

# Detailed guidance for employers

**Pension schemes:** Pension schemes under the  
new employer duties

# Publications in the series

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## Accompanying resources



### **Information to workers**

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At-a-glance summary of the duties and safeguards

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**Please note: This guidance is linked to the following appendices**

**Appendix A:** The phasing in of contribution levels

Available at: [www.tpr.gov.uk/docs/dg-4-appendix-a.pdf](http://www.tpr.gov.uk/docs/dg-4-appendix-a.pdf)

**Appendix B:** The phasing in of contributions for certification

Available at: [www.tpr.gov.uk/docs/dg-4-appendix-b.pdf](http://www.tpr.gov.uk/docs/dg-4-appendix-b.pdf)

**Appendix C:** Steps to take to determine if your DB pension scheme is a qualifying scheme

Available at: [www.tpr.gov.uk/docs/dg-4-appendix-c.pdf](http://www.tpr.gov.uk/docs/dg-4-appendix-c.pdf)

**Appendix D:** Steps to take to determine if your DC pension scheme is a qualifying scheme

Available at: [www.tpr.gov.uk/docs/dg-4-appendix-d.pdf](http://www.tpr.gov.uk/docs/dg-4-appendix-d.pdf)

**Appendix E:** The relevant pay reference period for the purposes of the minimum contribution entitlement

Available at: [www.tpr.gov.uk/docs/dg-4-appendix-e.pdf](http://www.tpr.gov.uk/docs/dg-4-appendix-e.pdf)

**Appendix F:** Entitlement check for DC occupational and personal pension schemes

Available at: [www.tpr.gov.uk/docs/dg-4-appendix-f.pdf](http://www.tpr.gov.uk/docs/dg-4-appendix-f.pdf)

# About this guidance

This guidance is aimed at professional advisers and employers with in-house pensions professionals. Trustees, managers and providers of pension schemes will also find it useful.

It provides factual information on the required criteria for a pension scheme to be an automatic enrolment scheme and/or a qualifying scheme, as set out in legislation. This includes the requirements for both UK and non-UK pension schemes.

Employers reading this guidance should already understand whether they need an automatic enrolment scheme, a qualifying scheme, or a combination of the two, to meet their duties. In order to understand this, employers should first read:

- **Detailed guidance no. 1 – Employer duties and defining the workforce**
- **Detailed guidance no. 2 – Getting ready.**

We recognise that many employers will already have pension provision for their workers, and that this will often match or exceed the minimum requirements contained in the duties. In these cases, such employers may just need to check that the minimum requirements are covered in their existing processes.

There are certain terms used in this guidance that are explained further in other guidance in this series, specifically **Detailed guidance no. 5 – Automatic enrolment** and **Detailed guidance no. 6 – Opting in, joining and contractual enrolment**. It may be useful to have them to hand as a point of reference when reading this guidance.

Use our automatic enrolment planner to understand what you need to do and when for automatic enrolment. It also summarises the main steps towards achieving compliance. Employers may find this helpful when navigating this guidance: [www.tpr.gov.uk/ae-planner](http://www.tpr.gov.uk/ae-planner).

It will be helpful to employers to be familiar with the different categories of workers. These are explained in detail in **Detailed guidance no. 1 – Employer duties and defining the workforce** or a quick reminder is available in the Key terms.



**Employers need to be familiar with the different categories of workers**

On 1 November 2013, the Department for Work and Pensions (DWP) introduced a number of technical changes to the legislation. This guidance has been updated to include reference to the changes in the definition of a relevant pay reference period for the purposes of the minimum requirements. The section Changes from last version provides details of significant changes made to this guidance. Further minor changes have been made but where these do not significantly impact on the structure or content, they are not listed.

## Key points

- To be an automatic enrolment scheme, a scheme must meet the qualifying criteria and the automatic enrolment criteria
- To be a qualifying scheme, a scheme need only meet the qualifying criteria
- As part of the qualifying criteria, the pension scheme must meet certain minimum requirements, which differ according to the type of pension scheme
- The minimum requirements for DC pension schemes are based on the contribution rate and require a minimum total contribution based on qualifying earnings, of which a specified amount must come from the employer
- Certification allows employers with DC schemes who use a definition of pensionable pay other than qualifying earnings to self-certify that their scheme meets the requirements
- Employers with DC pension schemes may choose to meet the certification criteria rather than the minimum requirements. The minimum requirements for defined benefit (DB) pension schemes are based on the benefits a jobholder is entitled to under the scheme
- 'Hybrid' pension schemes have elements of DB and DC and, depending on what type of hybrid they are, will have to meet either the same, or a modified version of, the minimum requirements for DB or DC pension schemes or a combination of both.

# Introduction: Automatic enrolment and qualifying pension schemes

1. The new employer duties require employers to put certain jobholders into a pension scheme. An employer must:
  - automatically enrol any eligible jobholders into an automatic enrolment scheme, unless they are already an active member of a qualifying scheme with that employer
  - enrol any non-eligible jobholders who give the employer an opt-in notice into an automatic enrolment scheme, unless they are already an active member of a qualifying scheme with that employer.

## Employers with existing pension schemes

2. Employers who already provide a pension scheme (or schemes) for some or all of their workers, will need to decide whether and how they want to use this pension scheme to meet their duties for existing members, as well as how they will fulfil their new automatic enrolment responsibilities.
3. Ahead of their staging date, an employer with an existing pension scheme will have to identify into which category of worker the active members of that pension scheme fall.
4. If they have eligible jobholders who are already active members of their existing pension scheme, they will need to consider whether they wish to use their existing pension scheme as a qualifying scheme for existing members who are eligible jobholders. This will mean that they will not have an automatic enrolment duty for these eligible jobholders but will be required to issue them with information. More details are in **Detailed guidance no. 3 – Assessing the workforce**.
5. To make this decision, an employer will need to understand the qualifying scheme criteria and satisfy themselves that their pension scheme meets, or can be amended to meet, these criteria.
6. For members of their workforce that are not already members of a pension scheme, an employer will need to decide whether they are likely to have automatic enrolment duties in respect of them. They should know this from completing their initial assessment of the workforce as part of getting ready for their duties (see **Detailed guidance no. 2 – Getting ready**).



