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Detailed guidance for employers

Appendix F: Entitlement check for DC occupational and personal pension schemes

This document accompanies:
Detailed guidance no. 4 – Pension schemes

automatic enrolment

The Pensions Regulator

1. If the minimum requirements have not been met and the employer does not want to use certification, then they may carry out an entitlement check. This is to establish if the entitlement under the scheme rules, however calculated, is at least equivalent to 8% of the jobholder's qualifying earnings with at least 3% being the employer's contribution. This means an individual check for each worker, although it may be possible to group similar workers together for the purpose of the entitlement check.

2. When carrying out an entitlement check the employer may chose which definition of relevant pay reference period to compare against. Appendix E has more information on the definitions. In describing the process for checking that an individual jobholder's entitlement under the scheme rules (or agreements in the case of personal pension schemes) is at least equivalent to the minimum requirements, we have broken it down into a number of steps:

   - **Step A:** Determine the pay reference period for the purposes of meeting the minimum requirements
   - **Step B:** Assess qualifying earnings for the pay reference period or part pay reference period
   - **Step C:** Calculate 3% and 8% of the qualifying earnings assessed in Step B. (Note that contribution levels are being phased in. Appendix A has more details.)
   - **Step D:** Assess pensionable pay for the pay reference period or part pay reference period
   - **Step E:** Apply the rate of contributions required under the pension scheme from the employer. See the examples for more information.

3. In some respects, the distinction between the steps is artificial – for some jobholders, such as those who receive a regular monthly or weekly salary, the process is straightforward. For jobholders with fluctuating earnings or commission and bonus payments, it is less straightforward.

4. To check individual entitlement, an employer must look forward from the eligible jobholder's automatic enrolment date or the jobholder's enrolment date and take the following steps. (The automatic enrolment date is explained in **Detailed guidance no. 5 – Automatic enrolment**. The enrolment date is explained in **Detailed guidance no. 6 – Opting in, joining and contractual enrolment**.)

Step A: Determine the pay reference period for the purposes of meeting the minimum requirements

5. Here we describe how to identify the relevant pay reference period for the purposes of meeting the minimum requirements, part of the qualifying criteria described in paragraphs 39 to 43 of **Detailed guidance no. 4 – Pension schemes**.

6. This example is based on the definition of relevant pay reference period which is the 12 month period aligned to an employer's staging date. Checking entitlement against this definition is likely to be appropriate where the scheme rules define pensionable pay as basic pay and the employer pays predictable fluctuating elements of pay (eg bonus or overtime) across the 12 month period.

7. In other circumstances, for example where scheme rules define pensionable pay as a band of earnings but they do not explicitly define the period of entitlement in the same way as the minimum requirement, it will normally be more appropriate for the employer to carry out an entitlement check against either the definition of relevant pay reference period aligned to tax week or months, or the definition aligned to the interval between payments of the workers regular wage or salary.

8. The relevant pay reference period under the scheme in this example is a 12 month period starting on the employer's staging date and then on each subsequent anniversary.

9. A jobholder who starts membership part way through the pay reference period has an initial pay reference period that starts on their automatic enrolment date and ends the day before the anniversary of the employer's staging date. Subsequent pay reference periods start on the anniversary of the employer's staging date.

10. The relevant pay reference period is likely to be different to the existing scheme year, as defined in the rules of the pension scheme.

Example 1a

Feather Cushions designs and makes cushions to order. It has a sales staff as well as the home workers who make the cushions and the members of staff who work as customer service agents. Their main office is run by Melissa as office manager. Melissa is responsible for HR functions, payroll and pensions.

Feather Cushions provides a DC occupational pension scheme for its staff and has done since 2010. The rules of this scheme require Feather Cushions to make an employer contribution of 2% and a total contribution of 6.5% of pensionable pay.

Feather Cushions' staging date was 1 August 2014. Feather Cushions has recruited a new worker, Malik, to work in their customer service team.

Malik is starting work on 1 October 2019. Malik's annual salary will be £18,000 a year and will be paid monthly (£1,500 a month).

