

3c Having completed the assessment

4 **Pension schemes**
Pension schemes under the new employer duties

5 Automatic enrolment
An explanation of the automatic enrolment process

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

7 Opting out
How to process 'opt-outs' from workers who want to leave a pension scheme

8 Safeguarding individuals
The new safeguards for workers

9 Keeping records
Records that must be kept by law under the new employer duties

10 Information to workers

11 Automatic re-enrolment

Accompanying resources

Information to workers
Summary of information requirements in a quick-reference table format

The different types of worker
Diagram of the different categories of worker and the criteria for each category

Employer duties and safeguards
At-a-glance summary of the duties and safeguards

Contents

	page
About this guidance	6
Introduction: Automatic enrolment and qualifying pension schemes	7
Employers with existing pension schemes	7
Employers without an existing pension scheme	8
All employers	8
Location of the pension scheme	9
Overview of automatic enrolment and qualifying schemes	11
In summary	12
Automatic enrolment criteria	13
Additional criteria for non-UK pension schemes	14
What the automatic enrolment criteria mean in practice	14
Qualifying criteria	16
Minimum requirements by pension scheme type	18
Defined contribution occupational pension schemes	19
Defined contribution personal pension schemes	20
Defined benefit pension schemes	25
Hybrid pension schemes	29
What the qualifying criteria mean in practice	30
Statutory increases in the minimum contributions entitlement for DC pension schemes	35
Ensuring the pension scheme continues to meet the qualifying criteria	37
Circumstances where an employer must consult on the proposal to increase member contributions	39
Ensure the correct contributions are deducted	41
Information to workers	41
Certifying that one of the alternative requirements are met and the increase in minimum contributions	42
What next?	45
Key terms: Summary of the different categories of worker	46

continued...

Please note: This guidance is linked to the following appendices

Appendix A: The phasing in of contribution levels
Available at: **www.tpr.gov.uk/docs/dg-4-appendix-a.pdf**

Appendix B: The phasing in of contributions for certification
Available at: **www.tpr.gov.uk/docs/dg-4-appendix-b.pdf**

Appendix C: Steps to take to determine if your DB pension scheme is a qualifying scheme
Available at: **www.tpr.gov.uk/docs/dg-4-appendix-c.pdf**

Appendix D: Steps to take to determine if your DC pension scheme is a qualifying scheme
Available at: **www.tpr.gov.uk/docs/dg-4-appendix-d.pdf**

Appendix E: The relevant pay reference period for the purposes of the minimum contribution entitlement
Available at: **www.tpr.gov.uk/docs/dg-4-appendix-e.pdf**

Appendix F: Entitlement check for DC occupational and personal pension schemes
Available at: **www.tpr.gov.uk/docs/dg-4-appendix-f.pdf**

About this guidance

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

It provides factual information on the required criteria for a pension scheme to be an automatic enrolment scheme and/or a qualifying scheme, as set out in legislation. This includes the requirements for both UK and non-UK pension schemes.

Employers reading this guidance should already understand whether they need an automatic enrolment scheme, a qualifying scheme, or a combination of the two, to meet their duties. In order to understand this, employers should first read:

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

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.

There are certain terms used in this guidance that are explained further in other guidance in this series, specifically **Detailed guidance no. 5 – Automatic enrolment** and **Detailed guidance no. 6 – Opting in, joining and contractual enrolment**. It may be useful to have them to hand as a point of reference when reading this guidance.

It will help employers if they are familiar with the different categories of workers. These are explained in **Detailed guidance no. 1 – Employer duties and defining the workforce**. A quick reminder is also available in Key terms.

This guidance forms part of the latest version of the detailed guidance for employers (published April 2019).

Employers need to be familiar with the different categories of workers

Introduction: Automatic enrolment and qualifying pension schemes

1. The new employer duties require employers to put certain jobholders into a pension scheme. An employer must:

   - automatically enrol any eligible jobholders into an automatic enrolment scheme, unless they are already an active member of a qualifying scheme with that employer
   - enrol any non-eligible jobholders who give the employer an opt-in notice into an automatic enrolment scheme, unless they are already an active member of a qualifying scheme with that employer.

Employers with existing pension schemes

2. Employers who already provide a pension scheme (or schemes) for some or all of their workers, will need to decide whether and how they want to use this pension scheme to meet their duties for existing members, as well as how they will fulfil their new automatic enrolment responsibilities.

3. Ahead of their staging date, an employer with an existing pension scheme will have to identify which category of worker the active scheme members fall into.

4. If they have eligible jobholders who are already active members of their existing pension scheme, they will need to consider whether they wish to use their existing pension scheme as a qualifying scheme for existing members who are eligible jobholders. This will mean that they will not have an automatic enrolment duty for these eligible jobholders but will be required to issue them with information. More details are in **Detailed guidance no. 3 – Assessing the workforce**.

5. To make this decision, an employer will need to understand the qualifying scheme criteria and satisfy themselves that their pension scheme meets, or can be amended to meet, these criteria.

6. An employer will need to decide whether they are likely to have automatic enrolment duties for workers who are not already members of a pension scheme. They should know this from completing their initial assessment of the workforce as part of getting ready for their duties (see **Detailed guidance no. 2 – Getting ready**).

7. If they are likely to have an automatic enrolment duty, they will need to consider whether they wish to:
   - use their existing pension scheme for automatic enrolment, or
   - put a new pension scheme in place and ensure it meets the automatic enrolment criteria.
8. To make this decision, an employer will need to understand the automatic enrolment scheme criteria and satisfy themselves that their pension scheme meets, or can be amended to meet, these criteria.

Employers without an existing pension scheme

9. An employer without existing pension provision, who is putting a pension scheme in place for the first time to fulfil their enrolment duties, will need to put an automatic enrolment scheme in place with effect from the date the duties first apply to them.

All employers

10. All employers will need to understand what makes a pension scheme an automatic enrolment scheme, and what makes it a qualifying scheme.
11. This guidance describes the required criteria. The guidance is divided into five sections:
    - An overview of automatic enrolment and qualifying schemes
    - The automatic enrolment criteria for UK and non-UK pension schemes, and what the criteria mean in practice
    - The qualifying criteria for UK and non-UK pension schemes
    - The minimum requirements for UK and non-UK pension schemes by scheme type
    - What the qualifying criteria and minimum requirements mean in practice.
12. When choosing a pension scheme to fulfil their duties, an employer might use an existing pension scheme or set up a new occupational or personal pension scheme.

13. Whether it is a new or existing pension scheme, an employer must be satisfied that it meets the criteria to be an automatic enrolment scheme or to be a qualifying scheme before they can use it.

14. It is important to note that these criteria are the minimum features the pension scheme is required to have. There will be other things to consider before an employer makes a decision about what type of pension scheme to use.

15. Some employers will pay for professional advice while others will make decisions with information from a range of sources. We support employers in understanding the process for selecting a pension scheme for automatic enrolment.

16. Further information for employers to help them understand types the factors they should consider when choosing a pension scheme: **www.tpr.gov.uk/ae-pension.**

Location of the pension scheme

17. The location of the main administration of the pension scheme is a relevant consideration when an employer is considering their options.

18. A pension scheme whose main administration is in the UK or other European Economic Area (EEA) state can be used for automatic enrolment and can also be used as a qualifying scheme, provided it meets the relevant criteria.

19. A pension scheme whose main administration is in a country outside the EEA cannot be used for automatic enrolment. It can be a qualifying scheme, provided it meets the relevant criteria, and so may be used for existing members of the pension scheme.

