

# A brief guide to automatic enrolment for employers using the LGPS and TPS

## Background

The law on workplace pensions has changed. Every employer with at least one member of staff now has duties, including enrolling those who are eligible into a workplace pension scheme and contributing towards it. This is called ‘automatic enrolment’.

This brief guide provides an outline of what employers who participate in the Local Government Pension Scheme (LGPS) and the Teachers’ Pension Scheme (TPS) in England and Wales are required to do to comply with their automatic enrolment legal duties. More detailed guidance is provided by the Pensions Regulator (TPR) - links to that guidance are provided throughout this document.

It will help employers if they are familiar with the different categories of worker for automatic enrolment purposes. These are explained briefly in the [key terms](#) section of this guide and in more detail in TPR’s [detailed guidance no.1](#).

This guide is split into the following sections:

[Contractual enrolment](#)

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## Contractual enrolment

Under the regulations that govern the LGPS and TPS most new employees are contractually enrolled into the relevant pension scheme. As both the LGPS and the TPS are qualifying schemes for automatic enrolment, employees that are contractually enrolled will be unaffected by automatic enrolment unless they elect to opt out of the LGPS or TPS.

**LGPS** - all eligible employees under the age of 75 are contractually enrolled into the LGPS on appointment unless their contract of employment is for less than three months.

Employees with a contract of employment for less than three months will not be contractually enrolled but will be automatically enrolled if they are an eligible job holder, although the employer can issue a [postponement](#) notice for up to three

months and a day and can choose not to automatically enrol the employee if any of the optional [exceptions](#) apply.

**TPS** – all teachers over the age of 16 and under the age of 75 are contractually enrolled into the TPS on appointment. The only exceptions to this are the two unusual categories of teachers detailed in paragraph 3.9 of the TPS [HR guide](#). These two categories of teachers must be enrolled into LGPS as set out in the paragraph above. However, at the point the reason for their exclusion from the TPS ceases to have effect the teacher must be enrolled into the TPS.

Automatic enrolment sits alongside contractual enrolment and requires that employers, from their [staging date](#) or [duties start date](#), continually monitor their workforce and take certain actions in respect of employees who are not contributing to their workplace pension scheme at specified times.

## Safeguards

The workplace pensions reform introduces new duties and safeguards that all employers must adhere to. The safeguards are intended to protect individuals, meaning there are certain things the employer must not do, both before a person starts working for them and once that person is a member of a pension scheme with that employer.

Full details of the safeguards can be viewed in TPR's [detailed guidance no.8](#) - a summary is provided below:

- an employer must not, as part of the recruitment process, make any suggestion that success in applying for a job may be conditional on opting out of the pension scheme
- an employer cannot seek to induce a member of either the LGPS or the TPS to opt out of the scheme
- an employer cannot treat a worker unfairly or dismiss a worker on account of the worker trying to enforce their automatic enrolment rights

## Duties for new employers

This section of the guide is relevant to:

- an employer who becomes an employer on or after 2 April 2017, does not have a PAYE scheme and has not paid PAYE income before 1<sup>st</sup> October 2017;
- an employer who first pays PAYE income in respect of any worker on or after 1 October 2017

For information on the definition of a worker see TPR's [detailed guidance no.1](#)

Any new employer who participates in the LGPS and/or TPS should be aware of the contractual enrolment requirements of the schemes, as detailed in the [contractual enrolment section](#) of this guide.

In addition to the contractual enrolment requirements, the employer must also be prepared for the onset of their automatic enrolment employer duties for those employees who are not contractually enrolled, or those that are contractually enrolled but subsequently opt out. An employer's automatic enrolment duties start from the date their first worker begins to be employed (their 'duties start date').

The date that the first worker begins to be employed is the date from which the worker's contract with the employer takes effect, i.e. the contractual start of employment.

The steps a new employer should take are set out below:

### 1. Assess the workforce

A new employer should undertake an initial assessment of workers to ascertain who will be contractually enrolled. If any workers will not be contractually enrolled (due to the reasons set out in the contractual enrolment section of this guide) the employer will need to identify which category of worker they fall into for automatic enrolment purposes.