7. If they are likely to have an automatic enrolment duty, they will need to consider whether they wish to:
  - use their existing pension scheme for automatic enrolment, or
  - put a new pension scheme in place and ensure it meets the automatic enrolment criteria.
8. To make this decision, an employer will need to understand the automatic enrolment scheme criteria and satisfy themselves that their pension scheme meets, or can be amended to meet, these criteria.

## Employers without an existing pension scheme

9. An employer without existing pension provision, who is putting a pension scheme in place for the first time to fulfil their enrolment duties, will need to put an automatic enrolment scheme in place with effect from the date the duties first apply to them.

## All employers

10. All employers will need to understand what makes a pension scheme an automatic enrolment scheme, and what makes it a qualifying scheme.
11. This guidance describes the required criteria. The guidance is divided into five sections:
  - Section 1 gives an overview of automatic enrolment and qualifying schemes
  - Section 2 describes the automatic enrolment criteria for UK and non-UK pension schemes, and what the criteria mean in practice
  - Section 3 describes the qualifying criteria for UK and non-UK pension schemes
  - Section 4 describes the minimum requirements for UK and non-UK pension schemes by scheme type
  - Section 5 describes what the qualifying criteria and minimum requirements mean in practice.
12. When choosing a pension scheme to fulfil their duties, an employer might use an existing pension scheme or set up a new occupational or personal pension scheme.

13. Among the choices of new schemes for employers is NEST, the National Employment Savings Trust, which is a pension scheme with the following characteristics:
  - It has a public service obligation, meaning it must accept all employers who apply to join
  - It has been established by Government to ensure that employers, including those that employ low to medium earners, can access pension saving and comply with their automatic enrolment duties.
14. Alternatively, employers may find a pension provider offering pension schemes for automatic enrolment by contacting the Association of British Insurers at [www.abi.org.uk/pensionproviders](http://www.abi.org.uk/pensionproviders).
15. An employer may wish to take advice on how to find a suitable pension scheme, or an employer can find general information about pensions on the following websites:
  - Money Advice Service: [www.moneyadvice.service.org.uk](http://www.moneyadvice.service.org.uk)
  - The Pensions Advisory Service: [www.pensionsadvisoryservice.org.uk](http://www.pensionsadvisoryservice.org.uk)
  - Gov.uk: [www.gov.uk](http://www.gov.uk)
  - The National Association of Pension Funds: [www.napf.co.uk](http://www.napf.co.uk)
16. To find a financial adviser or financial planner, an employer can contact IFA Promotion: [www.unbiased.co.uk](http://www.unbiased.co.uk)
17. Whether it is a new or existing pension scheme, an employer must be satisfied that it meets the criteria to be an automatic enrolment scheme or to be a qualifying scheme before they can use it.
18. It is important to note that the criteria are the minimum features the pension scheme is required to have. There will be other things to consider before an employer makes a decision about what type of pension scheme to use.
19. Some employers will pay for professional advice while others will make decisions with information from a range of sources. The Pensions Regulator ('the regulator') is supporting employers in understanding the process for selecting a pension scheme for automatic enrolment. Further information for employers to help them understand types of good quality features that will help deliver good member outcomes and should therefore be present in pension products is available on our website: [www.tpr.gov.uk/selectpension](http://www.tpr.gov.uk/selectpension).

## Location of the pension scheme

20. The location of the main administration of the pension scheme is a relevant consideration when an employer is considering their options.
21. A pension scheme whose main administration is in the UK or other European Economic Area (EEA) state can be used for automatic enrolment and can also be used as a qualifying scheme, provided it meets the relevant criteria.
22. A pension scheme whose main administration is in a country outside the EEA cannot be used for automatic enrolment. It can be a qualifying scheme, provided it meets the relevant criteria, and so may be used for existing members of the pension scheme.
23. Table 1 shows what criteria the different types of non-UK pension schemes must meet, and for which of the duties they can be used.

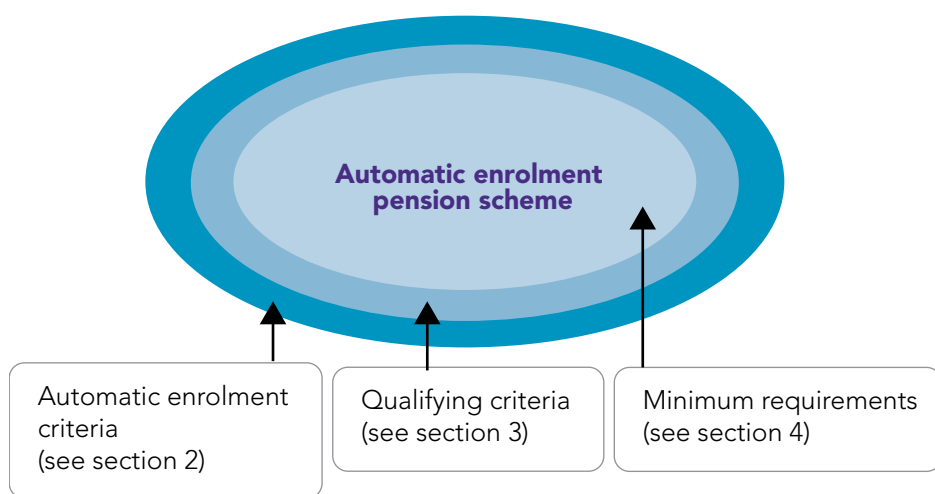
**Table 1**

In respect of:	What requirements EEA pension schemes must meet		What requirements non-EEA pension schemes must meet	
	scheme in existence prior to duties first applying to an employer	new scheme set up after duties first apply to employer	scheme in existence prior to duties first applying to an employer	new scheme set up after duties first apply to employer
Existing members who are eligible jobholders	Qualifying criteria for non-UK schemes	Not applicable	Qualifying criteria for non-UK schemes	Not applicable
Eligible jobholders who are not existing members	Qualifying criteria for non-UK schemes and automatic enrolment requirement for non-UK schemes		Cannot be used	
Non-eligible jobholders who wish to opt in	Qualifying criteria for non-UK schemes and automatic enrolment requirement for non-UK schemes		Cannot be used	
Entitled workers	Tax registered in the UK and direct payment arrangements in place between the worker and employer			

# 1. Overview of automatic enrolment and qualifying schemes

24. There are three sets of requirements that a pension scheme must meet in order to be an automatic enrolment scheme. Figure 1 illustrates these sets.