20. Table 1 shows what criteria the different types of non-UK pension schemes must meet, and for which of the duties they can be used.

Table 1

	What requirements EEA pension schemes must meet		**What requirements non-EEA pension schemes must meet**	
In respect of:	scheme in existence prior to duties first applying to an employer	new scheme set up after duties first apply to employer	scheme in existence prior to duties first applying to an employer	new scheme set up after duties first apply to employer
Existing members who are eligible jobholders	Qualifying criteria for non-UK schemes	Not applicable	Qualifying criteria for non-UK schemes	Not applicable
Eligible jobholders who are not existing members	Qualifying criteria for non-UK schemes and automatic enrolment requirement for non-UK schemes		Cannot be used	
Non-eligible jobholders who wish to opt in	Qualifying criteria for non-UK schemes and automatic enrolment requirement for non-UK schemes		Cannot be used	
Entitled workers	Tax registered in the UK and direct payment arrangements in place between the worker and employer			

Overview of automatic enrolment and qualifying schemes

21. There are three tiers of requirements that a pension scheme must meet in order to be an automatic enrolment scheme. Figure 1 illustrates these tiers.

Figure 1
The three tiers of requirements pension schemes must meet

22. An automatic enrolment scheme must meet the automatic enrolment criteria, the qualifying criteria and the minimum requirements. An employer must ensure that their pension scheme meets the criteria to be an automatic enrolment scheme if they want to use it for automatic enrolment, or for enrolling any jobholders who have opted in.

23. The minimum requirements differ depending on the type of pension scheme (eg whether the scheme is a DC or DB pension scheme). The minimum requirements are described in the section of this guidance entitled Minimum requirements by pension scheme type.

24. There are two tiers of requirements that a pension scheme must meet in order to be a qualifying scheme. Figure 2 illustrates these tiers.

Figure 2
The two tiers of requirements pension schemes must meet in order to be a qualifying scheme

25. A qualifying scheme must meet the qualifying criteria and the minimum requirements.

In summary

26. A qualifying scheme is a scheme that meets certain minimum requirements with some additional conditions (the 'qualifying criteria'). These are described in the section of this guidance entitled Qualifying criteria.

27. An automatic enrolment scheme is a qualifying scheme with some additional features (the 'automatic enrolment criteria') which means the employer can use it for automatic enrolment. These additional features are described in the section of this guidance entitled Automatic enrolment criteria. Broadly, this means that there should be nothing in the rules of the pension scheme which would act as a barrier to automatic enrolment.

Automatic enrolment criteria

28. An employer must ensure that their pension scheme meets the criteria (set out below) if they want to use it for automatic enrolment, or for enrolling any jobholders who have opted in.

29. To be an automatic enrolment scheme, a scheme must meet the qualifying criteria (set out in the next section) and in addition, it must not contain any provisions that:

    - prevent the employer from making the required arrangements to automatically enrol, opt in or re-enrol a jobholder
    - require the jobholder to express a choice in relation to any matter, or to provide any information, in order to remain an active member of the pension scheme.

30. If the scheme is a money purchase scheme, it must also not contain any provisions that allow either:

    - an amount to be deducted from a jobholder's pension pot or contributions, or
    - the value of a jobholder's pension rights to be reduced by any amount,

    if that amount is to be paid to a third party under an agreement with the employer unless the third party is either the member, the scheme trustee/manager, or the scheme provider. This is colloquially known as a 'consultancy charge'.

Additional criteria for non-UK pension schemes

31. Pension schemes with their main administration in an EEA state outside the UK can be used for automatic enrolment, providing they meet the following additional criteria. They must:

    - be an institution for occupational retirement provision within the meaning of Article 6(a) of the Institution for Occupational Retirement Provision (IORP) Directive, or a personal pension scheme that is regulated by the relevant competent authority in its home state and operated by a person authorised by that authority, in relation to that activity, and
    - be subject to the following regulatory requirements:
        - At least 70% of any jobholder's money purchase benefits (or lump-sum accrual) must be used to provide them with an income for life
        - Benefits must be paid no earlier than age 55 (unless on grounds of ill health).

32. Pension schemes with their main administration outside the EEA cannot be used for automatic enrolment.

What the automatic enrolment criteria mean in practice

33. Practically, the automatic enrolment criteria mean that the rules of the pension scheme cannot:

    - contain any barrier to enrolment into the pension scheme, eg if a scheme has an age restriction of 21, the employer may use it for automatic enrolment but will need to change the scheme rules or provide another automatic enrolment scheme for any jobholders under 21 who wish to opt in
    - require a jobholder to provide information to become or remain a member, eg to complete an application form or give consent
    - require an employer to provide information about the jobholder as a condition of joining beyond the specified information required for automatic enrolment, unless the employer is satisfied that they will be able to provide this information within a period of time short enough to not hamper the automatic enrolment process

- require a jobholder to make any choice to join or remain a member of a pension scheme, eg to make any choice about the fund their contributions will be invested in before they can become a member. However, the jobholder may express a choice voluntarily, if they wish, and if the scheme rules allow for it. An automatic enrolment scheme will therefore have to provide a default fund for all jobholders who do not express an opinion or choice. The Department for Work and Pensions (DWP) has published default guidance setting out industry standards for governance of funds, charging structure and communications. This guidance can be viewed at **www.dwp.gov.uk/policy/pensions-reform/workplace-pension-reforms/guidance**.

34. If an employer has to pay for advice regarding a money purchase scheme that they intend to use for automatic enrolment, then they will no longer be able to enter into an agreement to deduct such charges from the jobholder's contributions or entitlement under the scheme.

35. Employers with non-UK EEA pension schemes should also check with the trustees or scheme administrator, as the pension scheme may also need to comply with the existing cross-border requirements in respect of its UK members. Each EEA member state will have its own procedure for authorisation and approval.

Qualifying criteria

36. All automatic enrolment schemes must also meet the qualifying criteria. Any existing pension scheme that the employer already provides before their staging date will also have to meet the qualifying criteria, if the employer wants to continue to use it for those workers that are already active members.

37. A qualifying scheme may be a UK scheme (one with its main administration in the UK) or a non-UK scheme (with its main administration outside the UK). This includes non-UK pension schemes with their main administration outside the EEA (unlike the automatic enrolment criteria).

38. For a UK pension scheme to be qualifying in relation to a jobholder, it must:

    - be an occupational or personal pension scheme
    - be tax registered, and
    - satisfy certain minimum requirements. (The requirements differ according to the type of pension scheme and are described in the section of this guidance entitled Minimum requirements by pension scheme type.)

39. For a non-UK pension scheme to be qualifying in relation to a jobholder, it must:

    - be an occupational pension scheme[1] and, in the country where it has its main administration, there must be a body that regulates occupational pension schemes and that scheme itself, or
    - be a personal pension scheme[2] and, in the country where it is established, there must be a body that regulates personal pension schemes and the provider of that scheme, and

1
Occupational pension scheme (non-UK) is:

- an institution for occupational retirement provision (IORP) that has its main administration in an EEA state other than the UK, or
- a pension scheme that has its main administration outside an EEA state, and meets the definition of an occupational pension scheme as set out in section 1(1) of the Pension Schemes Act 1993.

2
Personal pension scheme (non-UK)

Within the EEA a personal pension scheme must be:

- regulated by a competent authority, and
- carried on by a person who is in relation to that activity authorised by a competent authority.

