

AUTOMATIC ENROLMENT FACTSHEET 2

OPTING OUT

It's important employers fully understand their duties as part of automatic enrolment. To assist with this, Scottish Widows has produced a range of fact sheets covering some of the key technical aspects of the regulations.

Further details may be found on the Pension Regulator's website: <http://www.thepensionregulator.gov.uk/employers/tools/employer-duties.aspx>

The right to opt-out of pension scheme membership is a useful and in some cases, essential option. However, it's only available during a very specific and short time frame. For employers and certain jobholders, having a clear understanding of the facility is crucial.

Opting out under the automatic enrolment legislation only applies to jobholders; both eligible, who have been automatically enrolled, and non eligible who have opted in and become active members of a pension scheme. Employers have no right to opt-out of their duties and employees are not able to opt-out of the automatic enrolment process entirely.

The right to opt-out is not available to entitled workers or those workers who are enrolled using a contractual agreement. In both cases if the worker wishes to leave a scheme they must do so under the terms of the scheme rules.

PROCESS AND TIMESCALES

So in order to opt-out, the jobholder must first have become an active member of the scheme. Just as importantly, they need to have received details of the enrolment from their employer to ensure they have sufficient information before exercising their option.

The jobholder has a very short timeframe in which to exercise their option. This is known as the opt-out period and it lasts for one month. For personal pensions the opt-out period starts from either the date the jobholder is sent the terms and conditions of the agreement to join the scheme or the date they're provided with written enrolment information, depending on which is later. Similarly, for occupational schemes it is the later of the automatic enrolment date and the date they are provided with written enrolment information.

In practice the opt-out notice must be issued within 6 weeks of the automatic enrolment date.

In order to opt-out the jobholder must complete an opt-out notice. Opt-out notices are normally provided by the pension scheme rather than the employer. This is to help ensure that the employer is not providing the jobholder with any inducements to opt-out.

The employer must ensure any opt-out notice it receives is valid. In order to be valid it must contain certain information including the jobholder's personal information, a prescribed declaration and a number of statutory statements. Full details are provided in Chapter 7 of The Pension Regulator's Guidance. <http://www.thepensionsregulator.gov.uk/docs/pensions-reform-opting-out-v4.pdf>

Where the employer receives an invalid notice they must let the jobholder know why it's invalid. The opt-out period is then extended to six weeks to allow the jobholder to correct this.

Where a valid notice is received the employer must stop deducting contributions and refund any that have been paid at the next available payroll run. Employers can't wait for pension schemes to return any premiums; if they haven't received them from the scheme then they must fund this themselves.

When a jobholder opts out, their status will be as if they'd never joined the pension scheme.

If jobholders decide to leave outside of the opt-out period, they would need to do so under the standard scheme rules. Personal pension scheme members lose their right to a refund and can either leave their contributions invested or have them transferred.

For occupational schemes the right to refunds and other options will depend on the length of service and the scheme rules in the normal way.

RE-ENROLMENT

If an eligible jobholder opts-out or leaves the scheme they'll need to be re-enrolled at the next re-enrolment date unless they have opted-out or ceased membership within the 12 months preceding the re-enrolment date. It's essential for the employer to maintain accurate records to ensure workers are assessed at the correct point. It's also important that employees are aware that their decision to opt-out will need to be reconsidered every three years. If they change employer the new employer will need to assess the worker and they will be automatically enrolled if eligible. If the worker wishes to opt-out they can do so.

EXISTING PENSION SAVINGS WITH TAX PROTECTED STATUS

Opting out is the only way the jobholder can ensure they are treated as never having joined the pension scheme. It's extremely important that any jobholders who have fixed or enhanced protection are made aware of their rights and opt-out within the specified timescales to ensure the protection is not lost.

LOWER CONTRIBUTION LEVELS

Instead of opting out of the scheme entirely some jobholders may wish to continue in a pension scheme but at a lower level of contribution. If the rules of the scheme allow and/or the employer agrees, this may be achieved by using their right to opt-out and then re-joining the same or a different scheme at a lower contribution.

Alternatively they could be automatically enrolled and then request that contributions are reduced to the required level.

In both cases the individual will need to be assessed at the employer's next re-enrolment date, which is usually three years after the staging date or last re-enrolment date, as the contributions will be below the statutory minimum. As mentioned above, it's essential that employers keep accurate records of these types of cases to ensure they meet their obligations at the correct dates.

INDUCEMENTS

While there may be good reasons for some employees to choose to opt-out, employers need to ensure they do not fall foul of the inducement regulations. These aim to protect workers and other employers from a minority of employers who may try to gain competitive advantage by reducing their overheads through encouraging their employees to opt-out of the pension scheme. There is no issue with an employer providing workers with information but they cannot take any action where the main purpose is to encourage jobholders or entitled workers to opt-out or cease membership of the scheme without them immediately becoming members of a suitable alternative.

HOW SCOTTISH WIDOWS CAN HELP

Scottish Widows tool AssistMe can help employers with the administrative burden of automatic-enrolment including the processing and record keeping involved where employees opt-out.

Every care has been taken to ensure that this information is correct and in accordance with our understanding of the law and HM Revenue & Customs practice, which may change. However, independent confirmation should be obtained before acting or refraining from acting in reliance upon the information given.

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