A table summarising the different categories of worker, which include eligible job holders, non-eligible jobholders and entitled workers can be found in the [key terms section](#) of this guide.

Comprehensive guidance is available in TPR's [detailed guidance no.1](#) - employer duties and defining the workforce and [detailed guidance no.2](#) – getting ready

### 2. Put administrative procedures in place

A new employer should have already made contact with their local LGPS administering authority and/or Teachers' Pensions earlier in the inception process. It is important that new employers understand their responsibilities including the data/information requirements of the respective pension schemes and how contributions should be paid over.

### 3. Automatic enrolment

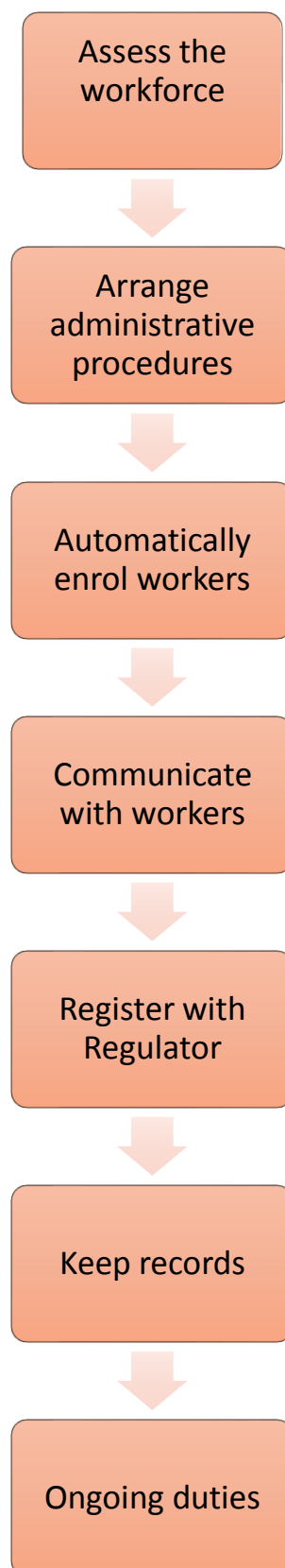
On the duties start date a new employer must, subject to the [exceptions](#) detailed later in this guide, automatically enrol eligible jobholders who have not been contractually enrolled into the LGPS or TPS.

However, an employer has the option to suspend the assessment of a worker, or a group of workers, for automatic enrolment for up to three months and a day by using postponement. See the [postponement section](#) of this guide for more information.

### 4. Communicate with the workforce

Employers must write to all their eligible jobholders, non-eligible jobholders and entitled workers who are not active members of the LGPS or TPS on their duties start date. That communication must be direct and sent within 6 weeks of the duties start date.

Template letters for the LGPS can be found in the [sample letters document](#). Template letters are also available on [TPR's website](#)



## 5. Register

All employers must register with TPR and provide information about how they have complied with their duties. This information must be submitted within five months of the duties start date. The declaration can be submitted on [TPR's website](#).

## 6. Record Keeping

Employers must keep comprehensive records about their employees and the scheme they have used to meet their automatic enrolment obligations. Records must be kept for 6 years.

Employers must keep opt out forms for 4 years but, subject to Data Protection legislation, it is recommended that these are retained for life.

The information employers are required to keep about the pension scheme they have used to meet their automatic enrolment duties includes evidence that the scheme meets the test scheme standard (which is a hypothetical scheme used as a benchmark). The test scheme certificate can be found [here](#) for the LGPS in England and Wales and [here](#) for the LGPS in Scotland. TPS employers can find the certificate [here](#).

More information about record keeping is available in TPR's [detailed guidance no.9](#) – keeping records

## 7. Ongoing duties

An employer's duties do not stop on the duties start date, they are required to monitor their workforce every pay reference period going forward and undertake a re-enrolment exercise every 3 years – see the section below on [ongoing duties](#) for more information.

## Postponement

Postponement is optional and is essentially the postponement of the assessment of a worker, or a group of workers, at certain dates and therefore a postponement of whatever duties may apply.