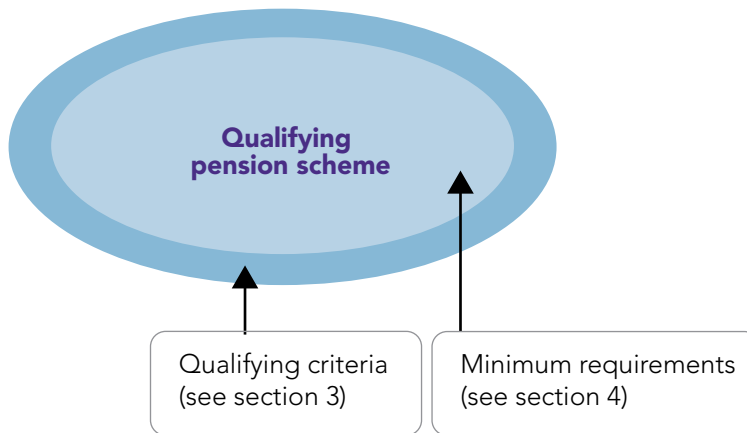
**Figure 1**  
**The three sets of requirements pension schemes must meet**



25. An automatic enrolment scheme must meet the automatic enrolment criteria, the qualifying criteria and the minimum requirements. An employer must ensure that their pension scheme meets the criteria to be an automatic enrolment scheme if they want to use it for automatic enrolment, or for enrolling any jobholders who have opted in.
26. The minimum requirements differ depending on the type of pension scheme (eg whether the scheme is a DC or DB pension scheme). The minimum requirements are described in section 4 of this guidance.
27. There are two sets of requirements that a pension scheme must meet in order to be a qualifying scheme. Figure 2 illustrates these sets.

## Figure 2

### The two sets of requirements pension schemes must meet in order to be a qualifying scheme

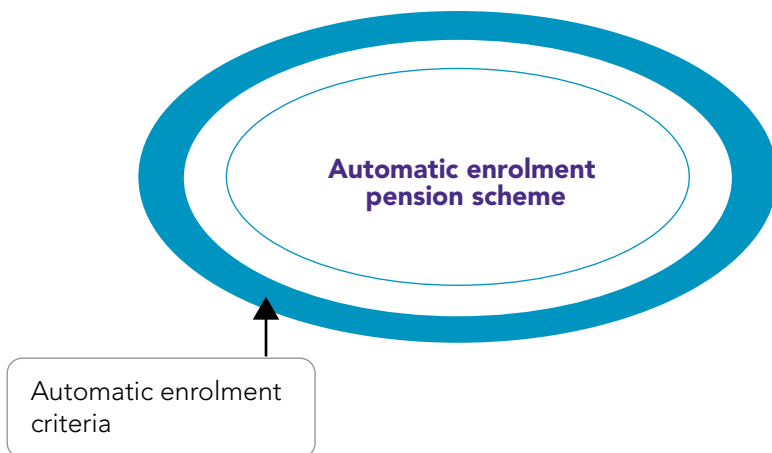


28. A qualifying scheme must meet the qualifying criteria and the minimum requirements.

## In summary

29. A qualifying scheme is a scheme that meets certain minimum requirements with some additional conditions (the 'qualifying criteria'). These are described in section 3 of this guidance.
30. An automatic enrolment scheme is a qualifying scheme with some additional features (the 'automatic enrolment criteria') which means the employer can use it for automatic enrolment. These additional features are described in section 2 of this guidance. Broadly, this means that there should be nothing in the rules of the pension scheme which would act as a barrier to automatic enrolment.

## 2. Automatic enrolment criteria



31. An employer must ensure that their pension scheme meets the criteria (set out below) if they want to use it for automatic enrolment, or for enrolling any jobholders who have opted in.
32. To be an automatic enrolment scheme, a scheme must meet the qualifying criteria (set out in section 3) and in addition, it must not contain any provisions that:
  - prevent the employer from making the required arrangements to automatically enrol, opt in or re-enrol a jobholder
  - require the jobholder to express a choice in relation to any matter, or to provide any information, in order to remain an active member of the pension scheme.
33. If the scheme is a money purchase scheme, it must also not contain any provisions that allow an amount to be deducted from a jobholder's pension pot or contributions, or the value of their pension rights to be reduced by any amount, if that amount is to be paid to a third party under an agreement with the employer unless that third party is either the member, the scheme trustee or manager, or the scheme provider. This is colloquially known as a 'consultancy charge'.

## Additional criteria for non-UK pension schemes

34. Pension schemes with their main administration in an EEA state outside the UK can be used for automatic enrolment, providing they meet the following additional criteria. They must:
- be an institution for occupational retirement provision within the meaning of Article 6(a) of the Institution for Occupational Retirement Provision (IORP) Directive, or a personal pension scheme that is regulated by the relevant competent authority in its home state and operated by a person authorised by that authority, in relation to that activity, and
  - be subject to the following regulatory requirements:
    - At least 70% of any jobholder's money purchase benefits (or lump-sum accrual) must be used to provide them with an income for life
    - Benefits must be paid no earlier than age 55 (unless on grounds of ill health).
35. Pension schemes with their main administration outside the EEA cannot be used for automatic enrolment.

## What the automatic enrolment criteria mean in practice

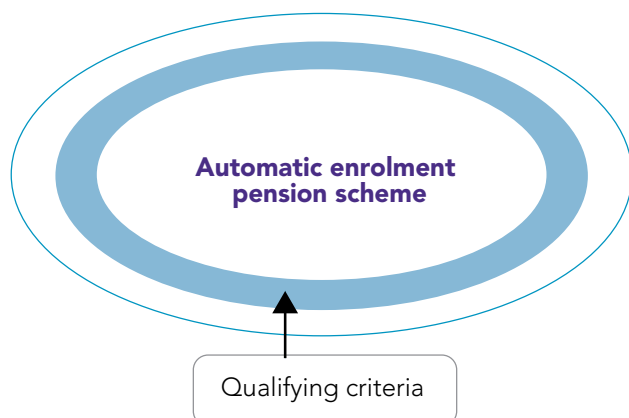
36. Practically, the automatic enrolment criteria mean that the rules of the pension scheme cannot:
- contain any barrier to enrolment into the pension scheme, eg if a scheme has an age restriction of 21, the employer may use it for automatic enrolment but will need to change the scheme rules or provide another automatic enrolment scheme for any jobholders under 21 who wish to opt in
  - require a jobholder to provide information to become or remain a member, eg to complete an application form or give consent
  - require an employer to provide information about the jobholder as a condition of joining beyond the specified information required for automatic enrolment, unless the employer is satisfied that they will be able to provide this information within a period of time short enough to not hamper the automatic enrolment process

