Since the first companies reached their Auto-enrolment staging date in late 2012, the statutory minimum contributions for both employers and employees into Qualifying Workplace Pension Schemes have remained static. Now everything is about to change and it will impact your organisation and its employees not once, but twice.

For employers that currently pay the minimum levels of employer and employee contributions into their Qualifying Workplace Pension Scheme and those who contribute more than is currently required but remain below the future minimums, an increase in contributions is required from 6 April 2018 and again on 6 April 2019.

Combined, these represent a potential five-fold increase in staff commitment within a relatively short period of time, not to mention at least a three-fold increase in company obligations. Are you ready? Are your employees ready?

In this edition of inPractice, we take you through the practicalities and the potential pitfalls.

What is your role in managing these changes?

Your business will need to factor in the significant cost increases of your Workplace Pension Scheme contributions under Auto-enrolment legislation. Most organisations need to work within budget limitations and have other mandatory commitments they need to fund.

It is likely that you undertook an investigation of the future costs of Auto-enrolment when you first established your Qualifying Workplace Pension Scheme in preparation for your staging date. Now is the time to revisit this analysis in consideration of how your workforce demographic looks today.

When it comes to your employees, further contribution increases may be difficult to swallow. At a time when take home pay is being squeezed, it’s understandable that many may reconsider the necessity of paying into a retirement fund. Naturally, changes will not be welcomed if they have seemingly sprung from nowhere and employers can expect varying degrees of response according to how and when they have communicated information about pension saving to their employees.
Whilst statutory communications are part and parcel of your Auto-enrolment duties, they do not apply to forthcoming contribution increases. Now is therefore the time to consider how to manage the messages around these contribution increases and why they are important. Employees need time to consider what’s important to them now and how they will accrue a retirement fund that will enable them to retire comfortably. It is equally important for employers to ensure employees can afford to retire in a timely way: failing to support this could mean an ageing, more expensive, and less productive workforce.

Finally, in light of these increases, it is important to consider the overall sustainability of your employee benefits programme and how you link the cost of maintaining it to the part it plays in recruiting and retaining the people you need to help your business thrive. Now may be the ideal opportunity to take a step back and consider a strategic review of your needs.

Statutory minimum contribution increases at a glance

Depending on your chosen pensionable salary definition and method of calculating contributions (the technical definitions are: Qualifying Earnings, Set 1, Set 2 or Set 3) the required increases are as follows:

### Qualifying Earnings and Set 2 (Basic Pay)

<table>
<thead>
<tr>
<th>Date effective</th>
<th>Employer minimum contribution</th>
<th>Staff contribution</th>
<th>Total minimum contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Currently until 5 April 2018</td>
<td>1%</td>
<td>1%</td>
<td>2%</td>
</tr>
<tr>
<td>6 April 2018 to 5 April 2019</td>
<td>2%</td>
<td>3%</td>
<td>5%</td>
</tr>
<tr>
<td>6 April 2019 onwards</td>
<td>3%</td>
<td>5%</td>
<td>8%</td>
</tr>
</tbody>
</table>

### Freshen up your knowledge of your Workplace Pension Scheme

Before you undertake any formal exercises such as employee communication or benefit structure reviews, it’s important to familiarise yourself with the make-up of your chosen scheme and the decisions you previously made.

- What is the basis currently used to calculate contributions, Basic Pay, Qualifying Earnings, or Total Earnings? Who pays what percentage?
- Should the current contribution basis remain? By what amount do the company and employee minimum contributions need to increase on 6 April 2018 and 6 April 2019?
- If you have certified using Set 1, 2 or 3, do you need to review the certificate?
- Have you already committed to a programme of increases in your initial Auto-enrolment communications? Was this based on the previous dates for the increases i.e. October 2017 and October 2018? Can you justify changing this and is a formal consultation required?
- Is a decision on contribution levels still to be made?
2 Get prepared
In case you had other plans:

The first phase of increases was originally scheduled for 1 October 2017. However, in April 2015 these dates were changed by Government to 6 April 2018. You may have already been planning to make the increases from 1 October 2017.

If you would still like to make the increases effective from this date, you can. However, your pension provider(s) and payroll should be consulted to ensure they have the capability to handle this. And again, ensure you are clear on any formal staff consultation requirements.

2018:

Unless you are sticking to the original schedule, the first statutory increase takes effect on Friday 6 April 2018, just after the Easter weekend, not 1 April 2018.

If you operate a monthly payroll and the Pay Reference Period (PRP) is normally 1st - 30th of the month, the payment in respect of April 2018 may need to be pro-rated - 5 days at the present level, 25 days at the increased level. However, this depends on scheme rules; a Group Personal Pension scheme would not usually be expected to pro-rate and the full increase can apply for the entire monthly period. Ask yourself:

- If staff are paid weekly, fortnightly, or at any other frequency, what are the implications for the payroll system and process? Can it cope?
- Payroll staff should be fully aware of what is happening and be able to manage this. Are they and can they?
- Considering the timing, will your payroll department be adequately staffed around the holiday period?