Melissa must first assess whether Malik will be an eligible jobholder on his first day of employment because, if he is, this will be his automatic enrolment date (Feather Cushions has chosen not to use postponement). (More information on assessing a worker can be found in **Detailed guidance no. 3 – Assessing the workforce**).

Having completed the assessment, Melissa identifies that Malik's automatic enrolment date will be 1 October 2019.

The relevant pay reference period for the purposes of meeting the minimum requirements for Malik is 1 October 2019 (his automatic enrolment date) to 31 July 2020 (the day before the anniversary of Feather Cushions' staging date).

Step B: Assess qualifying earnings for the pay reference period or part pay reference period

11. Looking forward, the employer will need to estimate what amount of qualifying earnings will be paid to the eligible jobholder in the pay reference period identified in Step A.

12. Qualifying earnings is a reference to earnings of between £6,240 and £50,000[1], made up of any of the following components of pay 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.

    The assessment of whether a component of pay constitutes an element of qualifying earnings is for the employer to make.

13. To make this estimate, an employer will need to make assumptions for the pay reference period going forward, concerning:

    - salary levels
    - salary increases
    - absences due to sickness (depending on the scheme rules), eg using their average sickness rates
    - absences on maternity pay (depending on the scheme rules)
    - absences on paternity pay
    - absences on adoption pay
    - overtime payments
    - commission payments, if appropriate
    - bonus payments.

    This assessment will be more straightforward for people who are salaried with regular payments of a fixed amount, than for someone with fluctuating earnings (eg commission-based).

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

Example 1b

As a member of the customer service team, Malik will not earn commission. Occasionally at peak times, such as during the seasonal sales, Feather Cushions may ask its customer service team to work overtime.

Melissa runs the office at Feather Cushions. Melissa knows that Malik will be an eligible jobholder and will need to be automatically enrolled into an automatic enrolment scheme. Before Feather Cushions can enrol him into a pension scheme it needs to be satisfied that the scheme meets the automatic enrolment criteria.

Melissa assesses that in the period 1 October 2019 to 31 July 2020, Malik's salary will be £15,000. Feather Cushions usually gives its staff a cost of living increase in April each year, but this is only for those members of staff who have been in employment for more than six months by April. Melissa therefore assumes that Malik will not receive any increase in salary in this period.

She makes an assumption that he will earn £650 in overtime in January 2020 during the winter sale, and £350 in overtime in June 2020 during the summer sale. This is based on the average amount of overtime earned by customer service staff during the previous June and January.

Feather Cushions only pays commission to its sales staff so Melissa assumes that no commission will be payable to Malik in this period. Bonuses are only paid to the directors so Melissa assumes that Malik will receive no bonus payment.

Feather Cushions continues to pay full pay for periods of sickness up to six months. Looking at Feather Cushions' average sickness rates and Malik's previous employment history, Melissa assumes that Malik's earnings will not drop due to sickness.

Finally, Melissa assumes that Malik will not have any statutory maternity, paternity or adoption pay payable during this period.

This gives Malik a total of £16,000 in earnings. Melissa now needs to apply the lower earnings threshold of the qualifying earnings band.

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The lower threshold in a 12-month period is £6,240[2]. For this pay reference period (of 10 months) the lower earnings threshold is £5,120 (10 x the monthly lower earnings threshold).

Melissa assesses therefore that the qualifying earnings payable to Malik in the relevant pay reference period will be £10,880 (ie pro-rata for 10 months: £16,000 – £5,120).

Step C: Calculate 3% and 8% of the qualifying earnings assessed in Step B

14. This will give the employer both the minimum total amount of contributions (8%) and the minimum amount of employer contributions (3%) to which the jobholder would be entitled under the minimum requirements for DC and personal pension schemes. It is necessary to check both, as a pension scheme may have equivalent entitlement for one and not the other.