## 2. Automatic enrolment criteria

- require a jobholder to make any choice to join or remain a member of a pension scheme, eg to make any choice about the fund their contributions will be invested in before they can become a member. However, the jobholder may express a choice voluntarily, if they wish, and if the scheme rules allow for it. An automatic enrolment scheme will therefore have to provide a default fund for all jobholders who do not express an opinion or choice. The DWP has published default guidance setting out industry standards for governance of funds, charging structure and communications. This guidance can be viewed at: [www.dwp.gov.uk/policy/pensions-reform/workplace-pension-reforms/guidance](http://www.dwp.gov.uk/policy/pensions-reform/workplace-pension-reforms/guidance).
37. If an employer has to pay for advice regarding a money purchase scheme that they intend to use for automatic enrolment, then they will no longer be able to enter into an agreement to deduct such charges from the jobholder's contributions or entitlement under the scheme.
38. Employers with non-UK EEA pension schemes should also check with the trustees or scheme administrator, as the pension scheme may also need to comply with the existing cross-border requirements in respect of its UK members. Each EEA member state will have its own procedure for authorisation and approval.



### 3. Qualifying criteria



- 39. All automatic enrolment schemes must also meet the qualifying criteria. Any existing pension scheme that the employer already provides before their staging date will also have to meet the qualifying criteria, if the employer wants to continue to use it for those workers that are already active members.
- 40. A qualifying scheme may be a UK scheme (one with its main administration in the UK) or a non-UK scheme (with its main administration outside the UK). This includes non-UK pension schemes with their main administration outside the EEA (unlike the automatic enrolment criteria).
- 41. For a UK pension scheme to be qualifying in relation to a jobholder, it must:
  - be an occupational or personal pension scheme
  - be tax registered, and
  - satisfy certain minimum requirements. (The requirements differ according to the type of pension scheme and are described in section 4.)
- 42. For a non-UK pension scheme to be qualifying in relation to a jobholder, it must:
  - be an occupational pension scheme<sup>1</sup> and, in the country where it has its main administration, there must be a body that regulates occupational pension schemes and that scheme itself, or
  - be a personal pension scheme<sup>2</sup> and, in the country where it is established, there must be a body that regulates personal pension schemes and the provider of that scheme, and

1  
Occupational pension scheme (non-UK) is:

- an institution for occupational retirement provision (IORP) that has its main administration in an EEA state other than the UK, or
- a pension scheme that has its main administration outside an EEA state, and meets the definition of an occupational pension scheme as set out in section 1(1) of the Pension Schemes Act 1993.

2  
Personal pension scheme (non-UK)

Within the EEA a personal pension scheme must be:

- regulated by a competent authority, and
- carried on by a person who is in relation to that activity authorised by a competent authority.

### 3. Qualifying criteria

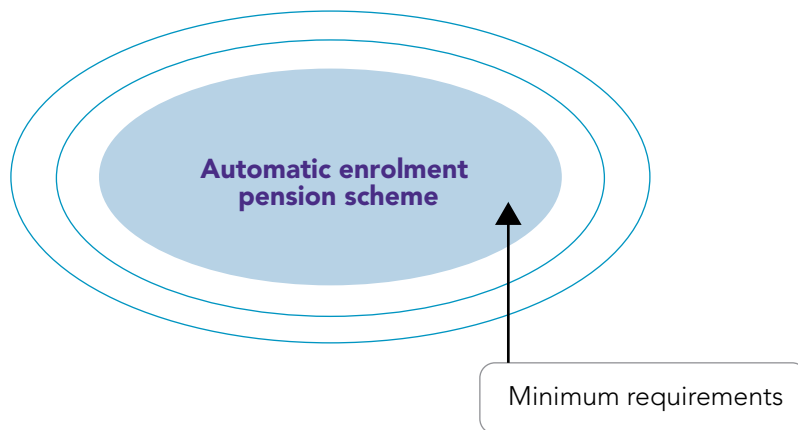
- satisfy the condition that the regulatory requirements provide that some of the benefits may be used to provide the jobholder with an income for life.

43. In addition, the non-UK pension scheme must:

- meet one of the following criteria:
  - It is a qualifying overseas pension scheme (QOPS), or
  - Jobholders receive tax relief on their contributions because of a double taxation agreement, or
  - Jobholders receive tax relief on their contributions under chapter 2, part 5 of the Income Tax (Earnings and Pensions) Act 2003 in accordance with paragraph 51 of Schedule 36 of the Finance Act 2004, or
  - It is a money purchase pension scheme whose jobholders do not receive any tax relief on their contributions but the employer's contribution includes an additional amount, which is equivalent in value to the tax relief that jobholders would have received, had the pension scheme been tax registered in the UK, and
- satisfy the same minimum requirements as for UK pension schemes, as set out in section 4, unless the scheme is a supplementary pension scheme<sup>3</sup> to which Directive 98/49/EC applies in relation to the jobholder.

<sup>3</sup>  
A scheme within the meaning of Article 3(b) of Directive 98/49/EC.

## 4. Minimum requirements by pension scheme type



44. These minimum requirements differ according to the type of pension scheme. They apply to both UK pension schemes and non-UK pension schemes, except where indicated. An employer need only consider the minimum requirements that are relevant to their pension scheme type.
45. The minimum requirements for DC pension schemes set a minimum contributions entitlement. There are some additional requirements where the DC pension scheme is a contract-based scheme (ie a personal pension). For employers who provide a DC pension scheme, there is an alternative way of meeting the requirements called 'certification'.
46. The minimum requirements for DC pension schemes, including certification, are described in paragraphs 49-80.
47. The minimum requirements for DB pension schemes set a benchmark for a jobholder's entitlement to benefits, and are described in paragraphs 81-92.
48. The minimum requirements for hybrid pension schemes (a scheme which is neither only a DB nor only a DC, but which generally has elements of both) are described in paragraphs 93-96.

