

Automatic enrolment

Compliance and enforcement

Quarterly bulletin 1 January – 31 March 2015



The Pensions
Regulator

This quarterly update provides information about our cases and the powers we have used relating to automatic enrolment and associated employer duties.

It is designed to help employers, their advisers and the pensions industry as a whole understand the type of compliance and enforcement interventions that follow our educative and enabling communications and support.

Automatic enrolment cases closed in the period

Cases closed in this quarter:	621
Cases closed to date ¹ :	2,782

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We define 'To date' as the period commencing from the outset of our compliance and enforcement activity for automatic enrolment (July 2012), and continuing all the way to the end of this reporting period (ie 31 March 2015).

Selected powers² used in the period

Power	Description	Number in period	Number to Mar 2015
Information Notice	The power to demand information and documents under section 72 of the Pensions Act 2004	15	31
Inspection	The power to inspect premises under section 74 of the Pensions Act 2004	1	8
Warrant	The power to search premises and take possession of content under section 78 of the Pensions Act 2004	0	0
Compliance Notice	A Compliance Notice under section 35 of the Pensions Act 2008 The power to remedy a contravention of one or more automatic enrolment employer duty provisions	213	1,529
Unpaid Contributions Notice	An Unpaid Contributions Notice under section 37 of the Pensions Act 2008 to remedy a late or non-payment due to a qualifying pension scheme	9	17
Fixed Penalty Notice	A Fixed Penalty Notice under section 40 of the Pensions Act 2008 of £400 for failure to comply with a statutory notice or some specific employer duties	198	367
Escalating Penalty Notice	An escalating penalty under section 41 of the Pensions Act 2008 of between £50 and £10,000 per day (depending on size) for failure to comply with a statutory notice	4	4
Total		446	1,962

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This report only provides data on the main powers that we anticipate using. Our annual commentary and analysis publication on automatic enrolment will provide data on any other powers we have used over the period. In addition these figures on the use of powers may fluctuate depending on the outcome of review applications.

Preventing non-compliance

This section highlights recent developments that we think employers or the industry should be aware of, as they can directly impact compliance with the employer duties.

The role of business advisers in automatic enrolment

Our research shows that eight in ten smaller medium and small employers have consulted an adviser to help them comply with their duties, or will do so.

The research also shows a near universal level of awareness about automatic enrolment, which is encouraging. However, gaps in knowledge remain, in particular among accountants and bookkeepers who continue to have the lowest level of understanding of all intermediaries about automatic enrolment.

We've recently launched a new online step-by-step guide to help business advisers assist their employer clients with automatic enrolment. The guide gives advisers the information they need and takes them through the tasks that must be completed in order for their clients to comply with their duties. It can be viewed at www.tpr.gov.uk/help-clients-prepare.

Employers who choose to use an adviser, for example an IFA, accountant or bookkeeper, should understand exactly what help they are being offered – whether it's simply information or a full automatic enrolment service. Both parties should also be clear who is taking responsibility for completing each task.

Business advisers can also access our new quick guide to setting up payroll. While having an automated payroll system is not a statutory duty, our research shows that employers with appropriate payroll software will be able to comply more easily with their automatic enrolment duties. The quick guide can be viewed at www.tpr.gov.uk/payroll-guide.



We've recently launched a new online step-by-step guide for business advisers.

Regulation changes update – effective 1 April 2015

Following consultation by the Department for Work and Pensions (DWP), new regulations came into force on 1 April 2015. They aim to reduce the administrative load with regards to assessment and issuing worker information especially for small and micro employers. The changes are not mandatory and so employers can continue to follow the 'old' rules indefinitely.

The new regulations introduce new exceptions for workers including for those who have ceased active membership of a qualifying pension scheme.

For workers:

- ▶ who contractually joined a qualifying pension scheme and then ceased membership of that scheme, or who have previously been automatically enrolled into a qualifying pension scheme and opted out or ceased membership of that scheme, and
- ▶ had ceased membership up to 12 months before the automatic enrolment date or automatic re-enrolment date, then, if they are an eligible jobholder on their automatic enrolment date/automatic re-enrolment date

the employer may choose whether or not to automatically enrol them.

If the employer chooses not to automatically enrol/re-enrol them, the employer will have no duty to re-enrol them until the next cyclical re-enrolment date.

The new regulations also contain simplifications in relation to information to workers. The number of communications to workers required has been reduced and the information they contain simplified. From 1 April 2015, there are only four occasions when communications are needed:

1. Enrolling workers
2. Using postponement
3. When workers have a right to opt in/join a scheme
4. When applying the transitional period

The letter templates available on our website have been amended to take account of these changes and the old templates are no longer available to download.

The regulations allow employers who have already developed a set of communications based on the old requirements to continue to use them. This is important for employers and service providers where established worker communication processes are already in place.

Consultation launched on the need for a basic automatic enrolment assessment tool

We recently launched a consultation on whether to provide a basic automatic enrolment assessment tool for employers who use the Basic PAYE Tool (BPT) offered by HM Revenue and Customs (HMRC). Around 200,000 small and micro employers currently use the BPT. However, it does not provide the required functionality to allow employers to meet their automatic enrolment duties, so we are now consulting on whether to provide a basic assessment tool to assist this group.