Examples of when an employer could use postponement are:

- in respect of workers with rare spikes in earnings
- for short-term workers who are due to leave soon after starting work
- for casual workers

An employer can only use postponement on certain dates, as below:

- the first day of employment, in respect of any worker starting employment after the employer's staging date
- for employers who do not have a staging date (i.e. certain new employers from 2 April 2017) the first day of employment of any worker including the start date of the first worker employed i.e. the employer's duties start date
- the date a worker employed by them meets the criteria to be an eligible jobholder after the employer's staging date or on or after the employer's duties start date
- at the end of the Transitional Delay period.

Postponement is not available at the cyclical automatic re-enrolment date for any employer.

The way an employer exercises the choice to use postponement is to give that worker a written notice which must be issued within six weeks and a day from the date they are using postponement (or before 1 October 2017 where postponement is to be used at the end of the Transitional Delay period).

The postponement notice tells a worker:

- that automatic enrolment has been postponed
- the deferral date
- that on the deferral date, if they meet the criteria to be an eligible jobholder, they will be automatically enrolled, and
- about their right to opt in to either the LGPS or TPS, as appropriate.

The deferral date is the last day of the postponement period and is a date of the employer's choosing. It can be up to three months and a day from the date postponement was applied.

### **On the deferral date**

On the deferral date, the employer must assess the worker and if they are an eligible jobholder the employer must automatically enrol the worker unless one of the [exceptions](#) apply. They cannot apply a further postponement period.

If the worker does not meet the eligible jobholder criteria on the deferral date, the employer must continue to assess the worker on the first day of each subsequent pay reference period to identify the next time the eligible jobholder criteria are met.

### **Using postponement more than once**

If the worker doesn't meet the eligible jobholder criteria on the deferral date, then the next time that they do, the employer can choose to:

- automatically enrol the eligible jobholder from the first day of the pay reference period in which the eligible jobholder criteria are met, or
- apply another postponement period of up to three months and a day (except when postponement has been used at the end of the Transitional Delay period)
- if any of the conditions for the optional [exceptions](#) are met, exercise their discretion to not automatically enrol the worker

The employer cannot automatically enrol the eligible jobholder if the employee had opted out of the LGPS or TPS more than 12 months before the automatic enrolment date.

The same rules for postponement apply in any subsequent application of postponement as they do on the first application.

A template LGPS postponement letter for the LGPS can be found in the [sample letters document](#).

Postponement is described in full in TPR's [detailed guidance no. 3a](#) – postponement.

## Transitional Delay

Transitional delay was an option available to LGPS and TPS employers that allowed them to delay automatic enrolment for their eligible jobholders until 1 October 2017, provided the eligible jobholders:

- had joined their employer before the employer's staging date
- were entitled to be an active member of the LGPS or TPS on that date, and
- were not active members of the LGPS or TPS on the employer's staging date

For more information on the rules that applied in relation to Transitional Delay see [TPR's website](#) which provides specific guidance on employer duties at the end of the transitional period.

## Opt outs

An employee who is either contractually or automatically enrolled into the LGPS or TPS can only opt out after they have been brought into the scheme i.e. they cannot complete an opt out form before they have been brought into the scheme. That does not mean that contributions have to be collected from pay before they can opt out; it merely means that they cannot sign and date the opt out form until on or after the date they are enrolled into the pension scheme.

An opt out can only be made on a prescribed opt out form which can only be obtained from the pension scheme administrator i.e. the employer cannot issue an opt out form. The opt out form must be sent to the employer to action on the payroll and the employer must notify the pension scheme administrator that the person has opted out.

If the employee opts out within 3 months of being enrolled they are to be treated as never having been an active member of the LGPS or TPS in that employment; the employer must refund the contributions to the employee within 6 weeks of receiving the opt out form, or, if the payroll has already been run by the end of the next pay period. The employer must then reduce the amount of contributions paid over to the pension scheme administrator by the amount of the refunded employee contributions plus the employer contributions already paid in respect of that employee.