## DC occupational pension schemes

49. The minimum requirements for DC occupational pension schemes are based on the contribution rate and require that under the scheme:

- the employer must make contributions in respect of the jobholder
- a total minimum contribution, however calculated, must be at least 8% of the jobholder's qualifying earnings (see paragraph 52) in the relevant pay reference period<sup>4</sup>
- a minimum employer's contribution, however calculated, must be at least 3% of the jobholder's qualifying earnings in the relevant pay reference period.

50. Note that contribution levels are being phased in. Appendix A has more details.

51. 'Under the scheme' means under the rules of the pension scheme or other binding agreement with the employer.

52. 'Qualifying earnings' is a reference to earnings of between £5,668 and £41,450<sup>5</sup> made up of any of the following components of pay ('earnings') that are due to be paid to the worker:

- salary
- wages
- commission
- bonuses
- overtime
- statutory sick pay
- statutory maternity pay
- ordinary or additional statutory paternity pay
- statutory adoption pay.

53. The assessment of whether a component of pay constitutes an element of qualifying earnings is for the employer to make. It is a separate and distinct assessment to deciding what constitutes basic pay for the purposes of a pension scheme that is using certification to meet minimum requirements as part of the qualifying criteria.

4  
See Appendix E for further information on the relevant pay reference period.

5  
These figures are for the 2013-2014 tax year. The DWP intends to announce the figures for the 2014-2015 tax year in December 2013. Following the DWP's announcement, you will find these on our website.

## DC personal pension schemes

54. The minimum requirements for personal pension schemes are also based on the contribution rate but, in addition, include requirements governing the mechanism for paying those contributions and the type of pension benefit provided.
55. Therefore, to be a qualifying scheme, a personal pension scheme must:
- be subject to regulation by the Financial Conduct Authority (FCA), and
  - have its operations carried out in the UK by a person who is an authorised person or an exempt person under section 19 of the Financial Services and Markets Act 2000, and
  - provide money purchase benefits, and
  - have certain types of agreements in place between the employer, the jobholder and the provider of the personal pension scheme.
56. The agreements are as follows:

### A. Agreement between the provider of the pension scheme and the employer

57. There must be an agreement between the provider of the pension scheme and the employer under which:
- the employer must make contributions in respect of the jobholder, and
  - the employer's contribution, however calculated, must be at least 3% of the jobholder's qualifying earnings in the relevant pay reference period<sup>6</sup>.
58. Note that contribution levels are being phased in. Appendix A has more details.
59. We expect the agreement to create a legally binding obligation (preferably by means of a written contract) on the employer to pay minimum contributions in respect of the jobholder to the provider of the pension scheme. It is unlikely that an existing group personal pension scheme or stakeholder pension scheme will have such an agreement in place.

<sup>6</sup>

See Appendix E for further information on the relevant pay reference period.

## B. Agreement between the provider of the pension scheme and the jobholder

60. This agreement is only needed if the employer's contribution is less than 8% of the jobholder's qualifying earnings and the jobholder is therefore required to make contributions.
61. Where this is the case, there must be an agreement between the provider of the pension scheme and the jobholder, under which:
- the jobholder must make contributions which, however calculated, are at least equal to the difference between:
    - 8% of the jobholder's qualifying earnings in the relevant pay reference period<sup>7</sup>, and
    - the employer's contribution under the agreement in (A) above.

The jobholder can choose to pay more than any shortfall if they wish.

62. Note that contribution levels are being phased in. Appendix A has more details.
63. It is for the provider of the pension scheme to decide how to put in place this agreement but we think that it may form part of the terms and conditions issued to the jobholder.

## C. Direct payment arrangements

64. There must be direct payment arrangements between the employer and the jobholder. Direct payment arrangements are arrangements under which the employer (or someone acting on their behalf) pays contributions to the pension scheme. The contributions are either:
- on the employer's own account but in respect of the jobholder (ie employer contributions), or
  - on behalf of the jobholder (jobholder contributions if the jobholder is making any) out of deductions from the jobholder's pay.
65. The direct payment arrangements must set out the due dates for paying these contributions.
66. Jobholder contributions deducted from pay must be paid to the pension scheme by the 19th day of the month following deduction (or 22nd day if the payment is by electronic means). There are special rules for the first deductions after joining. For more information see **Detailed guidance no. 5 – Automatic enrolment**.

7

See Appendix E for further information on the relevant pay reference period.

#### 4. Minimum requirements by pension scheme type

67. Employer contributions must be paid by the latest date set out under the arrangements for paying them to the pension scheme.
68. Direct payment arrangements are not required to be a written agreement on a single document. Essentially, direct payment arrangements exist where:
  - the employer makes employer contributions to a personal pension scheme (as is required under agreement (A)), or
  - the employer deducts the jobholder's contributions from pay and pays them across to the pension scheme for the jobholder, or
  - the employer does both.
69. A combination of other written and verbal agreements may exist between the provider of the pension scheme, the employer and the jobholder that constitute direct payment arrangements. In fact, because as part of the minimum requirements, there must be an agreement between the provider of the pension scheme and the employer under which the employer must make contributions, this will likely constitute and evidence the direct payment arrangements.

## Certification

70. Existing DC pension schemes, whether occupational or personal pension schemes, will base contributions on percentage rates of pensionable pay. The definition of pensionable pay in the scheme rules is likely to be different to qualifying earnings. Pensionable pay may just include basic pay and not overtime or bonuses and may require contributions to be deducted from the first pound earned, or from a band of earnings different to qualifying earnings.
71. In recognition of this, employers with schemes of this type are able to self-certify that their scheme meets the minimum requirements. One way of doing this is for employers to certify their scheme with respect to one of the alternative requirements. The alternative requirements comprise three sets as follows:
72. **Set 1**  
A total minimum contribution of at least 9% of pensionable pay (at least 4% of which must be the employer's contribution), or  
**Set 2**  
A total minimum contribution of at least 8% of pensionable pay (at least 3% of which must be the employer's contribution), provided that pensionable pay constitutes at least 85% of earnings (the ratio of pensionable pay to earnings can be calculated as an average at scheme level), or

##### Set 3

A total minimum contribution of at least 7% of earnings (at least 3% of which must be the employer's contribution) provided that all earnings are pensionable.