- satisfy the condition that the regulatory requirements provide that some of the benefits may be used to provide the jobholder with an income for life.

40. In addition, the non-UK pension scheme must:

- meet one of the following criteria:
  - It is a qualifying overseas pension scheme (QOPS), or
  - Jobholders receive tax relief on their contributions because of a double taxation agreement, or
  - Jobholders receive tax relief on their contributions under chapter 2, part 5 of the Income Tax (Earnings and Pensions) Act 2003 in accordance with paragraph 51 of Schedule 36 of the Finance Act 2004, or
  - It is a money purchase pension scheme whose jobholders do not receive any tax relief on their contributions but the employer's contribution includes an additional amount, which is equivalent in value to the tax relief that jobholders would have received, had the pension scheme been tax registered in the UK, and
- satisfy the same minimum requirements as for UK pension schemes, as set out inthe section of this guidance entitled Minimum requirements by pension scheme type, unless the scheme is a supplementary pension scheme[3] to which Directive 98/49/EC applies in relation to the jobholder.

3
A scheme within the meaning of Article 3(b) of Directive 98/49/EC.

Minimum requirements by pension scheme type

41. These minimum requirements differ according to the type of pension scheme. They apply to both UK pension schemes and non-UK pension schemes, except where indicated. An employer need only consider the minimum requirements that are relevant to their pension scheme type.

42. The minimum requirements for DC pension schemes, and DB schemes that satisfy certain conditions, set a minimum contributions entitlement. There are some additional requirements where the DC pension scheme is a contract-based scheme (ie a personal pension). For employers who provide a DC pension scheme, there is an alternative way of meeting the requirements called 'certification'.

43. The minimum requirements for DC pension schemes (and DB schemes that satisfy certain conditions) including certification that the scheme meets the minimum requirements for money purchase schemes, are described in paragraphs 46-79.

44. The minimum requirements for DB pension schemes set a benchmark for a jobholder's entitlement to benefits, or for the cost of providing those benefits, and are described in paragraphs 80-97.

45. The minimum requirements for hybrid pension schemes (a scheme which is neither only a DB nor only a DC, but which generally has elements of both) are described in paragraphs 98-101.

DC occupational pension schemes

46. The minimum requirements for DC occupational pension schemes, and DB schemes that satisfy certain conditions, are based on the contribution rate and require that under the scheme:

    - the employer must make contributions in respect of the jobholder
    - a total minimum contribution, however calculated, must be at least 8% of the jobholder's qualifying earnings (see paragraph 49) in the relevant pay reference period[4]
    - a minimum employer's contribution, however calculated, must be at least 3% of the jobholder's qualifying earnings in the relevant pay reference period.

47. Note that contribution levels are being phased in. See paragraphs 125 to 166 for more information.

48. 'Under the scheme' means under the rules of the pension scheme or other binding agreement with the employer.

49. 'Qualifying earnings' is a reference to earnings of between £6,240 and £50,000[5] made up of any of the following components of pay ('earnings') that are due to be paid to the worker:

    - salary
    - wages
    - commission
    - bonuses
    - overtime
    - statutory sick pay
    - statutory maternity pay
    - ordinary or additional statutory paternity pay
    - statutory adoption pay.

50. The assessment of whether a component of pay constitutes an element of qualifying earnings is for the employer to make. It is a separate and distinct assessment to deciding what constitutes basic pay for the purposes of a pension scheme that is using certification to meet minimum requirements as part of the qualifying criteria.

4
See Appendix E for further information on the relevant pay reference period.

5
These figures are for the 2019-2020 tax year. The DWP intends to announce the figures for the 2020-2021 tax year in November. Following the DWP's announcement, you will find these on our website.

DC personal pension schemes

51. The minimum requirements for personal pension schemes are also based on the contribution rate but, in addition, include requirements governing the mechanism for paying those contributions and the type of pension benefit provided.

52. Therefore, to be a qualifying scheme, a personal pension scheme must:

    - be subject to regulation by the Financial Conduct Authority (FCA), and
    - have its operations carried out in the UK by a person who is an authorised person or an exempt person under section 19 of the Financial Services and Markets Act 2000, and
    - provide money purchase benefits, and
    - have certain types of agreements in place between the employer, the jobholder and the provider of the personal pension scheme.

53. The agreements are as follows:

A. Agreement between the provider of the pension scheme and the employer

54. There must be an agreement between the provider of the pension scheme and the employer under which:

    - the employer must make contributions in respect of the jobholder, and
    - the employer's contribution, however calculated, must be at least 3% of the jobholder's qualifying earnings in the relevant pay reference period[6].

55. Note that contribution levels are being phased in. See paragraphs 125 to 166 for more information.

56. We expect the agreement to create a legally binding obligation (preferably by means of a written contract) on the employer to pay minimum contributions in respect of the jobholder to the provider of the pension scheme. It is unlikely that an existing group personal pension scheme or stakeholder pension scheme will have such an agreement in place.

6 See Appendix E for further information on the relevant pay reference period.

B. Agreement between the provider of the pension scheme and the jobholder

57. This agreement is only needed if the employer's contribution is less than 8% of the jobholder's qualifying earnings and the jobholder is therefore required to make contributions.

58. Where this is the case, there must be an agreement between the provider of the pension scheme and the jobholder, under which:

    - the jobholder must make contributions which, however calculated, are at least equal to the difference between:
        - 8% of the jobholder's qualifying earnings in the relevant pay reference period[7], and
        - the employer's contribution under the agreement in (A) above.

    The jobholder can choose to pay more than any shortfall if they wish.

59. Note that contribution levels are being phased in. See paragraphs 125 to 166 for more information.

60. It is for the provider of the pension scheme to decide how to put in place this agreement but we think that it may form part of the terms and conditions issued to the jobholder.

C. Direct payment arrangements

61. There must be direct payment arrangements between the employer and the jobholder. Direct payment arrangements are arrangements under which the employer (or someone acting on their behalf) pays contributions to the pension scheme. The contributions are either:

    - on the employer's own account but in respect of the jobholder (ie employer contributions), or
    - on behalf of the jobholder (jobholder contributions if the jobholder is making any) out of deductions from the jobholder's pay.

62. The direct payment arrangements must set out the due dates for paying these contributions.

63. Jobholder contributions deducted from pay must be paid to the pension scheme by the 19th day of the month following deduction (or 22nd day if the payment is by electronic means). There are special rules for the first deductions after joining. For more information see **Detailed guidance no. 5 – Automatic enrolment**.

7 See Appendix E for further information on the relevant pay reference period.

64. Employer contributions must be paid by the latest date set out under the arrangements for paying them to the pension scheme.

65. Direct payment arrangements are not required to be a written agreement on a single document. Essentially, direct payment arrangements exist where:

    - the employer makes employer contributions to a personal pension scheme (as is required under agreement (A)), or
    - the employer deducts the jobholder's contributions from pay and pays them across to the pension scheme for the jobholder, or
    - the employer does both.

66. A combination of other written and verbal agreements may exist between the provider of the pension scheme, the employer and the jobholder that constitute direct payment arrangements. In fact, because as part of the minimum requirements, there must be an agreement between the provider of the pension scheme and the employer under which the employer must make contributions, this will likely constitute evidence of the direct payment arrangements.

Certification

67. Existing DC pension schemes, whether occupational or personal pension schemes, will base contributions on percentage rates of pensionable pay. The definition of pensionable pay in the scheme rules is likely to be different to qualifying earnings. Pensionable pay may just include basic pay and not overtime or bonuses and may require contributions to be deducted from the first pound earned, or from a band of earnings different to qualifying earnings.