15. Note that contribution levels are being phased in. Appendix A has more details.

Example 1c

Melissa applies 8% to the qualifying earnings identified in example 1b (£10,880) to give a minimum requirement entitlement to total contributions of £870.40.

She applies 3% to the qualifying earnings (£10,880) to give an entitlement under the minimum requirements to an employer contribution of £326.40.

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This is the lower threshold of qualifying earnings for 2019-2020. The DWP will review these figures annually.

Visit **www.tpr.gov.uk/earnings-thresholds** for details of the current qualifying earnings thresholds and the earnings trigger for automatic enrolment.

Step D: Assess pensionable pay for the pay reference period or part pay reference period

16. Using the definition of pensionable pay in the scheme rules (or agreements in the case of personal pensions), the employer will now need to consider what amount of pensionable pay is due to be paid to the eligible jobholder in the pay reference period identified in Step A.

17. To do this, an employer will need to make the same assumptions they made in Step B.

Example 1d

The next step is for Melissa to assess what pensionable pay would be payable to Malik during the period 1 October 2019 to 31 July 2020.

Melissa checks the scheme rules. In the rules of the pension scheme, pensionable pay is defined as basic salary and it does not include commission or bonus payments. Basic salary changes to statutory maternity, paternity or adoption pay during periods of absence for these reasons, but does not drop to statutory sickness pay during periods of sickness.

Melissa knows she needs to apply the same assumptions that she made when assessing what qualifying earnings were payable. So she assumes that there will be no statutory maternity, paternity or adoption pay. She also assumes that there will be no increase in salary for Malik during this period.

Therefore, Melissa assesses that during the period 1 October 2019 to 31 July 2020 the pensionable pay payable to Malik will be £15,000, as the overtime she anticipates he will earn is not included in basic salary and is therefore excluded under the scheme rules.

Step E: Apply the rate of contributions required under the pension scheme from the employer

18. This will give the employer both the minimum total amount of contributions and the minimum amount of employer contributions to which the jobholder would be entitled under the pension scheme.

Example 1e

Having checked the scheme rules, Melissa sees they require an employer contribution of 2% and a total contribution of 6.5% of pensionable pay.

So she applies 6.5% to the pensionable pay identified in example 1d (£15,000) to give an entitlement under the pension scheme to total contributions of £975.

She applies 2% to the pensionable pay (£15,000) to give an entitlement under the pension scheme to an employer contribution of £300.

19. The jobholder's entitlement under the existing scheme rules (or agreements) is equivalent to the entitlement required under the qualifying requirements if:

- the amount for the total contribution in (E) equals or betters the amount in (C), and
- the amount for the employer contribution in (E) equals or betters the amount in (C), and
- the employer is certain that the assumptions used will not change in the future in a way which would cause the amounts in (E) to fall below (C).

Example 1f

Although from her assessment, Melissa can see the total contribution entitlement under the pension scheme is more than that required to be a qualifying scheme (£975 vs £870.40), when she compares the employer contribution it shows that the entitlement under the scheme is less than that required to be a qualifying scheme (£300 vs £326.40).

Therefore, Melissa has identified that Feather Cushions' DC pension scheme is not a qualifying scheme in relation to Malik and cannot be used for automatic enrolment for him.

20. Once the check is complete, providing the employer is satisfied that the necessary entitlement for the jobholder exists under the pension scheme, there is no requirement for the employer to undertake any further checks unless the assumptions change, eg the expectation of commission or overtime. The pension scheme will satisfy the minimum requirements in relation to the jobholder.

21. There is also no requirement to check the amount of contributions that are actually paid to the scheme, for the purposes of establishing if the scheme meets the minimum requirements. However, going forward, 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.

22. Where the entitlement is not at least equivalent to one or both of the minimum contribution requirements, the options open to the employer are to:

    - amend the scheme rules or agreements in such a way that it does meet the minimum requirements or one of the alternative requirements, or
    - create a jobholder's entitlement to a payment of the difference between the entitlement check and the minimum requirements in the scheme rules or agreements, or
    - choose a different pension scheme that meets the automatic enrolment criteria.

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