## Ongoing duties for all employers

### Continual monitoring of the workforce

Automatic enrolment is a continuing responsibility for employers. An employer's duties do not end after their staging date (or duties start date, if they don't have a staging date). Employers must:

- **keep records** of their automatic enrolment activities (this includes the names and addresses of staff they've enrolled, records of when contributions were paid into a pension scheme, staff opt-in notices, pension scheme reference number and information sent to the pension provider) for six years and opt out notices for four years. Read TPR's guidance on [record-keeping](#) for more information
- **monitor the ages and earnings** of their new and existing staff and check their automatic enrolment eligibility every pay reference period. As employees first

become eligible they will need to be automatically enrolled, unless one of the [exceptions](#) apply

- **enrol staff and write to them** to let them know how automatic enrolment applies to them as they become eligible

Where employees have multiple contracts with one employer, the employer must assess the situation and make a reasonable judgement as to whether the contracts are separate, distinct contracts or whether they are to be viewed as a single employment relationship. Where the employer considers that a single employment relationship exists, they will need to treat all the contracts as one contract. If this is not the case, they will need to treat each contract separately when assessing what category of worker the employee falls into.

An employee who is not an active member of the LGPS or TPS who becomes an eligible jobholder for the first time since either the employer's staging date or duties start date must be automatically enrolled from the beginning of the pay reference period in which they meet the eligible jobholder criteria, unless the employer chooses to use [postponement](#) or one of the [exceptions](#) apply.

The employer must write to employees who are being automatically enrolled within 6 weeks telling them that they are being automatically enrolled, the automatic enrolment date and that they have the right to opt out.

If an employer chooses to use postponement they must give the employee a written postponement notice which must be issued within six weeks and a day from the date they are using postponement. See the section on [postponement](#) for more information.

If an employee is not an active member of the LGPS or TPS and becomes a non-eligible jobholder or entitled worker for the first time since the employer's staging date or duties start date the employer must write to the employee within six weeks informing them of their right to opt into the LGPS or TPS.

It is worth noting that an employer is only obliged to provide information about the right to opt in once per employee, per employment.

Template letters for the LGPS can be found in the [sample letters document](#).  
Template letters are also available on [TPR's website](#)

### **Cyclical automatic re-enrolment**

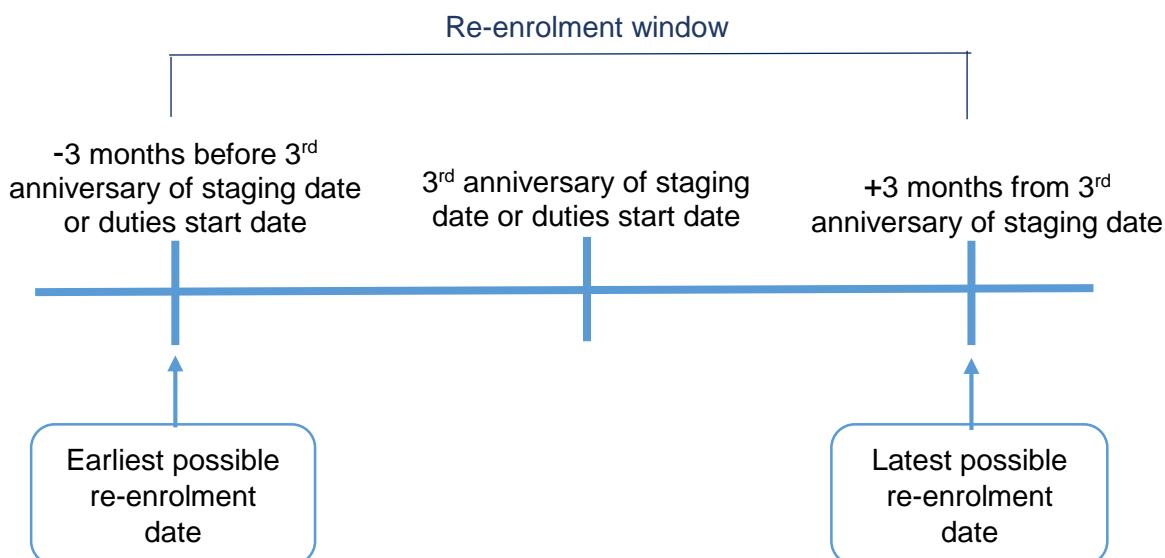
An underlying principle of the new duties is that an employer must put their eligible jobholders back into a workplace pension scheme on a three-yearly cycle.