While using payroll software is not an automatic enrolment requirement, our experience indicates that using appropriate payroll software helps employers to comply. However, this runs alongside research that indicates half of employers with fewer than nine staff would be unwilling to pay to upgrade their software for automatic enrolment.

Employers who use BPT and advisers acting on their behalf have also demonstrated unwillingness to purchase or use free payroll software available in the marketplace.

We are now seeking views, particularly from pension providers, payroll providers, business advisers, employer groups and users of HMRC's BPT, on what support is available for employers who use BPT so that we can identify gaps and consider whether a basic assessment tool is necessary.

To view the full consultation, visit www.tpr.gov.uk/open. This consultation will be open until 19 May 2015.



200,000 small and micro employers currently use the Basic PAYE Tool.

Lessons learned for employers from our casework

This section highlights examples of potentially non-compliant behaviour that we've seen in order to help other employers avoid these situations.

Employers should ensure they know what they will need to do to comply with their duties

Every employer with at least one member of staff has automatic enrolment duties. We have found that many employers assume the only duty that applies to them is automatically enrolling staff meeting the age and earning criteria for eligibility. They lack awareness of the duties in respect of the two other categories of staff:

1. Staff with a right to join a pension scheme
2. Staff with a right to opt in to an automatic enrolment pension scheme

We recently conducted an investigation in respect of a medium-sized employer in the cleaning sector. The employer contacted us on the day they were supposed to complete their declaration of compliance. The employer had been broadly aware of automatic enrolment but assumed that as most of their staff were 'low paid', they did not have any duties. We provided guidance over the telephone and in writing and the employer is currently in the process of becoming compliant.

Employers should use our new step-by step-guide at www.tpr.gov.uk/ae-guide which takes them through the tasks they will need to complete to be compliant with their automatic enrolment duties.

Check what services the pension scheme provides

In a recent case we investigated, a medium-sized employer had completed the declaration of compliance confirming that a high proportion of their workforce had been automatically enrolled with effect from the last day of the postponement period. The employer declared they were using a master trust.

After completing the declaration the employer contacted us to advise that no contributions had been paid to the pension scheme since the deferral date. The employer had misunderstood the role of the pension scheme and had assumed the pension scheme in question was responsible for calculating contributions and making the correct deductions from staff.

We gave the employer guidance about making contributions and told them to contact the pension scheme provider. The employer did this and subsequently put in place the appropriate systems and processes for paying contributions.

While automatic enrolment may be automatic for an employer's staff, it is not automatic for the employer. We recommend that employers start preparing for their automatic enrolment duties 12 months ahead of their staging date.

Proactive drives

We undertake a wide range of proactive and reactive compliance activities which aim to:

- ▶ establish and maintain a 'pro-compliance culture' amongst employers
- ▶ maximise deterrence for those who are considering committing a breach
- ▶ prevent non-compliance
- ▶ swiftly detect non-compliance
- ▶ investigate breaches in a fair, objective and professional manner
- ▶ effectively enforce against non-compliance

Declarations of compliance proactive drive

Completing a declaration of compliance is the legal requirement to submit information to us about how an employer has complied with their automatic enrolment duties, such as how many people have been automatically enrolled and into which pension scheme(s). Employers use a secure online service accessed through the Government Gateway to submit their declaration to us.

In our last quarterly bulletin we explained how we've been using the systems and data available to proactively check the accuracy of information submitted by employers when they declare compliance. As a result of this, we selected a number of medium-sized employers in February for further engagement, which included visiting premises to check records and interviewing key staff.

A number of themes were identified during these targeted visits, one of which was reliance by employers on intermediaries to help them comply with their duties. Over a third of the employers we visited used a financial adviser to help support and guide them through the process.

This is consistent with our research that shows employers will turn to advisers for help in meeting their duties. Eight in ten smaller medium and small employers have consulted an adviser or will do so. Two thirds of micros will also consult an adviser, with IFAs and accountants the main types used.



Over a third of the employers we visited for further engagement used a financial adviser for automatic enrolment.

A small number of employers we visited used a financial adviser to help implement automatic enrolment, and it became clear there was a lack of understanding by both the employers and financial adviser about certain parts of the process. This highlights the importance of clarity between the employer and adviser about exactly what services are being offered, and about who will be undertaking particular tasks.

Employers and their advisers should visit our website as it offers essential information about each task an employer will need to accomplish in order to comply and avoid penalties. The step-by-step guide will help employers work out the tasks they need to complete.

With more than 1.3 million employers needing to comply with their new workplace pensions over the next three years, ensuring the accuracy of declarations of compliance made by employers and targeting non-compliance risks will continue to be a focus for us and we will report on the outcome of this work in future quarterly bulletins.

Working in partnership with other agencies

We recognise that non-compliance with one area of regulation may indicate a heightened risk of non-compliance with pensions legislation. We currently work with a number of other agencies and are looking at potential areas to target for future joint operations with other regulatory bodies.

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