DC briefing, December 2022
Reflecting on a decade of auto-enrolment

We have just passed the 10-year anniversary of auto-enrolment (AE), arguably one of the most significant changes to the UK's pensions landscape in recent times. This milestone presents an opportunity to reflect on the successes of AE, while considering areas where more could be done.

Data published by The Pensions Regulator (TPR) shows that as of June 2022, 10.7 million employees have been automatically enrolled, and 974,000 re-enrolled (having previously opted out).

AE has particularly improved workplace pension participation in the private sector. The Office of National Statistics data shows that in 2012, only 32% of private sector employees participated in a workplace pension. By 2021, this figure had grown to 75%.

However, despite these impressive numbers, employers are being advised to check that they're complying with their ongoing duties, following the discovery of several errors during recent TPR inspections.

TPR increases spot checks on employers

TPR has recently announced plans to increase its auto-enrolment compliance inspections, which it largely paused during the pandemic.

They use a range of information to help detect noncompliance, including real-time information (RTI) data shared by HMRC, alerts from pension schemes/providers, whistleblowing reports from individuals, and 'other information and intelligence'.

Four common mistakes to look out for:

1. Communications

Within statutory deadlines, communications explaining how AE affects staff must be issued directly to employees (as opposed to being published in the pensions section of internal portals).

- One common communication error specifically concerns employers that operate postponement (by up to three months). This is often confused with contractual probationary periods at the start of employment. A contractual probationary period does not automatically mean postponing AE obligations during that period.
- For a postponement to be deemed valid, a formal notice – containing specific legal wording, including the right to opt-in – must be provided within six weeks of the start of employment.

2. Certificates of compliance

To be deemed a qualifying workplace scheme for AE purposes, one of the following should be used to calculate contributions:

- Qualifying earnings – a band of employee earnings, currently £6,240–£50,270 pa, or
- One of the 'alternative quality requirements', in which case the employer may need to self-certify that the scheme meets the minimum standard for employees.

Depending on the contribution structure, it may also be necessary to check that pensionable pay makes up at least 85% of total earnings. The employer can determine the time period covered by the certificate of compliance, provided a check takes place at least every 18 months.

- Some employers may be unaware whether certification is a requirement for their scheme, or whether an up-to-date certificate is appropriate and necessary. While the certificate does not need to be sent to TPR, the employer is under an obligation to retain it for a minimum of six years after the end of the certification period in case TPR requires it for inspection.

- Employers who mis-certify their scheme may be in breach of their obligations. This could result in enforcement action being taken by TPR, including making good any shortfalls in minimum contributions.

3. Complying with the opt-out rules

Even if an employee states that they do not wish to be included in the scheme, employers are still required to assess and, if the employee is eligible, enrol them. An employee cannot ‘opt out’ of a scheme until they have been enrolled into it and received information from the pension provider, including instructions on how opt out. If they decide to opt out and do so within a month, they will receive their contribution back in the following pay run.

4. Meeting re-enrolment and re-declaration duties

Every three years – from the anniversary of the staging date, start date of duties or the last re-enrolment date – employers are required to re-enrol employees who opted out or left the scheme more than 12 months ago.

Employees must also be re-enrolled if they are in the scheme but paying below the minimum levels required by AE, or where the employer has agreed to contribute into a pension that is not a qualifying scheme. This latter group includes many self-invested personal pensions.

Furthermore, where an employer has introduced a facility that provides additional cash remuneration in lieu of pension contributions e.g. for employees (often higher earners) who may be restricted by Lifetime Allowance and/or Tapered Annual Allowance, depending on individual circumstances, these employees may also need to be considered for re-enrolment. (Those with a form of HMRC lifetime allowance protection may be exempt.)

Once the re-enrolment process is complete, employers must complete a re-declaration of compliance online with TPR. This should be carried out even if there are no eligible employees to re-enrol.

“We also provide ongoing governance support to employers to make sure their scheme is managed correctly, that it meets all legal requirements, and is run in the best interests of members.”

Is your scheme fit for purpose?

This briefing covers just some of the issues employers need to look out for. It’s not an exhaustive list.

More generally, TPR requires employers to make sure their workplace pensions are monitored regularly, ensuring positive outcomes for all members. The direction of travel is clearly towards ongoing oversight of employers’ arrangements.

How First Actuarial can help

There are many areas where employers can trip up, and while some aspects around assessment, record-keeping and communication can be outsourced, legally they remain the responsibility of the employer. Ultimately, it will be the employer that will be fined if rules are not followed.

First Actuarial’s DC consulting team has significant experience of working with clients on the design and implementation of AE processes and helping them to audit and rectify any errors that arise.

We also provide ongoing governance support to employers to make sure their scheme is managed correctly, that it meets all legal requirements, and is run in the best interests of members.

For further information on any issue raised in this briefing, or to discuss your organisation’s pension needs, please contact one of our DC specialists below, or your usual First Actuarial consultant.

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