If you do want to make the change easier to manage and effective from 1 April 2018, or make any other changes to employees terms and conditions, we recommend you seek legal advice on the potential need to enter a formal consultation with employees.

3 Assess the impacts and identify challenges

These will be unique to your business but, broadly, there are key considerations common to all schemes and their associated processes:

- Might you expect more individuals to cease all contributions to the pension scheme?
- Have the increases been budgeted for? When does your company year start and end? When do you start the next year's budgeting process?
- Are you comfortable that your payroll / outsourced payroll can cope with the increases?
- On what basis are new employees being enrolled into the pension scheme?
- If postponement for new staff is not being used at present, should this be reconsidered?
- Do staff handbooks and employment contracts need reviewing? If so, when?
- If you utilise Salary Exchange (Sacrifice), will the increased employee contribution push any employees below the National Minimum / Living Wage level? Does the company need to review its Salary Exchange (Sacrifice) rules, terms and processes as well as the minimum salary threshold below which staff have pension contributions deducted from net pay? Will this materially impact the company’s National Insurance saving?
- Do you plan any new staff hires / acquisition / disposal / TUPE transfer activity in late 2017 or early 2018? Your pension and Auto-enrolment obligations and options should be carefully factored into your corporate strategy now.

4 Communicate the changes

Outside of any formal consultancy that you may need to undertake there is no legal requirement to communicate to staff on this issue, it is clearly good practice to do so. This will help all parties understand what's happening, when and why. This will allow your employees to plan, ask questions and consider their options. Practical considerations to cover in your communication activities include:

- Do staff remember any previously agreed increases and when was this last communicated?
- Are staff aware of the impact this will have on their pay and what reaction do you expect?
- Are new employees being made aware of the increased demands in the short term?
- Are communications clear, easy to understand and avoid inducing members to opt out?
- Do benefits guides and intranet pages need to be reviewed together with contracts and staff handbooks?
Prepare your approach for “Opting down”

It may be possible for staff to continue membership of the workplace pension scheme even if the new minimum contributions are not being paid, or cannot be afforded by the employee, post-April 2018. If an employee chooses to “opt down” they are then classed as not being an active member of a qualifying scheme and therefore must be re-enrolled every three years on the relevant minimum contribution levels in force at that time.

This is currently raising many questions around its practical application and the implications for employees, the employer, pension provider, payroll system and communications. It is important that you understand any restrictions that your pension provider(s) may have that could affect your ability to provide a flexible approach when it comes to your employees.

Our current understanding of “Opting down” is as follows:

As an employer, you are obliged to pay the minimum contributions required at that time. So, if an employee does not want to pay their share of the total contribution, should you make up the shortfall or can you pay nothing at all?

Take, for example, an employer using Set 1 criteria and intending to increase their contributions from 2% to 3% and employee contributions from 1% to 3%. If the employee wants to stay on 1%, does the employer have to continue to pay 2% or could they pay 1% or nil? Could the employer insist on 3% from the employee? If the minimum isn’t met, do they cease to be an active member of the pension scheme?

Our current understanding: is that if your employee elects to reduce their contribution below the mandatory minimum, there will be no obligation for you to make any contribution at all.

Employees may not want to pay the increased minimum and don’t want to opt out either. What do they need to do to remain in the qualifying scheme?

The Pension Regulator states – “Alternatively, the jobholder may decide not to opt out but instead to complete whatever documentation is required by the scheme to continue membership at a lower rate”. (TPR Detailed guidance for employers No. 7, Opting Out, Point 66). How does an existing pension member formally confirm their decision not to pay the increased amounts? Do they have to leave the scheme and re-join or simply ask for a contribution reduction?

Our current understanding: is that the employee would not have to leave the scheme and would be able to ask for a reduction in their contribution. However, they would also need to complete whatever documentation, if any, as required by the scheme to reduce their contribution subject to the scheme rules. As a result of this, their plan would become “non-qualifying”.

Inducements to opt out are not allowed. So, could providing information on options like “Opting down” be viewed as an inducement?

For example, could you set out the option to pay a lower amount but suggest this is not a good idea?

Our current understanding: based on information received from The Pensions Regulator, any communications to employees regarding the increases would not be able to include any information about making a lower contribution, as this could be considered an inducement.

New employers from 1 October 2017

Firms who become an employer for the first time on or after 1 October 2017 will immediately have legal duties with respect to their new member(s) of staff. These duties apply from the first day that the first member of staff starts work. By 1 February 2018, “staging dates” will no longer be relevant.

When you are about to employ a worker for the first time, you need to take certain steps in preparation for taking on the worker(s), such as registering as an employer with HMRC and taking out Employer Liability and Public Liability insurance (EL and PL). Getting ready for Pensions Auto-enrolment is just another one of these requirements. As soon as a new member of staff begins employment, you must be ready to comply with your pension related legal duties.

Take action now

We recommend you start dealing with this subject now to ensure you are fully prepared for the start of 2018. There are a number of options open to you and we can help you decide which fits best and how to communicate the decision to staff.

For more information please contact your Arthur J. Gallagher consultant or reach us at:

+44 (0)20 7204 8990
www.gallaghereb.com
sayhello@ajg.com
@ajgbenefits