68. In recognition of this, employers with DC schemes or DB schemes that satisfy certain conditions are able to self-certify that their scheme meets the minimum requirements. One way of doing this is for employers to certify their scheme with respect to one of the alternative DC requirements. These requirements comprise three sets as follows:

    Set 1
    A total minimum contribution of at least 9% of pensionable pay (at least 4% of which must be the employer's contribution), or

    Set 2
    A total minimum contribution of at least 8% of pensionable pay (at least 3% of which must be the employer's contribution), provided that pensionable pay constitutes at least 85% of earnings (the ratio of pensionable pay to earnings can be calculated as an average at scheme level), or

Set 3
A total minimum contribution of at least 7% of earnings (at least 3% of which must be the employer's contribution) provided that all earnings are pensionable.

69. Note that contribution levels in all three sets are being phased in. See paragraphs 125 to 166 for more information.

70. To certify, the rules of the scheme must require contributions in line with one of the sets. Where a personal pension is used, similar agreements to those described in paragraphs 54 to 60 between the scheme, jobholder and employer must be in place which reflect the contribution levels in one of the sets.

71. 'Earnings' has the same meaning as in section 13(3) of the Pensions Act 2008 (see paragraph 49 for more information).

72. For sets one and two, pensionable pay must be at least equivalent to basic pay. Basic pay is defined as the gross earnings (see paragraph 71) of the jobholder, disregarding the gross amount of:

- any commission, bonuses, overtime or similar payments
- any shift premium pay, and
- any reasonable allowance with respect to:
    - i. any duty of the jobholder, such as a duty in connection with the role of fire or bomb warden, that is ancillary to the main duties of the jobholder's employment
    - ii. the cost of relocation of the jobholder to a different place of work
    - iii. in a case not covered by ii), the purchase, lease or maintenance of a vehicle
    - iv. in a case not covered by ii) or iii), the purchase, lease or maintenance of an item, or
    - v. in a case not covered by ii), iii) or iv), the delivery of a service to the jobholder.

73. This definition of basic pay is separate to the assessment of what components of pay make up qualifying earnings. Qualifying earnings are described in paragraph 49. When an employer is assessing their worker to identify which category of worker they fall into, they must assess whether qualifying earnings are payable in the relevant pay reference period. This is explained in **Detailed guidance no. 3 – Assessing the workforce**.

74. Some employers may be unable to, or not wish to, certify that their scheme meets one of the alternative DC requirements because, for example, elements of non-pensionable pay are fluctuating. These employers may instead wish to certify that their scheme meets the minimum requirements in the Act. They can do this if an examination of current remuneration data for all relevant jobholders reveals that their entitlement under the scheme has met the minimum requirements in practice.

75. The employer has one month from the effective date of the certificate (which, for the first certificate, will usually be the scheme's staging date) to carry out any necessary checks and calculations and sign the certificate. They may look forward for up to 18 months (the maximum certification period) to certify that their scheme will be qualifying for that period. At the end of the period, if the employer wishes to re-certify, they must do so within one month.

76. The DWP has practical guidance for employers and their advisers on the certification of DC schemes and the DC element of certain hybrid schemes. This can be viewed at **www.dwp.gov.uk/docs/money-purchase-schemes-guidance-2012.pdf**

77. An employer can also determine whether their scheme meets the minimum requirements by carrying out an entitlement check. Broadly, this entails carrying out an individual check for each worker to establish whether the worker's entitlement under the scheme rules is at least equivalent to the minimum requirements for a DC scheme. Details on how to carry out an entitlement check are set out in Appendix F.

Additional requirements for qualifying DC schemes.

78. Even if a scheme meets the qualifying criteria, there are a number of additional requirements that must be met for a scheme to be used as a qualifying scheme by an employer. The duty to check that these requirements are met falls upon the trustees and managers of the scheme and not the employer. The requirements include:

- a limit on the charges that members pay out of their pension pot
- a ban on Active Member Discounts, where members who no longer contribute to the scheme pay higher charges than those members who currently contribute to the scheme
- a ban on commission charges, where scheme members cover commission costs paid to advisers by administration and service providers for advice given to employers or their staff.

79. We provide more information about these requirements for trustees and managers of occupational pension schemes on our website: **www.tpr.gov.uk/trustees/new-duties-for-dc-schemes.aspx** Employers may also find this information useful as background to these requirements.

DB pension schemes

80. The minimum requirements for DB pension schemes are usually based on the benefits to which a jobholder is entitled under the pension scheme at retirement or the cost of providing those benefits. However, schemes that satisfy certain conditions are allowed to meet the DC minimum requirements (see paragraph 93 for more information).

81. Prior to the abolition of contracting out on 6 April 2016, many DB pension schemes satisfied the minimum requirements if the employer had been issued with a contracting-out certificate and all the jobholders were in contracted out employment. These schemes must now meet either the test scheme standard or one of the alternative DB requirements as set out below. Transitional arrangements are in place for schemes that were contracted out on 5 April 2016 and who have chosen to meet the cost of accruals test. For more information please see paragraph 92.

Test scheme standard

82. The test scheme is a hypothetical scheme, which is used as a benchmark. A pension scheme will satisfy the test scheme standard if it provides benefits that are broadly equivalent to, or better than, the benefits the test scheme would provide.

83. A pension scheme does not have to exactly match the structure of the test scheme to satisfy the test scheme standard but the benefits provided must be broadly equivalent to, or better than those in the test scheme.

84. The key features of the test scheme include:

- entitlement to a pension from age 65, gradually increasing to 68 (to reflect increases in state pension age) and continuing for life
- an annual pension of 1/120th (or a lump sum of 16% for final salary lump sum schemes) of average qualifying earnings in the three tax years before the end of pensionable service, multiplied by the number of years of pensionable service, up to a maximum of 40 years
- for average salary lump sum schemes:
  - a lump sum of 16% of qualifying earnings averaged over pensionable service, multiplied by the number of years of pensionable service, up to a maximum of 40 years with revaluation in service by the annual increase in either the Retail Price Index (RPI) or the Consumer Price Index (CPI), capped at 2.5%, or
  - a lump sum of 8% of qualifying earnings averaged over pensionable service, multiplied by the number of years of pensionable service, up to a maximum of 40 years with revaluation in service by the annual increase in either the RPI or the CPI, capped at 2.5% plus a further 3.5% per annum and revaluation in deferment of 3.5% per annum in addition to that required by the bullet below
- revaluation of accrued benefits in deferment in accordance with section 84 of the Pension Schemes Act 1993
- annual increase of pensions in payment in accordance with section 51 of the Pensions Act 1995.

85. The comparison of a pension scheme's benefits with those provided by the test scheme will usually be done by the scheme actuary.

86. In some circumstances, the employer may self-certify that their pension scheme meets the standards of the test scheme, providing no actuarial calculations or comparisons are required. If the employer does self-certify, they can delegate calculations, if they prefer, but the employer remains responsible for ensuring the pension scheme meets the requirement.

87. The DWP has issued guidance for employers and actuaries on the certification of qualifying schemes and the comparison to the test scheme, available at **www.gov.uk/government/collections/automatic-enrolment-guidance-for-employers-and-actuaries**

88. Schemes that fail to satisfy the test scheme standard, cannot be qualifying schemes unless they meet one of the alternative DB requirements.