#### **Choosing the cyclical automatic re-enrolment date**

An employer can choose their cyclical automatic re-enrolment date from any date that falls within a six month window, starting three months before the third anniversary of their original staging or duties start date and ending three months from that anniversary.

Thereafter, an employer can continue to choose further re-enrolment dates within a six month window, starting three months before the third anniversary of the date

chosen for the previous automatic re-enrolment date and ending three months from that anniversary.



Employers should note that 'months' means calendar months.

#### Employer duties on the cyclical automatic re-enrolment date

Essentially cyclical automatic re-enrolment is a repeat of the process the employer carried out on their [staging date](#) or [duties start date](#), with a couple of key differences:

- cyclical automatic re-enrolment only applies to eligible jobholders who have had an automatic enrolment date with that employer
- postponement cannot be used with cyclical automatic re-enrolment

An employee will have had an automatic enrolment date if they have met the eligible jobholder criteria prior to the cyclical automatic re-enrolment date.

Crucially, the employer does not have to assess all their workers to identify if any meet the eligible jobholder criteria; instead they must assess only the employees who have opted out of the LGPS or TPS.

On the employer's cyclical automatic re-enrolment date they must automatically re-enrol any eligible jobholders who are not currently members of the LGPS or TPS unless one of the exceptions that amend the automatic enrolment duty to be optional apply (in which case the employer can choose whether to automatically re-enrol the eligible jobholder).

The employer must write to employees who are being automatically re-enrolled within 6 weeks telling them that they are being automatically enrolled, the automatic enrolment date and that they have the right to opt out.

Please note, the exception where the eligible jobholder opted out of the LGPS or TPS more than 12 months before the automatic enrolment date does not apply at the cyclical automatic re-enrolment date - see the [exceptions section](#) of this guide for more information.



### After cyclical automatic re-enrolment

Once cyclical automatic re-enrolment has been completed an employer must re-declare their compliance with the TPR to tell them how they have discharged their re-enrolment duty. The declaration can be submitted on [TPR's website](#).

The first re-declaration of compliance must be submitted within five calendar months of the third anniversary of the staging date or duties start date i.e. the re-declaration deadline does not change according to the re-enrolment date chosen by the employer.

Employers must also continue with their usual monitoring process each pay reference period to identify what category of worker an employee falls within in relation to their contract of employment

At the next cyclical automatic re-enrolment date they must repeat the re-enrolment assessment and re-declare their compliance with the TPR to tell them how they have discharged their re-enrolment duty. The re-declaration has to be submitted within 5 months of the third anniversary of the previous automatic re-enrolment date chosen by the employer.

More information about re-enrolment is available in TPR's [detailed guidance no.11](#)

### 50/50 section of the LGPS

The LGPS offers its members the opportunity to pay a lower rate of contributions in return for a lower rate of pension build up – this is called the 50/50 section of the LGPS.

The 50/50 section operates in tandem with the automatic enrolment provisions meaning that members who elect for the 50/50 section of the scheme will be automatically re-enrolled back into the main section of the scheme from the first pay period after the employer's cyclical automatic re-enrolment date, regardless of whether they are an entitled worker, non-eligible jobholder or an eligible jobholder.

### Exceptions

There are certain exceptions that change the automatic enrolment duty; the way the duty is changed depends on the exception, see below:

#### **When the automatic enrolment duty does not apply**

The automatic enrolment duty does not apply where the eligible jobholder opted out of the LGPS or TPS more than 12 months before the automatic enrolment date i.e. the employee must not be automatically enrolled.

Please note this exception does not apply at the cyclical automatic re-enrolment date.