73. To certify, the rules of the scheme must require contributions in line with one of the sets. Where a personal pension is used, similar agreements to those described in paragraphs 57 to 63 between the scheme, jobholder and employer must be in place which reflect the contribution levels in one of the sets.
74. 'Earnings' has the same meaning as in section 13(3) of the Pensions Act 2008 (see paragraph 52 for more information).
75. For sets one and two, pensionable pay must be at least equivalent to basic pay. Basic pay is defined as the gross earnings (see paragraph 74) of the jobholder, disregarding the gross amount of:
- any commission, bonuses, overtime or similar payments
  - any shift premium pay, and
  - any reasonable allowance with respect to:
    - i. any duty of the jobholder, such as a duty in connection with the role of fire or bomb warden, that is ancillary to the main duties of the jobholder's employment
    - ii. the cost of relocation of the jobholder to a different place of work
    - iii. in a case not covered by ii), the purchase, lease or maintenance of a vehicle
    - iv. in a case not covered by ii) or iii), the purchase, lease or maintenance of an item, or
    - v. in a case not covered by ii), iii) or iv), the delivery of a service to the jobholder.
76. This definition of basic pay is separate to the assessment of what components of pay make up qualifying earnings. Qualifying earnings are described in paragraph 52. When an employer is assessing their worker to identify into which category of worker they fall, they must assess whether qualifying earnings are payable in the relevant pay reference period. This is explained in **Detailed guidance no. 3 – Assessing the workforce**.



#### 4. Minimum requirements by pension scheme type

77. Some employers may be unable to, or not wish to, certify that their scheme meets one of the alternative requirements because, for example, elements of non-pensionable pay are fluctuating. These employers may instead wish to certify that their scheme meets the minimum requirements in the Act. They can do this if an examination of current remuneration data for all relevant jobholders reveals that their entitlement under the scheme has met the minimum requirements in practice.
78. The employer has one month from the effective date of the certificate (which, for the first certificate, will usually be the scheme's staging date) to carry out any necessary checks and calculations and sign the certificate. They may look forward for up to 18 months (the maximum certification period) to certify that their scheme will be qualifying for that period. At the end of the period, if the employer wishes to re-certify, they must do so within one month.
79. The DWP has practical guidance for employers and their advisers on the certification of DC schemes and the DC element of certain hybrid schemes. This can be viewed at [www.dwp.gov.uk/docs/money-purchase-schemes-guidance-2012.pdf](http://www.dwp.gov.uk/docs/money-purchase-schemes-guidance-2012.pdf)
80. An employer can also determine whether their scheme meets the minimum requirements by carrying out an entitlement check. Broadly, this entails carrying out an individual check for each worker to establish whether the worker's entitlement under the scheme rules is at least equivalent to the minimum requirements for a DC scheme. Details on how to carry out an entitlement check are set out in Appendix F.

### DB pension schemes

81. The minimum requirements for DB pension schemes are based on the benefits to which a jobholder is entitled under the pension scheme at retirement.
82. Most DB pension schemes will satisfy the minimum requirement if the employer has been issued with a contracting-out certificate by the National Insurance Services to the Pensions Industry (NISPI), part of Her Majesty's Revenue and Customs (HMRC) and all the jobholders are in contracted out employment. However, average salary pension schemes that are contracted out will also have to meet certain additional criteria (see paragraphs 91-92).
83. If a contracting-out certificate is cancelled by HMRC, or if the pension scheme is not contracted-out of State Second Pension, it may still satisfy the minimum requirement if it meets the 'test scheme standard' in relation to the jobholder.

## Test scheme standard

84. The test scheme is a hypothetical scheme, which is used as a benchmark. A pension scheme will satisfy the test scheme standard if it provides benefits that are broadly equivalent to, or better than, the benefits the test scheme would provide.
85. A pension scheme does not have to exactly match the structure of the test scheme to satisfy the test scheme standard but the benefits provided must be broadly equivalent to, or better than those in the test scheme.
86. The key features of the test scheme include:
- entitlement to a pension from age 65, gradually increasing to 68 (to reflect increases in state pension age) and continuing for life
  - an annual pension of 1/120th (or a lump sum of 16% for final salary lump sum schemes) of average qualifying earnings in the three tax years before the end of pensionable service, multiplied by the number of years of pensionable service, up to a maximum of 40 years
  - for average salary lump sum schemes:
    - a lump sum of 16% of qualifying earnings averaged over pensionable service, multiplied by the number of years of pensionable service, up to a maximum of 40 years with revaluation in service by the annual increase in either the Retail Price Index (RPI) or the Consumer Price Index (CPI), capped at 2.5%, or
    - a lump sum of 8% of qualifying earnings averaged over pensionable service, multiplied by the number of years of pensionable service, up to a maximum of 40 years with revaluation in service by the annual increase in either the RPI or the CPI, capped at 2.5% plus a further 3.5% per annum and revaluation in deferment of 3.5% per annum in addition to that required by the bullet below
  - revaluation of accrued benefits in deferment in accordance with section 84 of the Pension Schemes Act 1993
  - annual increase of pensions in payment in accordance with section 51 of the Pensions Act 1995.
87. The comparison of a pension scheme's benefits with those provided by the test scheme will usually be done by the scheme actuary.

#### 4. Minimum requirements by pension scheme type

88. In some circumstances, the employer may self-certify that their pension scheme meets the standards of the test scheme, providing no actuarial calculations or comparisons are required. If the employer does self-certify, they can delegate calculations, if they prefer, but the employer remains responsible for ensuring the pension scheme meets the requirement.
89. The DWP has issued guidance for employers and actuaries on the certification of qualifying schemes and the comparison to the test scheme, available at: [www.gov.uk/government/collections/automatic-enrolment-guidance-for-employers-and-actuaries](http://www.gov.uk/government/collections/automatic-enrolment-guidance-for-employers-and-actuaries)
90. Schemes that are not contracted-out DB pension schemes, and which fail to satisfy the test scheme standard, cannot be qualifying schemes.

