



Compliance and enforcement

Quarterly bulletin: July - September 2018
AUTOMATIC ENROLMENT SECTION

Automatic enrolment

Employers who fail to keep on top of their ongoing duties risk large fines

Automatic enrolment is a continuing process for employers – it doesn't end once you've put your staff into a workplace pension. Employers have ongoing responsibilities that they need to complete, and to stay compliant you will have to:

- ▶ assess the age and earnings of staff who aren't enrolled in a workplace pension each time you pay them, to see if they need to be put into one
- ▶ work out how much money you need to pay into your staff's scheme every time you pay them
- ▶ continue to make the payments that are due into the scheme every time you run payroll
- ▶ write to staff to let them know what's happening
- ▶ keep records relating to your workplace pension scheme

The ongoing duties survey we published last month showed that the majority of employers had no difficulty with their ongoing duties, finding them less onerous than expected, and spent an average of under two hours per month meeting them. Plus, in October we launched the latest phase of the workplace pensions advertising campaign we're running with the Department for Work and Pensions, focusing on the importance of keeping track of automatic enrolment after declaring compliance – so there's no excuse not to be aware. Our enforcement teams have also been conducting spot checks around the country – so employers should make sure they're staying on top of their legal duties as we may pay them a visit.

Case study

This household name employer automatically enrolled its eligible staff into a master trust pension scheme in 2013. The scheme was 'self certified' by the employer. Employers using certification to calculate contributions must re-assess their workforce every 18 months to ensure that it still meets the relevant criteria.

In 2016, the company assessed the workforce and realised that the circumstances had changed and the contributions should have been calculated another way (in this case, the company had originally based calculations for pensionable earnings on 85% of total earnings). The changes meant that the calculations for pensionable earnings would be based on 100% of their total earnings. However, the company failed to amend its payroll or update the pension scheme rules, meaning that the pension contributions paid fell below the minimum required by law.

The employer wrote to their staff to explain they would meet the full costs of the underpaid employer contributions (over £350,000), plus an additional allowance to compensate for lost investment returns. The company got in touch with us in 2017 and said that there had been an oversight and they had failed to make required changes because the business was very busy. We were not satisfied with their explanation or proposed rectification plan and, in April 2018, issued the company with a notice requiring them to pay the shortfall of both employer and employee contributions, adding up to a total of over £700,000. They confirmed that they had paid the outstanding amount in July 2018 and are now compliant with their automatic enrolment responsibilities.

Message to employers

It's important to keep track of your ongoing automatic enrolment responsibilities and be aware of any changes which might affect your pension contributions. Even if you've outsourced it to an adviser, you are still legally responsible and could end up with a costly bill if you get it wrong.

Cases closed

Automatic enrolment cases closed in the period

Cases closed in this quarter:	36,953
Cases closed to date ¹ :	241,633

Selected powers² used in the period

Power	Number in period	Number to September 2018
Information Notice	92	743
Inspection	111	1,472
Warrant	0	4
Compliance Notice	14,997	138,145
Unpaid Contributions Notice	6,413	13,846
Fixed Penalty Notice	12,551	68,102
Escalating Penalty Notice	3,931	15,967
Total	38,095	238,279

1

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 30 September 2018). We occasionally identify a small number of cases which have been incorrectly marked as relating to automatic enrolment. When this occurs, an adjustment to the numbers from the previous quarter will have been made.

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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.

Review of statutory notices for automatic enrolment

A review is where an employer who is the recipient of a statutory notice (such as a Compliance Notice, Fixed Penalty Notice or Escalating Penalty Notice) disagrees with our decision and requests a review.

Confirmed reviews are where we have carried out a review and decided that the statutory notice was issued correctly and appropriately and will continue to be applied to the employer. In some cases we revoke the statutory notice following the review. Where a notice is substituted, this may mean that a different breach has been uncovered and a different statutory power is used instead.

Reviews ³	Number in period	Number to September 2018
Requested	4,383	23,728
Completed	3,355	19,293

Outcome of reviews	Number in period	Number to September 2018
Confirmed	813	5,119
Revoked, substituted or varied	2,542	14,174

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Note that the above numbers represent the number of statutory notices that have been subject to a review request from an employer. The reviews completed in the period may not have been requested in the period. The numbers are subject to change over time as powers issued in a previous period are subsequently replaced as part of ongoing enforcement activity.

Tribunals for automatic enrolment

Employers who receive a penalty notice and disagree with our decision to issue it must first ask us for a review. If they disagree with the outcome of that review they can then appeal the decision to the Tribunal Service. Employers have 28 days after the review decision is issued in which to appeal.

Tribunals	Number in period	Number to September 2018
Requested	137	979
Defended	86	661
Not defended	42	308

Outcome of defended tribunals	Number in period	Number to September 2018
Confirmed	99	523
Revoked, substituted or varied	5	28
Total	104	551

Confirmed includes struck out and dismissed.

Ongoing tribunals where the decision has yet to be made on how to respond: 10

Defended tribunals still ongoing at the end of September 2018: 110

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