Alternative DB requirements

89. On 1 April 2015, the government introduced two alternative tests for a DB scheme to satisfy the qualifying criteria. One is based on the cost to the scheme of the future accrual of active members' benefits and the other is intended to allow DB schemes that satisfy certain conditions and that meet the minimum requirements for DC occupational schemes to be used for automatic enrolment.

Cost of accruals test

90. The cost of accruals test is based on the cost of providing members' benefits. It is applied at benefit scale level if the scheme has more than one scale of benefits and the actuary determines that there is a material difference in cost between the benefit scales. The period covered by the test is normally to be taken from the most recent written report signed by the actuary, or, in the absence of such a report, twelve months. Employers should therefore be able to rely upon any relevant actuarial work that has been carried out recently, for example, a funding valuation report.

91. To satisfy the test, the cost of providing benefits in respect of each benefit scale must require a contribution rate of at least:

    - 10% of qualifying earnings
    - 11% of pensionable earnings provided those earnings are at least equivalent to basic pay (as defined in paragraph 72)
    - 10% of pensionable earnings provided those earnings are at least equivalent to basic pay (as defined in paragraph 72) and the ratio of pensionable earnings to total pay averages out at least 85% over the scheme as a whole
    - 9% of pensionable earnings provided all earnings are pensionable or
    - 13% of pensionable earnings, provided those earnings are at least equivalent to the amount of basic pay (as defined in paragraph 72) that is above either the National Insurance (NI) lower earnings limit[8] or the amount of the basic state pension.

92. For schemes that do not provide survivors' pension benefits, a contribution rate which is 1% less than the amounts set out in paragraph 91 is acceptable.

8
The NI lower earnings limit is set out in section 5(1)(a)(i) of the Social Security Contributions and Benefits Act 1992.

Cost of accruals test for formerly contracted out DB schemes

93. For a transitional period, a scheme-level cost of accruals test is available to the employers of formerly contracted out schemes, even if there is a material difference in the cost of the benefits accruing for different groups of members. This is available only:

    - in respect of jobholders who were in contracted-out employment on 5 April 2016; and
    - where the scheme rules have not been amended after that date in a way that would mean that the contracting out requirements would not continue to be satisfied but for the abolition of contracting out.

Money purchase minimum requirements

94. DB schemes that satisfy certain conditions are permitted to meet the minimum requirements for DC occupational schemes (as set out in paragraphs 46-50 and 67-77 of this guide) in order to comply with the employer's automatic enrolment duties.

95. The DWP has issued guidance for pension professionals on the alternative DB requirements at **www.gov.uk/government/publications/automatic-enrolment-alternative-quality-requirements-for-defined-benefit-and-hybrid-pension-schemes**

Average salary pension schemes

96. As well as meeting either one of the alternative DB requirements or being broadly equivalent to or better than the test scheme standard, average salary pension schemes must also meet certain additional criteria in respect of accrued benefits, in order to meet the minimum requirements.

97. The additional criteria are that, during a jobholder's pensionable service, any benefits that accrue to the jobholder must be revalued as follows:

    - by the annual increase in either the RPI, or the CPI capped at 2.5% (the minimum rate[9]), or
    - if either, under the scheme, accrued benefits are to be revalued at any time at less than the minimum rate, for example because revaluation is by the increase in average earnings rather than inflation,or there is a discretionary power in the scheme rules to revalue accrued benefits:
        - the funding of the pension scheme must be based on the assumption that accrued benefits would be revalued at or above the minimum rate in the long term, and
        - such funding must be provided for in the pension scheme's statement of funding principles required under part 3 of the Pensions Act 2004, or in an equivalent funding statement if the pension scheme is not subject to the part 3 funding requirements of the Pensions Act 2004 (for example a non-UK pension scheme).

Hybrid pension schemes

98. A hybrid pension scheme is a scheme which is neither purely a DB nor purely a DC, but which generally has elements of both.

99. Depending on the type of pension scheme, it will have to meet:

    - the same minimum requirements as for DB pension schemes or a modified version, or
    - the same minimum requirements as a DC pension scheme or a modified version, including the option to use the certification process, or
    - a combination of the above.

100. Generally, each section of the scheme should be treated as if it is a separate scheme and the appropriate minimum requirements applied to each section. As long as one section meets the relevant minimum requirements, the scheme will qualify. However, there are some variations, as follows in Table 2.

9 For a new public service average salary scheme, the minimum rate is an annual increase or decrease in either the percentage change in earnings or prices (depending on the scheme) as specified under s9(2) of the Public Service Pensions Act 2013 for the year by reference to which the revaluation is made.

Table 2: Minimum requirements for some types of hybrid pension scheme

Types of hybrid scheme	Applicable minimum requirements
Sequential Both DB and DC benefits accrue in the scheme but not at the same time (eg members start in the DC section and move into the DB section after a specified number of years)	Treat each section as a separate scheme, however, both sections must satisfy the relevant requirements
Self-annuitising Benefits accrue on a DC scheme but the pension is paid by the scheme, rather than each member's pot being used to buy their pension	Treat as a DC scheme
Combination Both DB and DC benefits accrue at the same time	Treat each section as a separate scheme and if either section meets the relevant minimum requirements, the scheme will qualify. However, if neither section meets the minimum requirements in full, they may be applied proportionately in aggregate.

101. The DWP has practical guidance for employers and actuaries on how to certify that DB and hybrid schemes meet the appropriate minimum requirements. This can be viewed at **www.gov.uk/government/uploads/system/uploads/attachment_data/file/244982/auto-enrol-guid-emp.pdf**

What the qualifying criteria mean in practice

102. An employer has to be satisfied that the pension scheme they are using to fulfil their duties meets the qualifying criteria. This is either as part of being satisfied that the pension scheme is an automatic enrolment scheme, or for checking that their existing pension scheme meets the qualifying criteria so they can continue to use it for existing members.

103. For DB pension schemes or those hybrid pension schemes which have to meet the DB minimum criteria, this might be straightforward. Appendix C has a flowchart showing the steps an employer may use in determining whether the qualifying criteria are met for a pension scheme with its main administration in the UK.

104. For DC pension schemes, those hybrid pension schemes that must meet the DC minimum requirements, or DB schemes that meet certain conditions and are therefore allowed to qualify by meeting the DC minimum requirements, the employer will need to be satisfied that the entitlement under the rules of the pension scheme (or agreements in the case of personal pensions) is equivalent to, or better than, a total contribution of 8% of a jobholder's qualifying earnings in the relevant pay reference period[10].

105. An employer should first check the rules of the scheme (or agreements). If they explicitly state that:

- the pension scheme requires, as a minimum, a total contribution of 8% of the jobholder's qualifying earnings in the relevant pay reference period
- of which the employer's contribution is at least 3%

the employer can then be satisfied that the pension scheme meets the minimum requirements.

106. There is no requirement to check the amount of contributions that are actually paid for the purposes of establishing if the pension scheme meets the minimum requirements. However, an employer will still need to ensure that they are making the correct payments on time, as required by the pension scheme under the existing law on payment of contributions.

An employer should check the rules of the scheme (or agreement)

107. Note that contribution levels are being phased in. See paragraphs 125 to 166 for more information.

108. Alternatively, the employer may choose to certify that the scheme meets one of the alternative DC requirements. They may do this if the rules of the scheme they want to use:

- require contributions to be deducted from the first pound earned, or on a band of earnings different to that used for qualifying earnings
- do not use qualifying earnings as the definition of pensionable pay, and
- have a definition of pensionable pay which is at least equivalent to basic pay.