### Average salary pension schemes

91. As well as being broadly equivalent to, or better than the test scheme (or being contracted out), average salary pension schemes must meet certain additional criteria in respect of accrued benefits, in order to meet the minimum requirements.
92. The additional criteria are that, during a jobholder's pensionable service, any benefits that accrue to the jobholder must be revalued as follows:
  - by the annual increase in either the RPI, or the CPI capped at 2.5%, or
  - if there is a discretionary power in the scheme rules to revalue such benefits:
    - the funding of the pension scheme must take into account the exercise of the discretionary power and must do so on the assumption that the minimum revaluation rate is the annual increase in either the RPI or CPI capped at 2.5%, and
    - such funding must be provided for in the pension scheme's statement of funding principles required under part 3 of the Pensions Act 2004, or in an equivalent funding statement if the pension scheme is not subject to the part 3 funding requirements of the Pensions Act 2004 (for example a non-UK pension scheme).

## Hybrid pension schemes

93. A hybrid pension scheme is a scheme which is neither purely a DB nor purely a DC, but which generally has elements of both.
94. Depending on the type of pension scheme, it will have to meet:
- the same minimum requirements as for DB pension schemes or a modified version, or
  - the same minimum requirements as a DC pension scheme or a modified version, including the option to use the certification process, or
  - a combination of the above.
95. Generally, each section of the scheme should be treated as if it is a separate scheme and the appropriate minimum requirements applied to each section. As long as one section meets the relevant minimum requirements, the scheme will qualify. However, there are some variations, as follows in Table 2.

**Table 2**  
**Minimum requirements for some types of hybrid pension scheme**

Types of hybrid scheme	Applicable minimum requirements
Contracted out	As with DB schemes, the contracting out certificate is evidence that the scheme qualifies, unless it is a career average scheme, in which case it must also meet the revaluation criteria set out in paragraphs 90-91
<p><b>Non contracted out sequential</b>            Both DB and DC benefits accrue in the scheme but not at the same time (eg members start in the DC section and move into the DB section after a specified number of years)</p>	Treat each section as a separate scheme, however, both sections must satisfy the relevant requirements
<p><b>Non contracted out self-annuitising</b>            Benefits accrue on a DC scheme but the pension is paid by the scheme, rather than each member's pot being used to buy their pension</p>	Treat as a DC scheme
<p><b>Non contracted out combination</b>            Both DB and DC benefits accrue at the same time</p>	Treat each section as a separate scheme and if either section meets the relevant minimum requirements, the scheme will qualify. However, if neither section meets the minimum requirements in full, they may be applied proportionately in aggregate.

96. The DWP has practical guidance for employers and actuaries on how to certify that DB and hybrid schemes meet the appropriate minimum requirements. This can be viewed at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/244982/auto-enrol-guid-emp.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244982/auto-enrol-guid-emp.pdf)

## 5. What the qualifying criteria mean in practice

97. An employer has to be satisfied that the pension scheme they are using to fulfil their duties meets the qualifying criteria. This is either as part of being satisfied that the pension scheme is an automatic enrolment scheme, or for checking that their existing pension scheme meets the qualifying criteria so they can continue to use it for existing members.

98. For DB pension schemes or those hybrid pension schemes which have to meet the DB minimum criteria, this might be straightforward, eg by simply checking the contracting out certificate that the employer holds. Appendix C has a flowchart showing the steps an employer may use in determining whether the qualifying criteria are met for a pension scheme with its main administration in the UK.

99. For DC pension schemes or those hybrid pension schemes that must meet the DC minimum requirements, the employer will need to be satisfied that the entitlement under the rules of the pension scheme (or agreements in the case of personal pensions) is equivalent to, or better than, a total contribution of 8% of a jobholder's qualifying earnings in the relevant pay reference period<sup>8</sup>.

100. An employer should first check the rules of the scheme (or agreements). If they explicitly state that:

- the pension scheme requires, as a minimum, a total contribution of 8% of the jobholder's qualifying earnings in the relevant pay reference period<sup>8</sup>
- of which the employer's contribution is at least 3%

then the employer can then be satisfied that the pension scheme meets the minimum requirements.

101. There is no requirement to check the amount of contributions that are actually paid for the purposes of establishing if the pension scheme meets the minimum requirements. However, an employer will still need to ensure that they are making the correct payments on time, as required by the pension scheme under the existing law on payment of contributions.

102. Note that contribution levels are being phased in. Appendix A has more details.

<sup>8</sup>  
See Appendix E for further information on the relevant pay reference period.

103. Alternatively, the employer may choose to certify that the scheme meets one of the alternative requirements. They may do this if the rules of the scheme they want to use:

- require contributions to be deducted from the first pound earned, or on a band of earnings different to that used for qualifying earnings
- do not use qualifying earnings as the definition of pensionable pay, and
- have a definition of pensionable pay which is at least equivalent to basic pay.

104. If the rules of the scheme (or agreements) explicitly state that:

- the pension scheme requires as a minimum a total contribution of at least 9% of pensionable pay (of which at least 4% must be the employer's contribution), or
- the pension scheme requires as a minimum a total contribution of at least 8% of pensionable pay (at least 3% of which must be the employer's contribution) provided that pensionable pay constitutes at least 85% of earnings (the ratio of pensionable pay to earnings can be calculated as an average at scheme level), or
- the pension scheme requires as a minimum a total contribution of at least 7% of earnings (at least 3% of which must be the employer's contribution), provided that all earnings are pensionable

then the employer can certify the pension scheme and the scheme is taken to satisfy the relevant alternative requirements indicated in the employer's certification. Please note that these sets set out a minimum contribution rate. If the scheme requires a higher rate, the employer should still certify the scheme with respect to the most relevant set.

These contribution levels are also being phased in. Appendix B has more details.

105. If employers are unable to, or do not wish to, certify that their scheme meets one of the alternative requirements because, for example, elements of non-pensionable pay are fluctuating, they may instead be able to certify that their scheme meets the minimum requirements. They can do this if an examination of current remuneration data for all relevant jobholders reveals that their entitlement under the scheme has met the minimum requirements in practice.

106. If the employer is unable to, or does not wish to, certify that the scheme meets either the minimum requirements or the alternative requirements, they may choose to carry out an entitlement check to establish whether the entitlement under the rules is at least equivalent to 8% of a jobholder's qualifying earnings in the relevant pay reference period. This is an individual check for each worker, although it may be possible to group similar workers together.
107. Appendix D has a flowchart showing the steps an employer may use to determine whether the qualifying criteria are met for a DC pension scheme with its main administration in the UK.