#### **When the automatic enrolment duty is optional**

The automatic enrolment duty is optional for the employer at both the automatic enrolment date and the cyclical automatic re-enrolment date where:

- the eligible jobholder has been given notice or has given notice of the end of their employment and that notice was given before the end of the period

beginning with 6 weeks from the automatic enrolment date or cyclical automatic re-enrolment date, whichever is applicable

- the eligible jobholder opted out in the 12 months prior to the automatic enrolment date or cyclical automatic re-enrolment date, whichever is applicable
- the employer has reasonable grounds to believe that the eligible jobholder holds a protection from the lifetime allowance tax charge. The lifetime allowance protections that can be held are:
  - Primary protection
  - Enhanced protection
  - Fixed Protection 2012; Fixed Protection 2014; Fixed Protection 2016
  - Individual Protection 2014; Individual Protection 2016

Where an exception is used to not automatically enrol an eligible jobholder the employer does not need to continue to monitor them but action may need to be taken at the cyclical automatic re-enrolment date.

There are certain other exceptions that are not included in this guide as they are unlikely to apply to the employees who are eligible for membership of either the LGPS or TPS. Such exceptions include if the eligible jobholder has been paid a winding up lump sum, or is a director of a company or a member of a limited liability partnership and is not treated for income tax purposes as being employed by the company. Information about these exceptions can be found in the TPR's [detailed guidance no.1](#)

More information about exceptions to the automatic enrolment duty is available in TPR's [detailed guidance no.1](#) – employer duties and defining the workforce

## Compliance

The Pensions Regulator has powers to impose penalties for:

- failure to comply with duties
- non-compliance with contravention notices

For more information see [TPR's website](#).

## More information

The Pensions Regulator – detailed guidance including flowcharts and template letters are available at [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

Teachers' Pension Scheme – Teachers' Pensions has produced [online guidance](#) to support employers

For queries about this brief guide please email [query.lgps@local.gov.uk](mailto:query.lgps@local.gov.uk)

## Key terms

### Categories of worker

All workers will fall into one of three categories for automatic enrolment purposes:

Categories of Worker	Description of Worker
Eligible jobholder	<ul style="list-style-type: none"><li>• is aged between 22 and State Pension age</li><li>• is working or ordinarily works in the UK under their contract of employment</li><li>• has qualifying earnings above the earnings trigger for automatic enrolment i.e. annualised equivalent earnings of more than £10,000 are payable in the relevant pay reference period (each contract of employment should be treated separately<sup>1</sup>)</li></ul>
Non eligible jobholder	<ul style="list-style-type: none"><li>• is aged between 16 and 21 or State Pension age and 74</li><li>• is working or ordinarily works in the UK under their contract of employment</li><li>• has qualifying earnings above the earnings trigger for automatic enrolment i.e. annualised equivalent earnings of more than £10,000 is payable in the relevant pay reference period (each contract of employment should be treated separately<sup>1</sup>)</li></ul> <p>or</p> <ul style="list-style-type: none"><li>• is aged between 16 and 74</li><li>• is working or ordinarily works in the UK under their contract of employment</li><li>• has qualifying earnings equal to or below the earnings trigger for automatic enrolment but above the lower earnings limit i.e. annualised equivalent earnings of equal to or more than £6,032 but equal to or less than £10,000 are payable in the relevant pay reference period (each contract of employment should be treated separately<sup>1</sup>)</li></ul>
Entitled worker	<ul style="list-style-type: none"><li>• is aged between 16 and 74</li><li>• is working or ordinarily works in the UK under their contract of employment</li><li>• does not have qualifying earnings i.e. annualised equivalent earnings of less than £6,032 are payable in the relevant pay reference period (each contract of employment should be treated separately<sup>1</sup>).</li></ul>

A table summarising these different categories is set out on the next page.

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<sup>1</sup> Unless the employer considers that a single employment relationship exists – see [page 7](#) of this guide for more information

The category a worker falls into is determined by their age and earnings (annualised equivalent per pay reference period).