10 See Appendix E for further information on the relevant pay reference period.

109. If the rules of the scheme (or agreements) explicitly state that:

- the pension scheme requires as a minimum a total contribution of at least 9% of pensionable pay (of which at least 4% must be the employer's contribution), or
- the pension scheme requires as a minimum a total contribution of at least 8% of pensionable pay (at least 3% of which must be the employer's contribution) provided that pensionable pay constitutes at least 85% of earnings (the ratio of pensionable pay to earnings can be calculated as an average at scheme level), or
- the pension scheme requires as a minimum a total contribution of at least 7% of earnings (at least 3% of which must be the employer's contribution), provided that all earnings are pensionable

then the employer can certify the pension scheme and the scheme is taken to satisfy the relevant alternative DC requirements indicated in the employer's certification. Please note that these requirements set out a minimum contribution rate. If the scheme requires a higher rate, the employer should certify the scheme with respect to the most relevant set.

These contribution levels are also being phased in. See paragraphs 125 to 166 for more information.

110. If employers are unable to, or do not wish to, certify that their scheme meets one of the alternative DC requirements because, for example, elements of non-pensionable pay are fluctuating, they may instead be able to certify that their scheme meets the minimum requirements. They can do this if an examination of current remuneration data for all relevant jobholders reveals that their entitlement under the scheme has met the minimum requirements in practice.

111. If the employer is unable to, or does not wish to, certify that the scheme meets either the minimum requirements or the alternative DC requirements, they may choose to carry out an entitlement check to establish whether the entitlement under the rules is at least equivalent to 8% of a jobholder's qualifying earnings in the relevant pay reference period. This is an individual check for each worker, although it may be possible to group similar workers together.

112. Appendix D has a flowchart showing the steps an employer may use to determine whether the qualifying criteria are met for a DC pension scheme with its main administration in the UK.

113. If, after carrying out all the above-mentioned checks, the minimum or alternative DC requirements cannot be met, an employer may choose to change the scheme rules or agreements in one or a number of ways, including:

- increasing the rate of contributions required from the employer and/or the jobholder
- widening elements of pay included within the pension scheme definition (or definition set out in the agreements) of pensionable pay
- adopting a definition of pensionable pay, which is based on qualifying earnings and a contribution rate that meets the minimum required (ie 3% and 8% in total)
- changing the scheme rules (or agreements) to meet the DC certification criteria.

114. When an employer is satisfied that the effect of any change(s) fulfils the relevant minimum or alternative requirements, they are then able to use it as a qualifying scheme in relation to the jobholder (provided it meets the other qualifying requirements).

115. The employer should discuss any amendments to the scheme rules, and the process for making them, with the trustees, manager or providers of the pension scheme. There may be a requirement to consult with members if they are making changes to the scheme that increase member contributions. If an employer is required to consult, the consultation period is 60 days and this timing should be built into their planning for automatic enrolment.

Salary sacrifice

116. Some employers make pension contribution payments by a salary sacrifice arrangement. This is a contractual agreement between the worker and the employer by which the worker agrees to forego salary in return for pension contributions by the employer (the amount sacrificed is paid into a pension scheme by the employer in respect of the worker). The operation of a salary sacrifice arrangement is separate from the automatic enrolment provisions, although an employer may run the two processes in parallel when complying with their employer duties.

117. An employer may ask an eligible jobholder who must be automatically enrolled whether they want to put in place a salary sacrifice arrangement. However, active membership of a scheme cannot be dependent on whether the jobholder agrees to the arrangement. So, if the eligible jobholder declines to set up salary sacrifice, the employer must automatically enrol them in line with the automatic enrolment provisions with an alternative method of contribution deduction.

118. Employers may choose to put in place a salary sacrifice arrangement before or after the jobholder's automatic enrolment date. If they set it up before, they may choose to use postponement to give them time to put the arrangement in place. If they set it up after the automatic enrolment date, they will have to use a different method of payment for the initial pension contributions due from the automatic enrolment date.

119. When communicating the option of salary sacrifice to a jobholder, the employer should take care to separate this information from the enrolment information. The employer may send salary sacrifice and enrolment information together if they wish, but must avoid giving the impression that the jobholder will only be enrolled if they agree to salary sacrifice.

120. If the employer is using a DC scheme then the qualifying earnings used to meet the minimum requirement are the post-sacrifice level of salary.

Flexible benefits packages

121. Similarly, some employers include their pension provision in a wider flexible benefits scheme that they provide to their workers.

122. Flexible benefits schemes allow workers some freedom of choice about how they apportion their total pay and benefits. Traditionally, these schemes allow workers to choose what level of pay is committed to pension contributions alongside other benefits, such as healthcare, life assurance or cash.

123. Employers can still offer this choice as long as they comply with the underlying employer duties. Therefore, for DC schemes (or DB schemes that have been permitted to qualify by meeting the DC minimum requirements) an eligible jobholder (or jobholder who has chosen to opt in) must first be enrolled into the scheme at or above the relevant minimum contribution level required to make the scheme qualifying. For a DB scheme, the eligible jobholder/jobholder must be enrolled at or above the minimum accrual rate, or relevant cost of future accruals rate required to make the scheme qualifying. Enrolment must be able to take place at the minimum contribution level for a DC scheme (or specific type of DB scheme) (of 8% in total), or, for a DB scheme, into a scheme that meets either the test scheme standard or alternative DB requirement, even if the jobholder has not made any specific election regarding their flexible benefits options.

124. Having been enrolled with effect from the automatic enrolment date, the jobholder is free to reduce or increase the level of contributions in accordance with the rules of the flexible benefits arrangement and of the scheme.

Statutory increases in the minimum contributions entitlement for DC pension schemes

125. As explained above, DC pension schemes, certain hybrid pension schemes, or DB schemes that meet certain conditions must meet the DC minimum requirements in order to be a qualifying scheme. In other words, the entitlement to contributions under the rules of these pension schemes (or agreements in the case of personal pensions) must be equivalent to, or better than, either:

    a. the minimum contribution entitlement or

    b. where the employer has chosen to certify one of the alternative requirements is met, that alternative minimum requirement.

126. Both the minimum contribution entitlement and the alternative minimum requirements are subject to statutory increases. The first statutory increase in these contribution rates takes place on 6 April 2018. The next statutory increase takes place on 6 April 2019. Appendix A shows the new contribution rates at both of these dates for the minimum contribution entitlement. Appendix B contains the new contribution rates at both these dates for the alternative minimum requirements.

127. In some cases the entitlement under the rules of the automatic enrolment scheme or qualifying scheme being used by an employer to meet their duties may already be above the current minimum contribution entitlement or the relevant alternative minimum requirement (where the employer has chosen to use DC certification). If this entitlement under the scheme will continue to exceed the minimum contribution entitlement or relevant alternative minimum requirement after the statutory increase on 6 April 2018, no change will be necessary in terms of the scheme rules or agreements, or the employer's payroll process for this date.

128. If the entitlement will continue to exceed the minimum contribution entitlement or relevant alternative minimum requirement after the second statutory increase on 6 April 2019 then no action may be necessary for 6 April 2019 either.