## Schemes that do not meet the minimum or alternative requirements

108. If, after carrying out all the above-mentioned checks, the minimum or alternative requirements cannot be met, an employer may choose to change the scheme rules or agreements in one or a number of ways, including:
- increasing the rate of contributions required from the employer and/or the jobholder
  - widening elements of pay included within the pension scheme definition (or definition set out in the agreements) of pensionable pay
  - adopting a definition of pensionable pay, which is based on qualifying earnings and a contribution rate that meets the minimum required (ie 3% and 8% in total)
  - changing the scheme rules (or agreements) to meet the DC certification criteria.
109. When an employer is satisfied that the effect of any change(s) fulfils the relevant minimum or alternative requirements, they are then able to use it as a qualifying scheme in relation to the jobholder (provided it meets the other qualifying requirements).
110. The employer should discuss any amendments to the scheme rules, and the process for making them, with the trustees, manager or providers of the pension scheme. There may be a requirement to consult with members if they are making changes to the scheme that increase member contributions. If an employer is required to consult, the consultation period is a period of 60 days and this timing should be built into their planning for automatic enrolment.

**An employer should check the rules of the scheme (or agreement)**



## Salary sacrifice

111. Some employers make pension contribution payments by a salary sacrifice arrangement. This is a contractual agreement between the worker and the employer by which the worker agrees to forego salary in return for pension contributions by the employer (the amount sacrificed is paid into a pension scheme by the employer in respect of the worker). The operation of a salary sacrifice arrangement is separate to the automatic enrolment provisions, although an employer may run the two processes in parallel when complying with their employer duties.
112. An employer may ask an eligible jobholder who must be automatically enrolled whether they want to put in place a salary sacrifice arrangement. However, active membership of a scheme cannot be dependent on whether the jobholder agrees to the arrangement. So, if the eligible jobholder declines to set up salary sacrifice, the employer must automatically enrol them in line with the automatic enrolment provisions with an alternative method of contribution deduction.
113. Employers may choose to put in place a salary sacrifice arrangement before or after the jobholder's automatic enrolment date. If they set it up before, they may choose to use postponement to give them time to put the arrangement in place. If they set it up after the automatic enrolment date, they will have to use a different method of payment for the initial pension contributions due from the automatic enrolment date.
114. When communicating the option of salary sacrifice to a jobholder, the employer should take care to separate this information from the enrolment information. The employer may send salary sacrifice and enrolment information together if they wish, but must avoid giving the impression that the jobholder will only be enrolled if they agree to salary sacrifice.
115. If the employer is using a DC scheme then the qualifying earnings used to meet the minimum requirement are the post-sacrifice level of salary.

## Flexible benefits packages

116. Similarly, some employers include their pension provision in a wider flexible benefits scheme that they provide to their workers.
117. Flexible benefits schemes allow workers some freedom of choice about how they apportion their total pay and benefits. Traditionally, these schemes allow workers to choose what level of pay is committed to pension contributions alongside other benefits, such as healthcare, life assurance or cash.

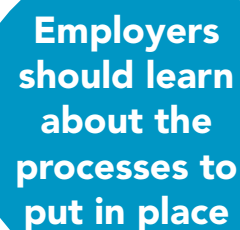
118. Employers can still offer this choice as long as they comply with the underlying employer duties. Therefore, an eligible jobholder (or jobholder who has chosen to opt in) must first be enrolled into the scheme at or above the relevant minimum contribution level for a DC scheme, or at or above the minimum accrual rate for a DB scheme (unless the scheme is contracted out) required to make the scheme qualifying. Enrolment must be able to take place at the minimum contribution level for a DC scheme (of 8% in total), or, for a DB scheme, into a contracted out scheme or a scheme that meets the test scheme standard, even if the jobholder has not made any specific election regarding their flexible benefits options.
119. Having been enrolled with effect from the automatic enrolment date, the jobholder is free to reduce or increase the level of contributions in accordance with the rules of the flexible benefits arrangement and of the scheme.

## What next?

Once an employer is able to identify the criteria a pension scheme must meet in order to be used to fulfil their new employer duties, the next step should be to learn about the processes they will need to put in place.

For employers who know they will, or are likely to have, an automatic enrolment duty, the next step should be to read **Detailed guidance no. 5 – Automatic enrolment**. It contains detailed information on the automatic enrolment process, from identifying who, when and how to automatically enrol, to an employer's ongoing responsibilities once the automatic enrolment process is complete.

It is also important for employers to understand the position of those workers who fall outside the automatic enrolment criteria, but who have a right to require their employer to enrol them into a pension scheme. **Detailed guidance no. 6 – Opting in, joining and contractual enrolment** explains what an employer must do if they receive a request from such a worker.



**Employers  
should learn  
about the  
processes to  
put in place**

# Changes from last version

This guidance has been updated to include reference to the changes in the legislation from 1 November 2013 in the definition of a relevant pay reference period for the purposes of the minimum requirements. This has resulted in the addition of a new appendix – Appendix E.

The table below lists other changes included in this version. This list is not exhaustive. It does not include minor editorial changes.

<b>Location</b>	<b>Change</b>
Paragraph 33	Updated for ban on consultancy charging
Paragraph 37	Updated for ban on consultancy charging
Paragraph 54	Removal of para 54 as wording unhelpful
Paragraph 73	Clarification around qualifying agreements for PP schemes
Paragraph 86	Updated for Test Scheme Standard changes
Paragraph 120	Clarification on flexible benefit packages

# Key terms

## Summary of the different categories of worker

Category of worker	Description of worker
Worker	An employee or someone who has a contract to perform work or services personally, that is not undertaking the work as part of their own business.
Jobholder	A worker who: <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</li><li>• has qualifying earnings.</li></ul>
Eligible jobholder	A jobholder who: <ul style="list-style-type: none"><li>• is aged between 22 and state pension age</li><li>• has qualifying earnings above the earnings trigger for automatic enrolment.</li></ul>
Non-eligible jobholder	A jobholder who: <ul style="list-style-type: none"><li>• is aged between 16 and 21 or state pension age and 74</li><li>• has qualifying earnings above the earnings trigger for automatic enrolment</li></ul> or <ul style="list-style-type: none"><li>• is aged between 16 and 74</li><li>• has qualifying earnings below the earnings trigger for automatic enrolment.</li></ul>
Entitled worker	A worker who: <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</li><li>• does not have qualifying earnings.</li></ul>

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Pension schemes

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