2018/19	Age	16 - 21	22 - <SPA*	SPA* - <75
<i>Earnings**</i>				
Under lower earnings threshold (£6,032***)	<i>Entitled worker</i>			
Between £6,032*** and £10,000	<i>Non-eligible jobholder</i>			
Over earnings trigger for automatic enrolment (£10,000)	<i>Non-eligible jobholder</i>	<i>Eligible jobholder</i>	<i>Non-eligible jobholder</i>	
<p>* <i>State Pension Age</i>  ** <i>Earnings</i>: separate contracts treated separately  *** To align with National Insurance contributions lower earnings limit</p>				

The values per pay reference period for 2018/19 are as below:

Pay reference period	Lower earnings threshold p.a.	Earnings trigger for automatic enrolment
Annual	£6,032.00	£10,000.00
6 months	£3,016.00	£4,998.00
3 months	£1,508.00	£2,499.00
1 Month	£503.00	£833.00
4 weeks	£464.00	£768.00
Fortnight	£232.00	£384.00
1 week	£116.00	£192.00

### Contract of employment

This means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

### **Duties start date**

The duties start date is the date a new employer's automatic enrolment duties start from. It is the date the new employer's first worker begins to be employed i.e. the date the first worker's contract of employment with the employer takes effect. A new employer is deemed to be:

- an employer who becomes an employer on or after 2 April 2017 and does not have a PAYE scheme and has not paid PAYE income before 1<sup>st</sup> October 2017;
- an employer who first pays PAYE income in respect of any worker on or after 1 October 2017

### **Earnings**

This is the sum of any of the following descriptions that are payable to the person in connection with the person's employment:

- salary, wages, commission, bonuses and overtime
- statutory sick pay under Part 11 of the Social Security Contributions and Benefits Act 1992 (c.4)
- statutory maternity pay under Part 12 of that Act
- statutory paternity pay under Part 12ZA of that Act
- statutory adoption pay under Part 12ZB of that Act
- statutory shared parental pay under Part 12ZC of that Act
- sums prescribed for the purposes of section 13 of the Pensions Act 2008

### **Pay reference period**

Where an employer chooses to use a pay reference period in relation to a person's normal pay period this is:

- where the person is paid their regular wage or salary weekly the pay reference period would be a week, or
- where the person is paid their regular wage or salary by reference to a longer period than a week, that period e.g. if an employer pays their employees on the 15<sup>th</sup> of January for the whole of that month the pay reference period is 31 days

Alternatively, an employer can choose to align a pay reference period to tax weeks or months. See TPR's [detailed guidance no.3](#) for more information on pay reference periods.

### **Staging date**

An employer's staging date is set in law as of 1 April 2012 and is the date the automatic enrolment duties apply to them. New employers have a 'duties start date' instead of a staging date – see the [duties start date definition](#) for what constitutes a new employer.

### **State Pension Age (SPA)**

The State Pension age is currently age 65 for men. The State pension age for women is currently being increased to be equalised with that for men and will reach 65 by November 2018.

State pension age equalisation timetable for women:

Date of Birth	New State Pension Age
Before 6 April 1950	60
6 April 1950 - 5 April 1951	In the range 60 - 61
6 April 1951 - 5 April 1952	In the range 61 - 62
6 April 1952 - 5 April 1953	In the range 62 - 63
6 April 1953 - 5 August 1953	In the range 63 - 64
6 August 1953 - 5 December 1953	In the range 64 - 65

The State pension age will then increase to 66 for both men and women from December 2018 to October 2020.

Increase in State pension age from 65 to 66 for men and women:

Date of Birth	New State Pension Age
6 December 1953 - 5 October 1954	In the range 65 – 66
After 5 October 1954	66

Under current legislation the State pension age is due to rise to 67 between 2026 and 2028 and to 68 between 2044 and 2046. However the government has [announced plans](#) to bring forward the rise to 68 to between 2037 and 2039.

### Worker

This means an individual who ordinarily works in Great Britain under:

- a contract of employment i.e. an employee, or
- any other contract by which the individual undertakes to do work or perform services personally for another party to the contract (i.e. they cannot send a substitute or sub-contract the work) and the individual is not undertaking the work as part of their own business.

### Disclaimer

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