129. In some cases, the rules of the automatic enrolment scheme or qualifying scheme being used by the employer may require contributions at the current minimum contribution entitlement or relevant alternative minimum requirement that applies up to and including 5 April 2018. Or, they may require contributions at the minimum contribution entitlement or relevant alternative minimum requirement that applies between 6 April 2018 and 5 April 2019. In either of these cases, the statutory increases in the minimum contribution entitlement and alternative requirements will impact an employer's processes.

130. Where this is the case there are a number of considerations for employers and action they may be required to take as a result. These include:

- ensuring that the automatic enrolment scheme or qualifying scheme they are using to fulfil their automatic enrolment duties continue to meet the qualifying criteria. The pension scheme rules, agreements or other governing documentation may need to be amended as a result
- determining whether they are required to consult with members affected by any increase in contributions
- ensuring the employer's payroll process and software are updated so that the correct amounts are calculated and deducted at the right time
- considering what information, if any, the employer considers necessary to raise the awareness with the workers who are active members of the scheme of any increase
- considering whether there is any impact upon the certification period if the employer has chosen to certify that one of the alternative minimum requirements are met.

131. More information on each of the bullets above is contained in the remainder of this section below.

Ensuring the pension scheme continues to meet the qualifying criteria

132. Employers should check the scheme rules, agreements and other governing documentation.

133. Where the employer is either not using certification or is certifying that their scheme meets the minimum contribution requirement and the scheme rules, agreements or other governing documentation explicitly state that:

- the pension scheme requires, as a minimum, a total contribution of 2% of the jobholder's qualifying earnings in the relevant pay reference period (of which the employer's contribution is at least 1%), and
- they do not include any increase in contributions which mean the minimum contribution entitlement will be equalled or bettered,

the scheme rules or agreements will need to be amended for 6 April 2018 to ensure that it continues to meet the qualifying criteria.

134. Where the employer has chosen to certify that the scheme meets the alternative minimum requirements under Set 1 and the scheme rules, agreements or other governing documentation explicitly state that:

- the pension scheme requires as a minimum a total contribution of at least 3% of pensionable pay (of which at least 2% must be the employer's contribution) and pensionable pay is at least basic pay, and
- they do not include any increase in contributions which mean the relevant alternative requirement will be equalled or bettered,

the scheme rules or agreements will need to be amended for 6 April 2018 to ensure that it continues to meet the qualifying criteria.

135. Similarly, where the employer has chosen to certify that the scheme meets the alternative minimum requirements under Set 2 and the scheme rules, agreements or other governing documentation explicitly state that:

- the pension scheme requires as a minimum a total contribution of at least 2% of pensionable pay (at least 1% of which must be the employer's contribution) and pensionable pay is at least basic pay, and
- they do not include any increase in contributions which mean the relevant alternative requirement will be equalled or bettered,

the scheme rules or agreements will need to be amended for 6 April 2018 to ensure that it continues to meet the qualifying criteria.

136. Finally, where the employer has chosen to certify that the scheme meets the alternative minimum requirements under Set 3 and the scheme rules, agreements or other governing documentation explicitly state that:

- the pension scheme requires as a minimum a total contribution of at least 2% of earnings (at least 1% of which must be the employer's contribution), and that all earnings are pensionable, and
- they do not include any increase in contributions which mean the relevant alternative requirement will be equalled or bettered,

the scheme rules or agreements will need to be amended for 6 April 2018 to ensure that it continues to meet the qualifying criteria.

137. There are additional considerations for an employer who has chosen to certify that the scheme meets one of the alternative minimum requirements and can be treated as a qualifying scheme. These additional considerations are discussed at paragraphs 160 to 166.

138. If the rules, agreements or other governing documentation need to be amended and are not, the scheme will not be a qualifying scheme for any of the employer's jobholders enrolled in it. As a result the employer will not be able to continue to use it to meet their employer duties after the statutory increase on 6 April 2018.

139. It is the employer's responsibility to ensure that the pension scheme they use to meet their employer duties is a qualifying scheme. However, in many cases, changing the scheme rules, agreements or other governing documentation will be the responsibility of the pension scheme trustees or managers. This will be the case in most contract-based and master trust schemes. For other trust-based schemes, an employer should check who has the power to modify the scheme rules or other documentation.

140. If the power of modification is with the pension scheme trustees or managers, employers will need to check with their pension provider that the increased minimum contribution entitlement or alternative requirement will be reflected in the pension scheme's rules, agreements or other governing documentation in time for 6 April 2018 and/or 6 April 2019. If the power of modification is with the employer they will need to take the necessary steps to amend the pension scheme rules in time for 6 April 2018 and/or 6 April 2019.

141. Whether the amendment to the pension scheme rules, agreements or other governing documentation is being administered by the employer or the pension scheme trustees or managers, the decision to make a change to increase member contributions may require employers to consult with affected scheme members before the change can be made.

142. If the power to modify the rules, agreements or other governing documentation of an automatic enrolment scheme or qualifying scheme lies with the pension scheme trustees or managers, the trustees or managers must advise the employer as to whether existing scheme members need to be consulted about the proposed change.

143. In other cases, the employer will also need to identify whether they are required to consult on the proposed amendment to the rules, agreements or other governing documentation of the automatic enrolment scheme or qualifying scheme.

144. It is important the employer identifies in good time whether they are required to consult. This is because there are legal requirements they must follow as part of the consultation process, and the time to complete these steps will need to be built into the timetable for changing the scheme rules, agreements or other governing documentation for 6 April 2018 and/or 6 April 2019.

145. The circumstances when an employer will be required to consult are discussed further in paragraphs 146 to 151 below.

Circumstances where an employer must consult on the proposal to increase member contributions

146. An employer will be required to consult with affected members on the proposal to increase member contributions where the following conditions are met:

    a. the employer wishes to amend the scheme rules, agreements or other governing documentation after the date they first started using the automatic enrolment scheme or qualifying scheme to meet their employer duties, and

    b. the employer wishes to increase member contributions as part of the amendment, and

    c. the employer has 50 or more employees. The number of employees is determined by calculating the average number of employees in the previous twelve months (including leavers), and

    d. the automatic enrolment scheme or qualifying scheme being used by the employer:

        – is not a public service pension scheme,

        – has more than one member

        – is not a small occupational pension scheme[11], and

11
A small occupational pension scheme is either:

- a scheme with fewer than twelve members where all of the members are trustees of the scheme and either:
  - the provisions of the scheme provide that any decision made by the trustees is made by the unanimous agreement of the trustees who are members of the scheme, or
  - the scheme has an Independent Trustee; or
- a scheme with fewer than twelve members where a company is the sole trustee of the scheme, and all the members of the scheme are directors of the company and either:
  - the provisions of the scheme provide that any decision made by the company in its capacity as trustee is made by the unanimous agreement of the directors who are members of the scheme, or
  - one of the directors of the company is an Independent Trustee.

e. the proposed increase does not explicitly match the statutory increases in the minimum contribution requirement or alternative requirement. For example, the increase in contribution rates may be different, or the date the increase takes effect may be different, and

f. the proposed change to increase member contributions was not already part of the operation of the scheme at the time the employer first started using that scheme to meet their employer duties.

147. An employer will not be required to consult where any of the above conditions are not met. This means that they are not required to consult where the proposed change to increase member contributions was already part of the scheme rules, agreements or other governing documentation at the time the employer first started using that scheme to fulfil their employer duties.

148. The employer is not required to consult in these circumstances, irrespective of whether the increase is to match the statutory increase in the minimum contribution entitlement or the relevant alternative requirement or is a different increase. For example, the increase in contribution rates may be different or the date the increase takes effect may be different.

149. It also means that the employer is not required to consult where the proposed change to increase member contributions is being made to ensure the scheme continues to meet the qualifying criteria - ie the proposed change explicitly matches that statutory increase in contributions with effect from the date of the statutory increase.

150. Even if the employer is not required by law to consult they may wish to consider consultation on any matter that would affect the growth of employees' pension rights.

151. Where an employer is required to consult, the consultation period is at least 60 days and this timing should be built into the time taken to amend the pension scheme rules, agreements or other governing documentation. For more information on the legal requirements for consulting scheme members on certain changes affecting a pension scheme see our regulatory guidance: The duty to consult (**http://www.thepensionsregulator.gov.uk/docs/employer-duty-to-consult-on-scheme-changes.pdf**).

Ensure the correct contributions are deducted

152. It is important that the employer's payroll software or processes are updated with the increased contributions rates so the employer is ready to calculate the increased contributions from 6 April 2018 and/or 6 April 2019.

153. Trustees and managers of occupational pension schemes will operate a schedule of payments, as required by law. This schedule is usually agreed with the employer. It will set out the due dates for paying jobholder contributions (if any) and employer contributions to the scheme, and the amount of those contributions. Employers should also check with the trustees that the payment schedule has been updated to reflect the increases in the contribution rates set out in the scheme rules or other governing documentation.

Information to workers

154. When a worker was first automatically enrolled or opted in, the enrolment information they were given by the employer as part of that automatic enrolment process included information about the statutory increases in the minimum contribution or alternative requirements. If they have been subsequently automatically re-enrolled they will also have been told of these increases in the enrolment information given as part of the automatic re-enrolment process.

155. There are no additional information duties under automatic enrolment for employers to advise members about the increases at the time of the actual change. Employers should consider doing so however, to help minimise queries when they deduct the increased contributions from their pay.

156. Employers should also be mindful that any worker who was automatically enrolled, opted in or automatically re-enrolled before 1 October 2016, would have been told in the enrolment information that the statutory increases would take place on 1 October 2017 and 1 October 2018 as this was the requirement at the time. As a result they should consider communicating to their workers about the increase taking effect on 6 April 2018 and 6 April 2019, again to minimise queries.

157. In addition, employers should also be mindful of the fact that the scheme rules or agreements may allow a member to remain at the lower contribution rate, or to reduce their contributions again after the increase.

158. If a member does not wish to pay the increased contributions due in April 2018 and 2019 and the scheme rules or terms and conditions allow them to remain at the lower contribution rate, or to reduce their contributions again after the increase, they will continue to be a member of the scheme. However, as contributions are below the minimum level required by law, the scheme will not be qualifying for them. This will mean that, at the employer's cyclical automatic re-enrolment date, such a worker will need to be automatically re-enrolled if they meet the eligible jobholder criteria on that date.

159. If the scheme rules or agreements allow the member such a choice the employer may wish to communicate with their workers about the increase and the choices available to them under the scheme rules or other governing documentation.

Certifying that one of the alternative requirements are met and the increase in minimum contributions

160. Where the employer has chosen to certify that one of the alternative requirements has been met, the certification period may include one or both of the dates of the statutory increases in the alternative requirement.

161. The process of certifying that the scheme can be used as a qualifying scheme is separate from the process to increase the minimum contributions but an employer should be aware of the interaction between the two different requirements.

162. If the entitlement under the rules of the automatic enrolment scheme or qualifying scheme being used by an employer to fulfil their employer duties is already above the increased alternative requirement there will be no effect on the certification process. However, if the entitlement under the pension scheme rules is at the current relevant alternative requirement which the employer has chosen to certify against, there may be an impact.

163. The DWP has produced guidance for employers on the process of certification (see paragraph 76), including a template of the certificate that can be used by employers. This template is divided so that where the certification period includes the date of one of the statutory increases in alternative requirement the employer certifies at the minimum that applies up until the date of change and then at the increased minimum from the date of change (see example 1).

Example 1

The effective date of the certification is 1 September 2017. The certification period is 18 months and so ends on 31 March 2019. Using the template in the DWP's guidance, the certificate would include certifying at the current relevant alternative requirement rate up to 5 April 2018 and then at the increased minimum rate from 6 April 2018 until the end of the certification period.

164. If the employer uses this template for the certificate, the scheme rules, agreements or other governing documentation will still need to reflect the change in the alternative requirements as above, and the employer's payroll will still need to be ready to calculate and deduct the increased amounts as above.

165. Alternatively, the employer could chose to certify at the higher increased amount for the whole certification period. In this case there will be no need for the employer's payroll to make a change on the date of the statutory increase, as the contributions will already be being calculated and deducted at the increased minimum contribution rate.

166. If an employer has not taken either of these approaches when certifying and the certification period includes one of the dates of the statutory increases in the relevant alternative requirement, they will need to end the certification period early and re-certify from the date of the statutory increase (see example 2). This is to ensure that the scheme can continue to be treated as qualifying scheme.

Example 2

The effective date of the certification is 1 September 2017. The certification period is 18 months and so ends on 31 March 2019. The employer has chosen to certify at the current statutory minimum for the whole certification period. In order to ensure that the pension scheme can continue to be treated as a qualifying scheme, the employer would need to end the certification period on 5 April 2018, and recertify from 6 April 2018 at the increased minimum contribution rate.

When the employer re-certifies on 6 April 2018, any certification period could span the next increase in the statutory minimum contribution entitlement on 6 April 2019. The employer could chose to:

a. Using the template in the DWP's guidance the employer certifies at the minimum that applies up until 6 April 2019 and then at the increased minimum from the date of change. (The scheme rules, agreements or other governing documentation will still need to reflect the change in the alternative requirements on 6 April 2019 as before, and the employer's payroll will still need to be ready to calculate and deduct the increased amounts as above.)

b. Certify at the higher statutory minimum contribution entitlement that applies from 6 April 2019 for the whole certification period, or

c. Certify at the current statutory minimum contribution entitlement and choose a certification period of 12 months. The employer will then need to re-certify from 6 April 2019.

What next?

Once an employer is able to identify the criteria a pension scheme must meet in order to be used to fulfil their new employer duties, the next step should be to learn about the processes they will need to put in place.

For employers who know they will, or are likely to have, an automatic enrolment duty, the next step should be to read **Detailed guidance no. 5 – Automatic enrolment**. It contains detailed information on the automatic enrolment process, from identifying who, when and how to automatically enrol, to an employer's ongoing responsibilities once the automatic enrolment process is complete.

It is also important for employers to understand the position of those workers who fall outside the automatic enrolment criteria, but who have a right to be enrolled into a pension scheme if they ask. **Detailed guidance no. 6 – Opting in, joining and contractual enrolment** explains what an employer must do if they receive a request from such a worker.

Employers should learn about the processes to put in place

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: • is aged between 16 and 74 • is working or ordinarily works in the UK under their contract • has qualifying earnings.
Eligible jobholder	A jobholder who: • is aged between 22 and state pension age • has qualifying earnings above the earnings trigger for automatic enrolment.
Non-eligible jobholder	A jobholder who: • is aged between 16 and 21 or state pension age and 74 • has qualifying earnings above the earnings trigger for automatic enrolment or • is aged between 16 and 74 • has qualifying earnings equal to or below the earnings trigger for automatic enrolment.
Entitled worker	A worker who: • is aged between 16 and 74 • is working or ordinarily works in the UK under their contract • does not have qualifying earnings.

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